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Panel A

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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:

13 SCOTT ROBERT GWALTNEY, M.D.
Downey Medical Center
14 9333 East Imperial Highway
Downey, California 90242

15 Physician's and Surgeon's Certificate
No. A 76028,

16 Respondent.

Case No. 800-2015-012227

Consolidated with Case No. 800-2016-021513

OAH No. 2017070174

17 **STIPULATED SETTLEMENT AND**
18 **DISCIPLINARY ORDER**

19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
22 of California, Department of Consumer Affairs (Board). She brought this action solely in her
23 official capacity and is represented in this matter by Xavier Becerra, Attorney General of the
24 State of California, by Nicholas B.C. Schultz, Deputy Attorney General.

25 2. Scott Robert Gwaltney, M.D. (Respondent) is represented in this proceeding by
26 attorney Kevin D. Cauley, Esq., whose address is: One Wilshire Building, 624 South Grand
27 Avenue, 22nd Floor, Los Angeles, California 90017-2906.

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3. On or about August 1, 2001, the Board issued Physician's and Surgeon's Certificate No. A 76028 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-012227, and will expire on August 31, 2019, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-012227 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served upon Respondent on June 1, 2017. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-012227 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-012227. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including: the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2015-012227.

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10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this Stipulated Settlement and Disciplinary Order, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, then the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 76028 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on

1 probation for five (5) years on the following terms and conditions.

2 1. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain
3 completely from the personal use or possession of controlled substances as defined in the
4 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and
5 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not
6 apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide
7 illness or condition.

8 Within fifteen (15) calendar days of receiving any lawfully prescribed medications,
9 Respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and
10 telephone number; medication name, strength, and quantity; and issuing pharmacy name, address,
11 and telephone number.

12 2. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the
13 use of products or beverages containing alcohol.

14 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar
15 days of the effective date of this Decision, Respondent shall enroll in a professionalism program,
16 that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
17 Respondent shall participate in and successfully complete that program. Respondent shall
18 provide any information and documents that the program may deem pertinent. Respondent shall
19 successfully complete the classroom component of the program not later than six (6) months after
20 Respondent's initial enrollment, and the longitudinal component of the program not later than the
21 time specified by the program, but no later than one (1) year after attending the classroom
22 component. The professionalism program shall be at Respondent's expense and shall be in
23 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

24 A professionalism program taken after the acts that gave rise to the charges in the
25 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
26 or its designee, be accepted towards the fulfillment of this condition if the program would have
27 been approved by the Board or its designee had the program been taken after the effective date of
28 this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than fifteen (15) calendar days after successfully completing the program or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

4. PSYCHIATRIC EVALUATION. Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within fifteen (15) calendar days after being notified by the Board or its designee.

5. PSYCHOTHERAPY. Within sixty (60) calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five (5) years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist with any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Respondent to undergo psychiatric

1 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of
2 probation, Respondent is found to be mentally unfit to resume the practice of medicine without
3 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
4 period of probation shall be extended until the Board determines that Respondent is mentally fit
5 to resume the practice of medicine without restrictions.

6 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

7 6. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
8 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice
9 where: 1) Respondent merely shares office space with another physician but is not affiliated for
10 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
11 location.

12 If Respondent fails to establish a practice with another physician or secure employment in
13 an appropriate practice setting within sixty (60) calendar days of the effective date of this
14 Decision, Respondent shall receive a notification from the Board or its designee to cease the
15 practice of medicine within three (3) calendar days after being so notified. The Respondent shall
16 not resume practice until an appropriate practice setting is established.

17 If, during the course of the probation, the Respondent's practice setting changes and the
18 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent
19 shall notify the Board or its designee within five (5) calendar days of the practice setting change.
20 If Respondent fails to establish a practice with another physician] or secure employment in an
21 appropriate practice setting within sixty (60) calendar days of the practice setting change,
22 Respondent shall receive a notification from the Board or its designee to cease the practice of
23 medicine within three (3) calendar days after being so notified. The Respondent shall not resume
24 practice until an appropriate practice setting is established.

25 7. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)
26 days of the effective date of this Decision, Respondent shall provide to the Board the names,
27 physical addresses, mailing addresses, and telephone numbers of any and all employers and
28 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's

1 worksite monitor, and Respondent's employers and supervisors to communicate regarding
2 Respondent's work status, performance, and monitoring.

3 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or
4 Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff
5 privileges.

6 8. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
7 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
8 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
9 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall
10 make daily contact with the Board or its designee to determine whether biological fluid testing is
11 required. Respondent shall be tested on the date of the notification as directed by the Board or its
12 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at
13 any time, including weekends and holidays. Except when testing on a specific date as ordered by
14 the Board or its designee, the scheduling of biological fluid testing shall be done on a random
15 basis. The cost of biological fluid testing shall be borne by the Respondent.

16 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.
17 During the second year of probation and for the duration of the probationary term, up to five (5)
18 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no
19 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing
20 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number
21 of random tests to the first-year level of frequency for any reason.

22 Prior to practicing medicine, Respondent shall contract with a laboratory or service,
23 approved in advance by the Board or its designee, that will conduct random, unannounced,
24 observed, biological fluid testing and meets all of the following standards:

25 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry
26 Association or have completed the training required to serve as a collector for the United
27 States Department of Transportation.

28 (b) Its specimen collectors conform to the current United States Department of

1 Transportation Specimen Collection Guidelines.

2 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published
3 by the United States Department of Transportation without regard to the type of test
4 administered.

5 (d) Its specimen collectors observe the collection of testing specimens.

6 (e) Its laboratories are certified and accredited by the United States Department of Health
7 and Human Services.

8 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day
9 of receipt and all specimens collected shall be handled pursuant to chain of custody
10 procedures. The laboratory shall process and analyze the specimens and provide legally
11 defensible test results to the Board within seven (7) business days of receipt of the
12 specimen. The Board will be notified of non-negative results within one (1) business day
13 and will be notified of negative test results within seven (7) business days.

14 (g) Its testing locations possess all the materials, equipment, and technical expertise
15 necessary in order to test Respondent on any day of the week.

16 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens
17 for the detection of alcohol and illegal and controlled substances.

18 (i) It maintains testing sites located throughout California.

19 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line
20 computer database that allows the Respondent to check in daily for testing.

21 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff
22 access to drug test results and compliance reporting information that is available 24 hours a
23 day.

24 (l) It employs or contracts with toxicologists that are licensed physicians and have
25 knowledge of substance abuse disorders and the appropriate medical training to interpret
26 and evaluate laboratory biological fluid test results, medical histories, and any other
27 information relevant to biomedical information.

28 (m) It will not consider a toxicology screen to be negative if a positive result is obtained

1 while practicing, even if the Respondent holds a valid prescription for the substance.

2 Prior to changing testing locations for any reason, including during vacation or other travel,
3 alternative testing locations must be approved by the Board and meet the requirements above.

4 The contract shall require that the laboratory directly notify the Board or its designee of
5 non-negative results within one (1) business day and negative test results within seven (7)
6 business days of the results becoming available. Respondent shall maintain this laboratory or
7 service contract during the period of probation.

8 A certified copy of any laboratory test result may be received in evidence in any
9 proceedings between the Board and Respondent.

10 If a biological fluid test result indicates Respondent has used, consumed, ingested, or
11 administered to himself or herself a prohibited substance, the Board shall order Respondent to
12 cease practice and instruct Respondent to leave any place of work where Respondent is practicing
13 medicine or providing medical services. The Board shall immediately notify all of Respondent's
14 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or
15 provide medical services while the cease-practice order is in effect.

16 A biological fluid test will not be considered negative if a positive result is obtained while
17 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited
18 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

19 After the issuance of a cease-practice order, the Board shall determine whether the positive
20 biological fluid test is in fact evidence of prohibited substance use by consulting with the
21 specimen collector and the laboratory, communicating with the licensee, his or her treating
22 physician(s), other health care provider, or group facilitator, as applicable.

23 For purposes of this condition, the terms "biological fluid testing" and "testing" mean the
24 acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

25 For purposes of this condition, the term "prohibited substance" means an illegal drug, a
26 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by
27 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been
28 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

1 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited
2 substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the
3 Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to
4 any other terms or conditions the Board determines are necessary for public protection or to
5 enhance Respondent's rehabilitation.

6 9. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of
7 the effective date of this Decision, Respondent shall submit to the Board or its designee, for its
8 prior approval, the name of a substance abuse support group which he or she shall attend for the
9 duration of probation. Respondent shall attend substance abuse support group meetings at least
10 once per week, or as ordered by the Board or its designee. Respondent shall pay all substance
11 abuse support group meeting costs.

12 The facilitator of the substance abuse support group meeting shall have a minimum of three
13 (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed
14 or certified by the state or nationally certified organizations. The facilitator shall not have a
15 current or former financial, personal, or business relationship with Respondent within the last five
16 (5) years. Respondent's previous participation in a substance abuse group support meeting led by
17 the same facilitator does not constitute a prohibited current or former financial, personal, or
18 business relationship.

19 The facilitator shall provide a signed document to the Board or its designee showing
20 Respondent's name, the group name, the date and location of the meeting, Respondent's
21 attendance, and Respondent's level of participation and progress. The facilitator shall report any
22 unexcused absence by Respondent from any substance abuse support group meeting to the Board,
23 or its designee, within twenty-four (24) hours of the unexcused absence.

24 10. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty
25 (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or
26 its designee for prior approval as a worksite monitor, the name and qualifications of one or more
27 licensed physician and surgeon, other licensed health care professional if no physician and
28 surgeon is available, or, as approved by the Board or its designee, a person in a position of

1 authority who is capable of monitoring the Respondent at work.

2 The worksite monitor shall not have a current or former financial, personal, or familial
3 relationship with Respondent, or any other relationship that could reasonably be expected to
4 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its
5 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite
6 monitor, this requirement may be waived by the Board or its designee; however, under no
7 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

8 The worksite monitor shall have an active unrestricted license with no disciplinary action
9 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms
10 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth
11 by the Board or its designee.

12 Respondent shall pay all worksite monitoring costs.

13 The worksite monitor shall have face-to-face contact with Respondent in the work
14 environment on as frequent a basis as determined by the Board or its designee, but not less than
15 once per week; interview other staff in the office regarding Respondent's behavior, if requested
16 by the Board or its designee; and review Respondent's work attendance.

17 The worksite monitor shall verbally report any suspected substance abuse to the Board and
18 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected
19 substance abuse does not occur during the Board's normal business hours, the verbal report shall
20 be made to the Board or its designee within one (1) hour of the next business day. A written
21 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
22 any other information deemed important by the worksite monitor shall be submitted to the Board
23 or its designee within forty-eight (48) hours of the occurrence.

24 The worksite monitor shall complete and submit a written report monthly or as directed by
25 the Board or its designee which shall include the following: (1) Respondent's name and
26 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)
27 the worksite monitor's license number, if applicable; (4) the location or location(s) of the
28 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the

1 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;
2 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can
3 lead to suspected substance abuse by Respondent. Respondent shall complete any required
4 consent forms and execute agreements with the approved worksite monitor and the Board, or its
5 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

6 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)
7 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior
8 approval, the name and qualifications of a replacement monitor who will be assuming that
9 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a
10 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the
11 monitor, Respondent shall receive a notification from the Board or its designee to cease the
12 practice of medicine within three (3) calendar days after being so notified. Respondent shall
13 cease the practice of medicine until a replacement monitor is approved and assumes monitoring
14 responsibility.

15 11. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING
16 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of
17 probation.

18 A. If Respondent commits a major violation of probation as defined by section
19 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take
20 one or more of the following actions:

21 (1) Issue an immediate cease-practice order and order Respondent to undergo a clinical
22 diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of
23 Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice
24 order issued by the Board or its designee shall state that Respondent must test negative for at least
25 a month of continuous biological fluid testing before being allowed to resume practice. For
26 purposes of determining the length of time a Respondent must test negative while undergoing
27 continuous biological fluid testing following issuance of a cease-practice order, a month is
28 defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until

1 notified in writing by the Board or its designee that he or she may do so.

2 (2) Increase the frequency of biological fluid testing.

3 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or
4 other action as determined by the Board or its designee.

5 B. If Respondent commits a minor violation of probation as defined by section
6 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
7 one or more of the following actions:

8 (1) Issue a cease-practice order.

9 (2) Order practice limitations.

10 (3) Order or increase supervision of Respondent.

11 (4) Order increased documentation.

12 (5) Issue a citation and fine, or a warning letter.

13 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in
14 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
15 Regulations, at Respondent's expense.

16 (7) Take any other action as determined by the Board or its designee.

17 C. Nothing in this Decision shall be considered a limitation on the Board's authority
18 to revoke Respondent's probation if he or she has violated any term or condition of probation. If
19 Respondent violates probation in any respect, the Board, after giving Respondent notice and the
20 opportunity to be heard, may revoke probation and carry out the disciplinary order that was
21 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed
22 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
23 is final, and the period of probation shall be extended until the matter is final.

24 12. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
25 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
26 Chief Executive Officer at every hospital where privileges or membership are extended to
27 Respondent, at any other facility where Respondent engages in the practice of medicine,
28 including all physician and locum tenens registries or other similar agencies, and to the Chief

1 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
2 Respondent. Respondent shall submit proof of compliance to the Board or its designee within
3 fifteen (15) calendar days.

4 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

5 13. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
6 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
7 advanced practice nurses in a medical practice outside of the Kaiser Emergency Department.

8 14. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
9 governing the practice of medicine in California and remain in full compliance with any court
10 ordered criminal probation, payments, and other orders.

11 15. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
12 under penalty of perjury on forms provided by the Board, stating whether there has been
13 compliance with all the conditions of probation.

14 Respondent shall submit quarterly declarations not later than ten (10) calendar days after
15 the end of the preceding quarter.

16 16. GENERAL PROBATION REQUIREMENTS.

17 Compliance with Probation Unit

18 Respondent shall comply with the Board's probation unit.

19 Address Changes

20 Respondent shall, at all times, keep the Board informed of Respondent's business and
21 residence addresses, email address (if available), and telephone number. Changes of such
22 addresses shall be immediately communicated in writing to the Board or its designee. Under no
23 circumstances shall a post office box serve as an address of record, except as allowed by Business
24 and Professions Code section 2021(b).

25 Place of Practice

26 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
27 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
28 facility.

1 License Renewal

2 Respondent shall maintain a current and renewed California physician's and surgeon's
3 license.

4 Travel or Residence Outside California

5 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
6 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
7 (30) calendar days.

8 In the event Respondent should leave the State of California to reside or to practice,
9 Respondent shall notify the Board or its designee in writing thirty (30) calendar days prior to the
10 dates of departure and return.

11 17. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
12 available in person upon request for interviews either at Respondent's place of business or at the
13 probation unit office, with or without prior notice throughout the term of probation.

14 18. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
15 its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting
16 more than thirty (30) calendar days and within fifteen (15) calendar days of Respondent's return
17 to practice. Non-practice is defined as any period of time Respondent is not practicing medicine
18 as defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours
19 in a calendar month in direct patient care, clinical activity or teaching, or other activity as
20 approved by the Board. If Respondent resides in California and is considered to be in non-
21 practice, Respondent shall comply with all terms and conditions of probation. All time spent in
22 an intensive training program which has been approved by the Board or its designee shall not be
23 considered non-practice and does not relieve Respondent from complying with all the terms and
24 conditions of probation. Practicing medicine in another state of the United States or Federal
25 jurisdiction while on probation with the medical licensing authority of that state or jurisdiction
26 shall not be considered non-practice. A Board-ordered suspension of practice shall not be
27 considered as a period of non-practice.

28 In the event Respondent's period of non-practice while on probation exceeds eighteen (18)

1 calendar months, Respondent shall successfully complete the Federation of State Medical Board's
2 Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment
3 program that meets the criteria of Condition 18 of the current version of the Board's "Manual of
4 Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of
5 medicine.

6 Respondent's period of non-practice while on probation shall not exceed two (2) years.

7 Periods of non-practice will not apply to the reduction of the probationary term.

8 Periods of non-practice for a Respondent residing outside of California will relieve
9 Respondent of the responsibility to comply with the probationary terms and conditions with the
10 exception of this condition and the following terms and conditions of probation: Obey All Laws;
11 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
12 Controlled Substances; and Biological Fluid Testing.

13 19. COMPLETION OF PROBATION. Respondent shall comply with all financial
14 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
15 completion of probation. Upon successful completion of probation, Respondent's certificate shall
16 be fully restored.

17 20. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
18 of probation is a violation of probation. If Respondent violates probation in any respect, the
19 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
20 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke
21 Probation, or an Interim Suspension Order is filed against Respondent during probation, the
22 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall
23 be extended until the matter is final.

24 21. LICENSE SURRENDER. Following the effective date of this Decision, if
25 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
26 the terms and conditions of probation, Respondent may request to surrender his or her license.
27 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
28 determining whether or not to grant the request, or to take any other action deemed appropriate

1 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
2 shall within fifteen (15) calendar days deliver Respondent's wallet and wall certificate to the
3 Board or its designee and Respondent shall no longer practice medicine. Respondent will no
4 longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical
5 license, the application shall be treated as a petition for reinstatement of a revoked certificate.

6 22. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
7 with probation monitoring each and every year of probation, as designated by the Board, which
8 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
9 California and delivered to the Board or its designee no later than January 31 of each calendar
10 year.

11 ACCEPTANCE

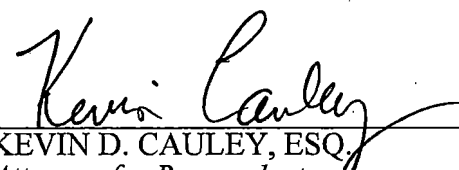
12 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
13 discussed it with my attorney, Kevin D. Cauley, Esq. I understand the stipulation and the effect it
14 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
15 Disciplinary Order voluntarily, knowingly, and intelligently, and I agree to be bound by the
16 Decision and Order of the Medical Board of California.

17
18 DATED: 12/14/17


19 SCOTT ROBERT GWALTNEY, M.D.
20 Respondent

21 I have read and fully discussed with Respondent the terms and conditions and other matters
22 contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and
23 content.

24
25 DATED: 12-14-17


26 KEVIN D. CAULEY, ESQ.
27 Attorney for Respondent

28 ///

///

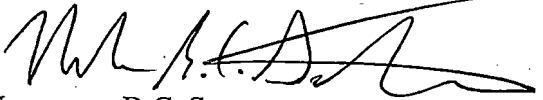
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: December 14, 2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General



NICHOLAS B.C. SCHULTZ
Deputy Attorney General
Attorneys for Complainant

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62634175.doc

Exhibit A

Accusation No. 800-2015-012227

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 NICHOLAS B.C. SCHULTZ
Deputy Attorney General
4 State Bar No. 302151
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 897-6564
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 1 20 17
BY [Signature] ANALYST

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. 800-2015-012227

13 SCOTT ROBERT GWALTNEY, M.D.
Downey Medical Center
14 9333 East Imperial Highway
Downey, California 90242

Consolidated with Case No. 800-2016-021513

15 Physician's and Surgeon's Certificate
No. A 76028,

A C C U S A T I O N

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about August 1, 2001, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 76028 to Scott Robert Gwaltney, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on August 31, 2017, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions 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. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

///

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 “...”

4 6. Section 2236 of the Code states:

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

9 “(b) The district attorney, city attorney, or other prosecuting agency shall notify the
10 Division of Medical Quality¹ of the pendency of an action against a licensee charging a felony or
11 misdemeanor immediately upon obtaining information that the defendant is a licensee. The
12 notice shall identify the licensee and describe the crimes charged and the facts alleged. The
13 prosecuting agency shall also notify the clerk of the court in which the action is pending that the
14 defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds
15 a license as a physician and surgeon.

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

21 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
22 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
23 shall be conclusive evidence of the fact that the conviction occurred.”

24 ///

25 _____
26 ¹ California Business and Professions Code Section 2002, as amended and effective January 1,
27 2008, provides that, unless otherwise expressly provided, the term “board” as used in the State Medical
28 Practice Act (Cal. Bus. & Prof. Code §§§§ 2000, et seq.) means the “Medical Board of California” and
references to the “Division of Medical Quality” and “Division of Licensing” in the Act or any other
provision of law shall be deemed to refer to the Board.

1 7. Section 2239 of the Code states:

2 “(a) The use or prescribing for or administering to himself or herself, of any controlled
3 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
4 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
5 any other person or to the public, or to the extent that such use impairs the ability of the licensee
6 to practice medicine safely or more than one misdemeanor or any felony involving the use,
7 consumption, or self-administration of any of the substances referred to in this section, or any
8 combination thereof, constitutes unprofessional conduct. The record of the conviction is
9 conclusive evidence of such unprofessional conduct.

10 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
11 deemed to be a conviction within the meaning of this section. The Medical Board may order
12 discipline of the licensee in accordance with Section 2227 or the Medical Board may order the
13 denial of the license when the time for appeal has elapsed or the judgment of conviction has been
14 affirmed on appeal or when an order granting probation is made suspending imposition of
15 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
16 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,
17 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
18 indictment.”²

19 8. Section 490 of the Code states:

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

24 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
25 discipline a licensee for conviction of a crime that is independent of the authority granted under

26 ² There is a nexus between a physician’s use of alcoholic beverages and his or her fitness to
27 practice medicine, established by the Legislature in Section 2239, in “all cases where a licensed physician
28 used alcoholic beverages to the extent or in such a manner as to pose a danger to himself or others.”
(*Watson v. Superior Court (Medical Board)* (2009) 176 Cal.App.4th 1407, 1411).

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

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

9 “(d) The Legislature hereby finds and declares that the application of this section has been
10 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
11 554, and that the holding in that case has placed a significant number of statutes and regulations
12 in question, resulting in potential harm to the consumers of California from licensees who have
13 been convicted of crimes. Therefore, the Legislature finds and declares that this section
14 establishes an independent basis for a board to impose discipline upon a licensee, and that the
15 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
16 to, but rather are declaratory of, existing law.”

17 9. Section 493 of the Code states:

18 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
19 the department pursuant to law to deny an application for a license or to suspend or revoke a
20 license or otherwise take disciplinary action against a person who holds a license, upon the
21 ground that the applicant or the licensee has been convicted of a crime substantially related to the
22 qualifications, functions, and duties of the licensee in question, the record of conviction of the
23 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
24 and the board may inquire into the circumstances surrounding the commission of the crime in
25 order to fix the degree of discipline or to determine if the conviction is substantially related to the
26 qualifications, functions, and duties of the licensee in question.

27 “...”

28 ///

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

“For the purposes of denial, suspension or revocation of a license, certificate or 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.”

FACTUAL SUMMARY

11. On May 26, 2015, in the case entitled *The People of the State of California v. Scott Robert Gwaltney*, case number 5MP02463, in the Superior Court of California, County of Los Angeles, Respondent, upon his plea of nolo contendere, was convicted of reckless driving in violation of Vehicle Code Section 23103, subdivision (a), a misdemeanor.³ Respondent was also charged with driving under the influence in violation of Vehicle Code Section 23152, subdivision (a), a misdemeanor. Additionally, Respondent was initially charged with driving a vehicle while having a blood alcohol content of 0.14 percent, in violation of Vehicle Code Section 23152, subdivision (b), a misdemeanor.⁴ However, both of the driving under the influence charges were dismissed as part of Respondent's plea agreement with the Los Angeles City Attorney's Office. Respondent was placed on three years of probation with the following terms and conditions:

A. Pay a fine of \$390.00 or serve thirteen days in the Los Angeles County Jail with credit for two days already served in custody;

B. Enroll within twenty-one days of release from custody in an AB-541 program;

³ Vehicle Code Section 23103, subdivision (a) provides: “A person who drives a vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.”

⁴ Vehicle Code Section 23152, subdivision (b) provides: "It is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle..."

1 C. Enroll, participate in and successfully complete a three month licensed first-
2 offender alcohol and other drug education and counseling program;

3 D. Not drive any vehicle with any measurable amount of alcohol or drugs in his
4 blood or refuse to take and complete any blood alcohol or drug chemical test, any field sobriety
5 test, and any preliminary alcohol screening test when requested by a peace officer;

6 E. Not drive a motor vehicle without a valid driver's license in his possession or
7 without liability insurance in at least the minimum amounts required by law;

8 F. Obey all laws, rules and regulations of the Superior Court; and

9 G. Pay fines, fees, and restitution totaling \$1,741.00 as directed by the Superior
10 Court or, alternatively, perform 186 hours of community service work.

11 12. The circumstances leading to Respondent's 2015 conviction are as follows:

12 A. At approximately 11:30 p.m. on February 16, 2015, law enforcement officers
13 with the California Highway Patrol (CHP) were driving eastbound on Washington Boulevard in
14 Los Angeles when they observed a white 2015 BMW sedan with dealer-issued license plates.
15 After observing that the vehicle did not have state-issued license plates, the CHP officers initiated
16 a traffic stop.

17 B. The CHP officers contacted Respondent in the driver's seat of the BMW.
18 Respondent displayed symptoms of intoxication upon contact, including: a strong odor of alcohol
19 emitting from his breath; bloodshot, red and watery eyes; and difficulty following instructions.
20 Standardized Field Sobriety Tests were conducted and Respondent displayed pronounced psycho-
21 physical impairment. Respondent initially denied consuming any alcoholic beverages, and he
22 refused to take a preliminary alcohol screening test at the scene.

23 C. Respondent was arrested for driving under the influence of an alcoholic
24 beverage. When Respondent was transported to the Los Angeles Police Department he confessed
25 to drinking wine earlier that evening. Respondent ultimately consented to take a blood test. A
26 blood sample was taken from Respondent's left arm at approximately 2:22 a.m. Subsequent
27 testing of Respondent's blood sample revealed that his blood alcohol level was approximately
28 0.14 percent three hours after driving.

1 D. Respondent was booked at the Los Angeles Police Department.

2 13. On October 24, 2016, in the case entitled *The People of the State of California v.*
3 *Scott Robert Gwaltney*, case number 6IN01999, in the Superior Court of California, County of
4 Los Angeles, Respondent, upon his plea of nolo contendere, was convicted of driving a vehicle
5 while having a blood alcohol content of 0.24 percent, in violation of Vehicle Code Section 23152,
6 subdivision (b), a misdemeanor. Respondent was also charged with driving under the influence
7 in violation of Vehicle Code Section 23152, subdivision (a), a misdemeanor. Additionally,
8 Respondent was initially charged with hit-and-run resulting in property damage, in violation of
9 Vehicle Code Section 20002, subdivision (a), a misdemeanor. However, both of these charges
10 were dismissed as part of Respondent's plea agreement with the Los Angeles City Attorney's
11 Office. Respondent was placed on five years of probation with the following terms and
12 conditions:

13 A. Pay a fine of \$510.00 and serve four days in the Los Angeles County Jail or,
14 alternatively, perform seventeen days of community service work;

15 B. Enroll, participate in and successfully complete an eighteen month licensed
16 second-offender alcohol and other drug education and counseling program;

17 C. Enroll within twenty-one days of release from custody in an SB-38 program;

18 D. Not drive any vehicle with any measurable amount of alcohol or drugs in his
19 blood or refuse to take and complete any blood alcohol or drug chemical test, any field sobriety
20 test, and any preliminary alcohol screening test when requested by a peace officer;

21 E. Not drive a motor vehicle without a valid driver's license in his possession or
22 without liability insurance in at least the minimum amounts required by law;

23 F. Obey all laws, rules and regulations of the Superior Court; and

24 G. Pay fines, fees, and restitution totaling \$2,439.00.

25 14. The circumstances leading to Respondent's 2016 conviction are as follows:

26 A. At approximately 11:30 p.m. on March 17, 2016, law enforcement officers with
27 the California Highway Patrol (CHP) were dispatched to a traffic collision at the Crenshaw
28 Boulevard exit eastbound on Interstate Highway 105 in Hawthorne. The CHP officers located an

1 abandoned white 2015 BMW sedan registered to Respondent. The CHP officers interviewed the
2 victim-motorist and his passenger regarding the traffic collision. They reported to the CHP
3 officers that the driver of the white 2015 BMW fled the scene of the crash in an unknown
4 direction on foot. Both the victim-motorist and his passenger identified Respondent as the driver
5 of the BMW in a photographic line-up conducted in April 2016. The victim-motorist's passenger
6 also reported that Respondent appeared intoxicated at the time of the crash.

7 B. The CHP officers examined the crash scene and determined that the traffic
8 collision occurred in the eastbound lanes of Interstate Highway 105 prior to 120th Street in
9 Hawthorne. After evaluating the crash scene and interviewing the victim-motorist and his
10 passenger, the CHP officers concluded that Respondent was driving his BMW approximately
11 eighty miles per hour when he crashed into the back end of a Freightliner truck travelling about
12 fifteen miles per hour as it approached a curve in the roadway. The Freightliner truck was driven
13 by the victim-motorist. Due to Respondent's level of intoxication, he did not slow his vehicle in
14 a timely manner and crashed into the Freightliner truck. Respondent initially stopped at the crash
15 scene and spoke with the victim-motorist from the driver's seat of his BMW. The victim-
16 motorist returned to his truck to retrieve documents to exchange information; however,
17 Respondent left his BMW and walked away from the freeway without further discussion of the
18 crash. Respondent's vehicle sustained major damage, while the victim's vehicle sustained minor
19 damage.

20 C. The CHP officers contacted Respondent at his residential address on file with
21 the Department of Motor Vehicles. Respondent was standing next to another vehicle outside of
22 his home with visible injuries. Respondent exclaimed to the CHP officers, "I was in a crash."
23 During his interaction with the CHP officers, Respondent displayed symptoms of intoxication
24 upon contact, including: a strong odor of alcohol emitting from his breath; red and watery eyes;
25 slurred speech; droopy eyelids; poor balance; and impaired perception of time. Standardized
26 Field Sobriety Tests were conducted and Respondent displayed pronounced psycho-physical
27 impairment. Respondent admitted to consuming "two mugs" of "green beer" starting at 2:00 p.m.
28 Respondent was found in possession of the ignition key for the BMW in his pocket. When asked

1 about the traffic collision, Respondent explained that the "big rig" crashed into his vehicle.
2 Respondent told the CHP officers that he called 9-1-1 to report the traffic collision, but he left the
3 crash scene to call the American Automobile Association (AAA) because it was taking so long.
4 However, Respondent called a friend to receive a ride back to his residence after leaving the crash
5 scene. Respondent did not convey that he was leaving to the victim-motorist or his passenger.

6 D. Respondent consented to and provided two breath samples on the Preliminary
7 Alcohol Screening (PAS) device. The first sample taken at 1:05 a.m. revealed that Respondent's
8 breath alcohol concentration was approximately 0.194 percent. The second sample taken at 1:07
9 a.m. revealed that Respondent's breath alcohol concentration was approximately 0.187 percent.

10 E. Respondent was arrested for driving under the influence of an alcoholic
11 beverage, as well as hit-and-run resulting in property damage. Respondent was transported to
12 Gardena Memorial Hospital to be medically evaluated and he ultimately consented to take a
13 blood test. At approximately 1:46 a.m., a blood sample was taken from Respondent's right arm.
14 Subsequent testing of Respondent's blood sample revealed that his blood alcohol level was
15 approximately 0.14 percent.

16 F. Respondent was booked at the Hawthorne Police Department.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Convictions of Substantially Related Crimes)**

19 15. By reason of the facts set forth in paragraphs 11 through 14 above, Respondent is
20 subject to disciplinary action under Section 2236, subdivision (a), and Section 490 of the Code, as
21 well as California Code of Regulations, title 16, Section 1360, in that Respondent has been
22 convicted of crimes substantially related to the qualifications, function or duties of a physician
23 and surgeon.

24 16. Respondent's acts and/or omissions as set forth in paragraphs 11 through 14 above,
25 whether proven individually, jointly, or in any combination thereof, constitute convictions of
26 crimes substantially related to the qualifications, function or duties of a physician and surgeon
27 pursuant to Section 2236, subdivision (a), and Section 490 of the Code, as well as California
28 Code of Regulations, title 16, Section 1360.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Use of Alcoholic Beverages in a Dangerous Manner)**

3 17. By reason of the facts set forth in paragraphs 11 through 14 above, Respondent is
4 subject to disciplinary action under Section 2239 of the Code in that Respondent used alcoholic
5 beverages to the extent, or in such a manner, as to be dangerous and injurious to himself, or to
6 any other person or to the public, and Respondent has more than one misdemeanor conviction
7 involving the use, consumption, or self-administration of alcoholic beverages.

8 18. Respondent's acts and/or omissions as set forth in paragraphs 11 through 14 above,
9 whether proven individually, jointly, or in any combination thereof, constitute the use of
10 alcoholic beverages to the extent, or in such a manner, as to be dangerous and injurious to
11 himself, or to any other person or to the public, as well as more than one misdemeanor conviction
12 involving the use, consumption, or self-administration of alcohol beverages pursuant to Section
13 2239 of the Code.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct)**

16 19. By reason of the facts set forth in paragraph 11 through 14 above, Respondent is
17 subject to disciplinary action under Section 2234, subdivision (a) of the Code in that Respondent
18 has been convicted of crimes substantially related to the qualifications, functions, or duties of a
19 physician and surgeon; used alcoholic beverages to the extent, or in such a manner, as to be
20 dangerous and injurious to himself, or to any other person or to the public; and has more than one
21 misdemeanor conviction involving the use, consumption, or self-administration of alcoholic
22 beverages.

23 20. Respondent's acts and/or omissions as set forth in paragraphs 11 through 14 above,
24 whether proven individually, jointly, or in any combination thereof, constitute Respondent's
25 convictions of crimes substantially related to the qualifications, functions, or duties of a physician
26 and surgeon; use of alcoholic beverages to the extent, or in such a manner, as to be dangerous and
27 injurious to himself, or to any other person or to the public; and more than one misdemeanor

28 ///

1 conviction involving the use, consumption, or self-administration of alcoholic beverages pursuant
2 to Section 2234, subdivision (a) of the Code.

3 **PRAYER**

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

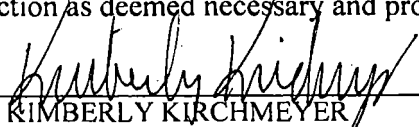
6 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 76028,
7 issued to Scott Robert Gwaltney, M.D.;

8 2. Revoking, suspending or denying approval of his authority to supervise physician
9 assistants, pursuant to section 3527 of the Code and advanced practice nurses;

10 3. If placed on probation, ordering Scott Robert Gwaltney, M.D. to pay the Medical
11 Board of California the costs of probation monitoring; and

12 4. Taking such other and further action as deemed necessary and proper.

13 DATED: June 1, 2017


14 KIMBERLY KIRCHMEYER
15 Executive Director
16 Medical Board of California
17 Department of Consumer Affairs
18 State of California
19 Complainant

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21 62361676.doc
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