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

In the Matter of the Accusation Against:	)	
GARY ALAN WALTER, M.D.	)	Case No. 800-2016-021924
Physician's and Surgeon's Certificate No. G 45798	)	OAH No. 2017050302
Respondent	)	

DECISION AND ORDER

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on April 6, 2018.

IT IS SO ORDERED: March 7, 2018.

MEDICAL BOARD OF CALIFORNIA

Kristina D. Lawson, J.D., Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: GARY ALAN WALTER, M.D. Visalia, California Physician's and Surgeon's Certificate No. G 45798 Respondent.	OAH No. 2017050302 MB No. 800-2016-021924

PROPOSED DECISION

This matter was heard before Administrative Law Judge Erin R. Koch-Goodman, Office of Administrative Hearings, State of California, on November 6 and 7, 2017, in Sacramento, California.

John S. Gatschet, Deputy Attorney General, appeared on behalf of Kimberly Kirchmeyer (complainant), Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

Gary Hunt, Attorney at Law, McCormick Barstow LLP, appeared on behalf of Gary Alan Walter, M.D. (respondent), who was present throughout the hearing.

Evidence was heard on November 6 and 7, 2017. The record was held open for the submission of closing briefs. The parties submitted simultaneous closing briefs on December 22, 2017; complainant's Closing Brief was marked Exhibit 18 and respondent's Closing Brief was marked Exhibit Q. The parties submitted simultaneous reply briefs on January 8, 2018; complainant's Reply Brief was marked Exhibit 19 and respondent's Reply Brief was marked Exhibit R. The matter was submitted for decision on January 8, 2018.

FACTUAL FINDINGS

1. On July 31, 1981, the Board issued respondent Physician's and Surgeon's Certificate No. G 45798. Unless renewed or revoked, the license will expire on November 30, 2018.

2. On April 10, 2017, complainant, in her official capacity, made and served the Accusation, alleging respondent used alcohol in a manner dangerous to himself and others; was convicted of a crime substantially related to the qualifications, functions, and duties of a physician and surgeon; and committed general unprofessional conduct. On or about April 20, 2017, respondent filed a Notice of Defense and request for hearing.

Criminal Conviction

3. On May 5, 2016, in the Superior Court of California, County of San Luis Obispo (SLO), Case No. 16M04145, respondent was convicted, on a plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving under the influence (DUI) with a blood alcohol content (BAC) greater than 0.08 percent), a misdemeanor. The Court sentenced respondent to two days in jail and ordered respondent to serve 36 months informal probation, and ordered respondent to complete a First Offenders DUI program and pay fines and fees.

4. The circumstances underlying the conviction occurred on March 9, 2016, when respondent, while driving to work, hit a parked vehicle, and left the scene of the accident. Respondent was subsequently arrested for DUI with a 0.19 percent BAC.

On the evening of March 8, 2016, respondent was having trouble getting to sleep. He drank several glasses of vodka and then went to sleep. The next morning, he drove from his home in Cambria to SLO to report for work. Once in SLO, respondent hit a parked vehicle on Broad Street, just south of Higuera Street, and fled the scene of the accident. The SLO Police Department received calls reporting an Escalade, with front end damage and a blown front right tire, traveling at a high rate of speed on Broad Street. Police Officer J. Middleton was dispatched. Officer Middleton found respondent sitting in his vehicle, pulled over to the curb, on Broad Street, just south of Tank Farm Road; a distance of 2.45 miles from the site of the accident. Officer Middleton made contact with respondent. Officer Middleton asked respondent how the front of his vehicle had become damaged; respondent said he had no idea. Officer Middleton asked respondent where he was coming from and respondent said "Starbucks in the Marigold Center," but later said "from Broad Street and Higuera." Officer Middleton had respondent exit the vehicle. Respondent was unsteady on his feet, emitted a faint odor of alcohol from his breath and person, had bloodshot and glassy eyes, and spoke slowly. Officer Middleton asked respondent if he had been drinking; respondent reported he had had "a couple singles" of vodka between 5:00 and 7:00 p.m. the night before. Officer Middleton administered Field Sobriety Tests (FSTs), which respondent failed. Officer Middleton administered a breathalyzer test and respondent registered a 0.155 percent BAC. Officer Middleton transported respondent to French Hospital for a blood draw; test results later revealed a 0.19 percent BAC. Respondent was arrested and transported to jail.

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Respondent's Evidence

CHEMICAL DEPENDENCY EVALUATION – RICHARD GUZZETTA, M.D.

5. Respondent retained Richard Guzzetta, M.D. for a chemical dependency evaluation. On September 19, 2017, Dr. Guzzetta saw respondent for 30 minutes; he interviewed respondent and completed a physical examination. Respondent saw Dr. Guzzetta a second time, for a follow-up evaluation. On October 17, 2017, Dr. Guzzetta saw respondent for 15 minutes; he interviewed respondent and completed a physical examination.

6. Dr. Guzzetta completed his undergraduate education in Molecular Biological in 1974, at San Jose State University, before completing his medical degree from the University of Southern California (USC) in 1978. Dr. Guzzetta then completed a one-year internship at USC, Los Angeles County Medical Center, and then a two-year residency in Family Practice at the University of California, San Francisco, Valley Medical Center. He is a Diplomate of the American Board of Addition Medicine, American Board of Family Medicine, and American Academy of Family Physicians. He has been licensed to practice medicine in California since 1979. Since then, he has been the Medical Director for several health clinics and recovery centers. Currently, Dr. Guzzetta is the Medical Director for the Touchstone Medical Group, Touchstone Recovery Center, and the County of Fresno, Perinatal Substance Abuse Treatment Program, practicing family and addiction medicine. He is a consultant for two pharmaceutical companies: Forest Pharmaceuticals, Inc. and Donahoe Purohit Miller, Inc. During his career, he has made more than 36 presentations on addiction medicine. Dr. Guzzetta has never been hired by the Board.

7. On September 19, 2017, Dr. Guzzetta wrote a Report, finding respondent had no substance abuse disorder and was able to practice medicine without restrictions. Dr. Guzzetta diagnosed respondent as follows: "Axis I - generalized anxiety disorder, Axis II – no diagnosis, Axis III – hypertension, Axis IV – problem with medical board, Axis V – 85."[1] On October 17, 2017, Dr. Guzzetta completed a chart note detailing his follow-up examination of respondent and his findings were as follows: "there is no evidence of alcohol or drug dependence or abuse. Able to perform as physician with no restrictions." Overall, Dr. Guzzetta found respondent to provide credible and consistent answers to his questions and no physical signs of substance abuse.

8. Dr. Guzzetta testified at hearing consistent with his report and chart notes. He explained his inquiry was to determine whether alcohol had caused problems in respondent's life; whether respondent showed a pattern of alcohol abuse; and whether respondent was a threat to himself and/or others. Dr. Guzzetta found none of the above to be true. For Dr.

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[1] From the Diagnostic and Statistical Manual of Mental Disorders (DSM V), Axis I is all psychological diagnostic categories except mental retardation and personality disorder; Axis II is personality disorders and mental retardation; Axis III is general medical conditions, acute medical conditions and physical disorders; Axis IV is psychosocial and environmental factors contributing to the disorder; and Axis V is global Assessment of Functioning.

Guzzetta, one DUI does not equal alcohol dependence, and respondent possessed none of the DSM V criteria for substance abuse. When questioned, Dr. Guzzetta admitted he knew nothing about the facts of respondent's DUI, including: his 0.19 percent BAC; respondent was on his way to work; he hit a parked vehicle and left the scene of the accident; respondent was suffering from insomnia when he started drinking the night before the accident and his arrest; and he drank a large quantity of hard alcohol on the night of March 8, 2016. Dr. Guzzetta is convinced that the underlying facts of respondent's DUI are irrelevant to whether he has a substance abuse disorder or not; and even still, he remained confident in his conclusions regarding respondent.

RESPONDENT'S TESTIMONY

9. Respondent owns Microcorre Diagnostic Laboratory (MDL) in Tulare. MDL specializes in forensic and anatomic pathology. Respondent employs a physician, a histologist, a courier, a transcriptionist, and two account managers. In the late 1960s, respondent signed a contract with Tulare County to perform autopsies, medical examinations, file reports, and testify in legal proceedings. In 2005, respondent signed a contract with Kings County to perform autopsies, medical examinations, write reports, and testify in legal proceedings. Also in 2005, respondent signed a contract with SLO County Sheriff Coroner's Office to perform autopsies, medical examinations, write reports, and testify in legal proceedings. On September 15, 2017, respondent ended his contract with SLO. Currently, respondent commits almost 100 percent of his time performing autopsies, medical examinations, writing reports, and testifying in legal proceedings for Tulare and King Counties. He also has hospital privileges at Visalia Community Hospital, Xavier Community Hospital, and Corcoran Community Hospital.

10. Today, respondent is 70 years old. He is in a stable, long-term relationship, with his partner of 20 years. Respondent has practiced medicine for over 38 years. He completed his Bachelor of Arts in Chemistry and Biology in 1972 at Pacific Union College in Angwin before completing his medical degree at Loma Linda University in 1977. After graduation, respondent spent three years working as a private pilot. From 1980 to 1984, respondent completed a residency in pathology at the University of California, Los Angeles (UCLA) Medical Center. He is a Diplomate with the National Board of Medical Examiners and Board Certified by the American College of Forensic Examiners. He is licensed to practice medicine in Hawaii, Arizona, and California, since 1981. Since 1984, respondent has owned and operated MDL.

11. Respondent testified at hearing. He acknowledged his conviction, but minimized, disputed, or claimed a lack of knowledge regarding the underlying conduct leading to his arrest and conviction. Respondent cannot remember how many glasses of vodka he drank on the night of March 8, 2016, and he cannot remember at what time he began to drink or stopped drinking. When questioned, respondent admitted he must have had five to seven glasses of vodka to have tested at 0.19 percent BAC sometime after 8:00 a.m. on March 9, 2016. However, he did not feel intoxicated when he drove on the morning of March 9, 2016; instead describing himself as "tired, lightheaded, and nauseous." He does

not recall telling the police officer he was coming from Starbucks at the Marigold Center, before telling the officer he had traveled down Broad Street. He does not believe he traveled two miles after hitting the parked vehicle, but was instead looking for a parking spot so he could go back to the vehicle he had hit. He does not recall telling the police officer that his vehicle was handling fine or that he did not know what happened to the front end of his vehicle.

12. Since his conviction, respondent has stopped drinking alcohol. He believes the risks associated with drinking alcohol are too great. However, respondent also testified he was not aware of the effects of alcohol on a person, even though he has conducted autopsies on people who have been killed as a result of alcohol related accidents.

CHARACTER REFERENCES

13. Respondent offered three character witnesses, Senior Deputy David Walker, Shawn McRae, and Gregory Mellor, M.D., and declarations of support from Walker, McRae, and Mellor, as well as Alan Knight, Joachim Schotthoefer, and Jue-Rong Zhang, M.D. Mr. Walker worked in the SLO Coroner's Office with respondent for seven years. Mr. Walker assisted respondent perform autopsies; and always stood in close proximity to respondent while working. Mr. Walker never had a concern about respondent's work. He has never assessed respondent as intoxicated while at work or had a report from others of respondent being intoxicated while on the job; Mr. Walker "would not tolerate" anyone intoxicated while at work. Mr. Walker is aware of respondent's DUI and believes it to be "an isolated incident." When questioned, Mr. Walker was not aware that respondent hit a parked vehicle; did not stop for two miles after hitting the parked vehicle; and his BAC was 0.19 percent.

14. Shawn McRae is the Chief Deputy Coroner for Kings County. Mr. McRae has worked with respondent for four years, assisting in autopsies; Mr. McRae stands in close proximity to respondent while working. Mr. McRae has never observed respondent to be intoxicated while at work, nor received a report from others that respondent was intoxicated while at work in Kings County. When questioned, Mr. McRae was not aware that respondent hit a parked vehicle; did not stop for two miles after hitting the parked vehicle; and respondent's BAC was 0.19 percent.

15. Dr. Gregory Mellor is a diagnostic radiologist and a 40 year personal friend of respondent. Dr. Mellor and respondent interact socially two to three times per month and speak at least once a day. Dr. Mellor has been around respondent when he has had something to drink; usually, two glasses of wine with dinner. Dr. Mellor has never seen respondent drunk. If respondent does drink alcohol, Dr. Mellor reports respondent will get a ride with a designated driver; Dr. Mellor does not drink alcohol and can always drive respondent home. Dr. Mellor describes respondent as "generous; thoughtful; a good friend to have; he goes out of his way to help others/his friends; and he volunteers in the community." He report that respondent is "well thought of and respected in the community." Dr. Mellor admitted that respondent "took awhile" to tell him about his DUI; respondent was embarrassed and "expressed remorse." Dr. Mellor was surprised respondent had gotten a

DUI. Respondent explained to Dr. Mellor that he could not sleep; found vodka in the freezer; and had a couple of drinks to fall asleep. Dr. Mellor has socialized with respondent since the DUI and respondent no longer consumes alcohol. Dr. Mellor described respondent as "living a very regimented lifestyle." He was unaware respondent did not stop for two miles after hitting a parked vehicle on March 9, 2016; and respondent's BAC was 0.19 percent.

16. The declarations from Alan Knight, Joachim Schotthoefer, Jue-Rong Zhang, M.D. expressed respect and admiration for respondent. Mr. Knight is the Deputy Chief Coroner of Tulare County. Mr. Knight has worked with respondent for four years. Mr. Knight finds respondent to be "invested in his work; thorough and very knowledgeable; extremely personable and always more than willing to share his knowledge; he takes the time to answer my questions and engage with others in the office." When performing autopsies together, Mr. Knight stands in close proximity to respondent and he has never detected the odor of alcohol on respondent's person. In addition, Mr. Knight has made unannounced visits to respondent's office in Visalia, and has never observed evidence of intoxication.

17. Mr. Schotthoefer is the Lab Manager of MDL and a 20 year personal friend of respondent. Mr. Schotthoefer has observed respondent in social settings and on vacation and never observed respondent drink to excess. Mr. Schotthoefer interacts with respondent on a daily basis at MDL and has never observed respondent to be under the influence at work. Respondent shared with Mr. Schotthoefer the facts of his March 2016 DUI, and Mr. Schotthoefer has observed how the event has affected respondent. Respondent told Mr. Schotthoefer he made a mistake in March 2016, and expressed a great deal of embarrassment. As a result, respondent has chosen to abstain from alcohol since the DUI. Mr. Schotthoefer believes respondent is very remorseful.

18. Dr. Zhang is an anatomic and clinical pathologist, practicing cytopathologist at MDL for 12 years. Dr. Zhang interacts with respondent on a daily basis and has never observed respondent to be intoxicated at work. Dr. Zhang describes respondent as a "consummate professional; very loyal to his work and consistently impressive, both in his medical knowledge and pathology skills. He treats every case very seriously and has respect for our job and the work we do."

Discussion

19. Respondent was convicted of one DUI in March 2016. Respondent has completed a First Offender program and paid all fines and fees. He remains on criminal probation until March 2019. Following his conviction, respondent was assessed by an addiction specialist to be free from any alcohol use disorder. Nonetheless, since his conviction, respondent has chosen to no longer drink alcohol.

20. Prior to his conviction, respondent was a social drinker, consuming wine with dinner and at social occasions, but not drinking to excess. Respondent's friends vouch for

his limited social alcohol consumption, and his work colleagues swear by respondent's workplace decorum and sobriety.

21. Notwithstanding the above, respondent consumed a large amount of alcohol on March 8, and then drove his vehicle while intoxicated on March 9. He hit a parked vehicle and then fled the scene of the accident, driving two miles away. He was contacted by law enforcement, after the SLO police were contacted with reports of a vehicle driving at a high rate of speed down Broad Street. When questioned by SLO police, respondent said his vehicle drove fine and he had no idea what happened to the front end of his vehicle, even though the front passenger tire was blown out and the front right side of the vehicle was substantially damaged. At hearing, respondent was unable to recall the number of drinks or amount of alcohol he consumed on March 8. He reported not feeling intoxicated on the morning of March 9; yet he was "nauseous and lightheaded"; and his BAC was 0.19 percent. He testified he was not aware of the effects of alcohol on a person, even though he admitted to conducting autopsies on people who have been killed as a result of alcohol related accidents. Here, his testimony was disingenuous; he is a medical doctor who makes decisions about cause of death based upon physical examination and pathology. Other than damage to his vehicle and personal embarrassment, respondent never acknowledged his drinking to excess; the potential risk of his behavior on himself or others; his failure to accurately make a personal assessment of his intoxication before driving; or the effects of alcohol on driving.

22. Respondent's actions on March 9, 2016, evidenced extremely poor judgment and a lack of concern for others. He was under the influence of alcohol when he drove to work and was scheduled to perform autopsies. He was fortunate not to have seriously injured or killed himself or someone else when he drove; he was also headed to work, where he would have conducted autopsies while under the influence. Respondent is a doctor, trained to know the effect of alcohol on the body and mind, and yet he still took the chance with his life and the lives of others. For these reasons, it would be premature to allow respondent to engage in unrestricted medical practice at this time.

23. The above matters having been considered. It was established that respondent consumed alcohol and drove a vehicle on March 9, 2016, to an extent, or in such a manner as to be dangerous or injurious to himself or to the public. He was clearly impaired on March 9, 2016, but he failed to recognize his altered and impaired state of being, and drove to work to perform autopsies on behalf of the SLO Coroner's Office.

24. Respondent's behavior on March 9, 2016, was reckless and ill advised. He failed to see the potential danger to both himself and the public; recognize the medical implications of his drinking; and correctly assess his personal impairment before driving. Given the above, and in order to ensure that the public is adequately protected, respondent's license should be placed on probation for three years. Under the minimum penalty recommended in Board Disciplinary Guidelines, a five year probation is warranted, but respondent does not appear to have a substance abuse disorder, therefore, a five year

probation is excessive. In addition, it is unnecessary and no public interest would be served by imposing a 60-day suspension of respondent's license per the Guidelines.

LEGAL CONCLUSIONS

1. The Board may take disciplinary action against a licensee because the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of a physician and surgeon. (Bus. & Prof. Code, §§ 490 and 493.)

> 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.

(CCR, tit. 16 § 1360.)

2. Business and Professions Code, section 2234, requires the Board to "take action against any licensee who is charged with unprofessional conduct." Unprofessional conduct includes, but is not limited to: "Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter; [and] [a]ny action or conduct that would have warranted the denial of a certificate." (Bus & Prof. Code, § 2234, subds. (a) and (f).)

3. Business and Professions Code section 2236, subdivision (a), provides:

> 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. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

California Code of Regulations, Title 16, section 1360 states, in part:

> 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.

4. Business and Professions Code section 2239, subdivision (a) provides:

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

5. Cause exists for disciplinary action under Business and Professions Code, section 2234, as defined by section 2239, subdivision (a), by reason of the matters set forth in Factual Findings 3 and 4. Respondent used alcoholic beverages to the extent, or in such manner as to be dangerous or injurious to himself and to the public.

6. Cause exists for disciplinary action under Business and Professions Code, sections 490, 493, and 2236, and California Code of Regulations, Title 16, section 1360, by reason of the matters set forth in Factual Findings 3 and 4. Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a physician and surgeon when he was convicted of driving under the influence.

7. The matters set forth in Factual Findings 3 through 24 were considered in making the following Order. It would not be contrary to the public interest to place respondent's license on probation for three years under minimum terms and conditions set forth in the Board Disciplinary Guidelines, except that no license suspension should be imposed.

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ORDER

Physician's and Surgeon's Certificate No. G 45798 issued to respondent Gary Allen Walter, M.D. is REVOKED. However, the revocation is STAYED, and respondent is placed on probation for three years, upon the following terms and conditions:

1. Controlled Substances - Abstain From Use. Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification to cease practice shall be dissolved.

2. Alcohol - Abstain From Use. Respondent shall abstain completely from the use of products or beverages containing alcohol.

If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide respondent with a hearing within 30 days of the request, unless

respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification to cease practice shall be dissolved.

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

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

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

(a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
(b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.
(c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.
(d) Its specimen collectors observe the collection of testing specimens.
(e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.
(f) Its testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled

pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.

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

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

(i) It maintains testing sites located throughout California.

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

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

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

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if the respondent holds a valid prescription for the substance.

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

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

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

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

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

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

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

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

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

4. Professionalism Program (Ethics Course). Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

5. Clinical Diagnostic Evaluations and Reports: Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether respondent has a substance abuse problem, whether respondent is a threat to herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to respondent's rehabilitation and ability to practice safely.. If the evaluator determines during the evaluation process that respondent is a threat to herself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: respondent's license type; respondent's history; respondent's documented length of sobriety (i.e., length of time that has elapsed since respondent's last substance use); respondent's scope and pattern of substance abuse; respondent's treatment history, medical history and current medical condition; the nature, duration and severity of respondent's substance abuse problem or problems; and whether respondent is a threat to himself or herself or the public.

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on respondent based on the recommendations made by the evaluator. Respondent shall not be returned to practice until he has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that he has not used, consumed, ingested, or administered to himself a prohibited substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that he is fit to practice medicine safely. The period of time that respondent is not practicing medicine shall not be counted toward completion of the term of probation. Respondent shall undergo biological fluid testing as required in this Decision at least two (2) times per week while awaiting the notification from the Board if he or she is fit to practice medicine safely.

Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified by the Board or its designee.

6. Psychotherapy. Within 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 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 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 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over

respondent's license and the period of probation shall be extended until the Board determines that respondent is mentally fit to resume the practice of medicine without restrictions.

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

7. Medical Evaluation and Treatment. Within 30 days of the effective date of this Decision, and on a period basis thereafter as may be required by the Board or its designee, respondent shall undergo a medical evaluation by a Board-appointed physician who shall consider any information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee. Respondent shall provide the evaluating physician any information and documentation that the evaluating physician may deem pertinent.

Following the evaluation, respondent shall comply with all restrictions or conditions recommended by the evaluating physician within 15 calendar days after being notified by the Board or its designee. If respondent is required by the Board or its designee to undergo medical treatment, respondent shall within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval of the name and qualifications of a California licensed treating physician of respondent's choice. Upon approval of the treating physician, respondent shall within 15 calendar days undertake medical treatment and shall continue such treatment until further notice from the Board or its designee.

The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit quarterly reports to the Board or its designee indicating whether or not the respondent is capable of practicing medicine safely. Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment, the Board or its designee deems necessary.

If, prior to the completion of probation, respondent is found to be physically incapable of resuming the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is physically capable of resuming the practice of medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

8. Notification. Within seven (7) days of the effective date of this Decision, respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

9. Supervision of Physician Assistants. During probation, respondent is prohibited from supervising physician assistants.

10. Obey All Laws: Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

11. Quarterly Declarations: Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

12. General Probation Requirements:

Compliance with Probation Unit - Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision:

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

Place of Practice - Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal - Respondent shall maintain a current and renewed California physician's and surgeon's license.

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

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its

designee in writing 30 calendar days prior to the dates of departure and return.

13. Interview with the Board or its Designee: Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

14. Non-practice While on Probation: Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

Periods of non-practice will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

15. Completion of Probation: Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

16. Violation of Probation Condition for Substance-Abusing Licensees: Failure to fully comply with any term or condition of probation is a violation of probation.

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

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

(2) Increase the frequency of biological fluid testing.

(3) Refer respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of respondent;

(4) Order increased documentation;

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

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

(7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke respondent's probation if he or she has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against

respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

17. License Surrender: Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

18. Probation Monitoring Costs: Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATED: February 7, 2018

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ERIN R. KOCH-GOODMAN
Administrative Law Judge
Office of Administrative Hearings

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 10 2017
BY: K. Voong ANALYST

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

In the Matter of the Accusation Against: **GARY ALAN WALTER, M.D.** P O Box 4294 Visalia, CA 93278 Physician's and Surgeon's Certificate No. G 45798, Respondent.	Case No. 800-2016-021924 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about July 31, 1981, the Medical Board issued Physician's and Surgeon's Certificate No. Number G 45798 to Gary Alan Walter, M.D. ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2018, unless renewed.

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 ("Code") unless otherwise indicated.

4. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

5. Section 493 of the Code states, in pertinent part:

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

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

6. Section 2227 of the Code provides, in pertinent part, that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

7. Section 2234 of the Code, states, in pertinent part:

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

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

"...

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

"..."

8. Section 2236 of the Code states, in pertinent part:

"(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. 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 Division of Medical Quality[1] 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 duties of a physician and surgeon.

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

9. Section 2239 of the Code states:

[1] Pursuant to Business and Professions Code Section 2002, "Division of Medical Quality" or "Division" shall be deemed to refer to the Medical Board of California.

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

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

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."

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FIRST CAUSE FOR DISCIPLINE

(Use of Alcoholic Beverage in a Dangerous or Injurious Manner)

11. Respondent's license is subject to disciplinary action under sections 2234, subdivisions (a) and (f), and 2239 of the Code in that he used alcohol to the extent and in such a manner to endanger himself and the public by driving on a road impaired on his way to work as a forensic pathologist for the county of San Luis Obispo. The circumstances are as follows:

12. On or about March 9, 2016, at approximately 7:52 a.m., San Luis Obispo Police Officer J.M. was dispatched to respond to a report that there was a black Cadillac Escalade truck traveling at a high rate of speed with front-end damage and a blown front right tire. A second call reported that the vehicle had pulled over. Officer J.M. responded and located the vehicle which had front end damage. Officer J.M. made contact with the driver of the vehicle, later identified as Respondent. Officer J.M. asked Respondent for his identification and asked him how the front of his vehicle had been damaged. Respondent stated he had no idea. Officer J.M. had Respondent exit the vehicle and when he exited, Respondent appeared unsteady on his feet. Respondent looked at the damage to the front end of his vehicle and stated he still had no idea how it happened.

13. Officer J.M. had paramedics respond to the scene to see if Respondent suffered from any medical issues. Respondent reported he had no medical issues. Officer J.M. detected a faint odor of an alcoholic beverage emitting from Respondent's breath. Respondent stated that he had last consumed alcohol the night before. Respondent stated he had a "couple singles" of Vodka and stopped drinking at 7 p.m. on March 8, 2016. Respondent stated he was on his way to work when he was contacted by law enforcement. On March 9, 2016, Respondent was the San Luis Obispo County Contracted Medical Examiner and worked as a forensic pathologist who performed autopsies, medical examinations, filed reports, and testified in legal proceedings. Respondent was asked to perform a number of Field Sobriety Tests. Respondent then provided a preliminary alcohol screening test which displayed the presence of ethyl alcohol in the amount of .155% at approximately 8:36 a.m. Officer J.M. placed Respondent under arrest for operating a motor vehicle while under the influence of alcohol.

14. San Luis Obispo Police Officer A.S. assisted with Officer J.M.'s investigation. Officer A.S. observed the Respondent's damaged vehicle at the corner of Tank Farm Road and Broad Street in San Luis Obispo. Officer J.M. told Officer A.S. that Respondent stated he had come from the Starbucks at the Marigold Center located at Broad Street and Tank Farm Road. Respondent's statement did not match the reporting party's statement that Respondent had been observed at Broad Street and Orcutt Road. Officer A.S. went to the Starbucks at the Marigold Center and found no signs of debris. Officer J.M. then called Officer A.S. and reported that Respondent now stated he had come down Broad Street from the area of Higuera Street. Officer A.S. discovered debris and fluid in the vicinity of 1113 Broad Street. The debris matched the damage to Respondent's vehicle. The object and/or vehicle that Respondent's vehicle had hit was not located. The distance between the accident location and the location where Respondent's vehicle was discovered by law enforcement is approximately 2.4 miles.

15. Respondent was transported to French Hospital after he requested a blood test to determine his blood alcohol content. A blood sample was obtained at approximately 9:09 a.m on March 9, 2016, by a phlebotomist. On March 16, 2016, a San Luis Obispo County Sheriff criminalist L.L. determined that the Respondent's blood sample had a blood alcohol concentration of .19%.

16. On May 3, 2016, the California Attorney General's Office filed a two count misdemeanor complaint in San Luis Obispo County Superior Court case number 16M04145 alleging a misdemeanor violation of Vehicle Code 23152(a), driving under the influence of alcohol, and a misdemeanor violation of Vehicle Code 23152(b), driving with a blood alcohol content greater than .08%. On May 5, 2016, Respondent pled no contest to a misdemeanor violation of Vehicle Code 23152(b), and the parties stipulated to a blood alcohol content of .08% for purposes of resolution. The Superior Court placed the Respondent on three years informal probation, and sentenced him to two days in jail with credit for time served. The probation terms included a three month driving under the influence class, a $2,425.00 fine, and a prohibition against driving with any measurable amount of alcohol in his system.

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17. Respondent's conduct as described above constitutes the use of alcohol to an extent and in such a manner to endanger himself and the public and constitutes unprofessional conduct in violation of sections 2234, subdivision (a) and (f), and 2239 of the Code and hereby provides cause for discipline to Respondent's license.

SECOND CAUSE FOR DISCIPLINE

(Conviction of a Crime Substantially Related to the Qualifications, Functions, and Duties of a Physician and Surgeon)

18. Respondent's license is subject to disciplinary action under sections 490, 493, and 2236 of the Code and California Code of Regulations, title 16, section 1360, in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a physician and surgeon when he was arrested for driving under the influence on his way to work. The circumstances are as follows:

19. Complainant realleges paragraphs 11 through 17, and those paragraphs are incorporated by reference as if fully set forth herein.

20. Respondent's conduct as described above constitutes the conviction of a crime substantially related to the qualifications, functions, and duties, of a physician and surgeon and constitutes unprofessional conduct in violation of sections 490, 493, and 2236 of the Code and California Code of Regulations, title 16, section 1360, and hereby provides cause for discipline to Respondent's license.

THIRD CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

21. Respondent's license is subject to disciplinary action under section 2234 of the Code, in that he has committed general unprofessional conduct as more particularly alleged in paragraphs 11 through 17 above, which are hereby incorporated by reference and re-alleged as if fully set forth therein.

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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. Number G 45798, issued to Gary Alan Walter, M.D.;

2. Revoking, suspending or denying approval of Gary Alan Walter, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice nurses;

3. Ordering Gary Alan Walter, 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: April 10, 2017

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

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