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

In the Matter of the Second Amended Petition to Revoke Probation Against:	)	
THOMAS S. POWERS, M.D.	)	**Case No. 800-2018-046243**
Physician's and Surgeon's Certificate No. G15640	)	
Respondent	)	

DECISION

The attached Stipulated Surrender of License and Disciplinary Order 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 June 18, 2019.

IT IS SO ORDERED June 11, 2019 .

MEDICAL BOARD OF CALIFORNIA

By: Kimberly Kirchmeyer
Kimberly Kirchmeyer
Executive Director

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
CHRISTINE A. RHEE
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State Bar No. 295656
600 West Broadway, Suite 1800
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Attorneys for Petitioner

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

In the Matter of the Second Amended Petition to Revoke Probation Against: **THOMAS S. POWERS, M.D.** **2221 E. 4th Street, C147** **Santa Ana, CA 92705-3804** **Physician's and Surgeon's Certificate No. G15640,** Respondent.	Case No. 800-2018-046243 OAH No. 2018110856 **STIPULATED SURRENDER OF LICENSE AND DISCIPLINARY ORDER**

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

PARTIES

1. Kimberly Kirchmeyer (Petitioner) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Christine A. Rhee, Deputy Attorney General.

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2. Thomas S. Powers, M.D. (Respondent) is represented in this proceeding by attorney John D. Martin, Esq., whose address is: 319 Harvard Avenue, Claremont, CA 91711.

3. On or about October 18, 1968, the Board issued Physician's and Surgeon's Certificate No. G15640 to Thomas S. Powers, M.D. (Respondent). Physician's and Surgeon's Certificate No. G15640 was in full force and effect at all times relevant to the charges brought in Second Amended Petition to Revoke Probation No. 800-2018-046243 and will expire on August 31, 2019, unless renewed.

JURISDICTION

4. Second Amended Petition to Revoke Probation No. 800-2018-046243 was filed before the Board, and is currently pending against Respondent. Second Amended Petition to Revoke Probation No. 800-2018-046243 and all other statutorily required documents were properly served on Respondent on May 20, 2019. Respondent timely filed his Notice of Defense. A true and correct copy of Second Amended Petition to Revoke Probation No. 800-2018-046243 is attached as Exhibit A and is incorporated by reference herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Second Amended Petition to Revoke Probation No. 800-2018-046243. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Second Amended Petition to Revoke Probation; 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.

7. Having had the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Second Amended Petition to Revoke Probation No. 800-2018-046243, agrees that cause exists for discipline, and hereby surrenders his Physician's and Surgeon's Certificate No. G15640 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

CONTINGENCY

10. Pursuant to Business and Professions Code section 2224, subdivision (b), the Executive Director of the Board has been delegated the authority to adopt or reject a stipulation for surrender of a Physician's and Surgeon's Certificate.

11. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be null and void and not binding upon the parties unless approved by the Executive Director on behalf of the Board. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive Director and/or the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Executive Director, the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Executive Director on behalf of the Board does not, in her discretion, approve and adopt this Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason by the Executive Director on behalf of the Board, Respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion, and/or consideration of

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this Stipulated Surrender of License and Disciplinary Order or of any matter or matters related hereto.

12. The Executive Director shall have a reasonable period of time in which to consider and act on this stipulation after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Executive Director considers and acts upon it.

ADDITIONAL PROVISIONS

13. This Stipulated Surrender of License and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final, and exclusive embodiment of the agreements of the parties in the above-entitled matter.

14. The parties agree that copies of this Stipulated Surrender of License and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

15. 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. G15640, issued to Respondent Thomas S. Powers, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate No. G15640 and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

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4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Second Amended Petition to Revoke Probation No. 800-2018-046243 shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. Respondent shall pay the Board the outstanding fines for Citation Order No. 8002017035359 and Citation Order No. 8002018045408 in the amount of $350.00 and $700.00, respectively, prior to petitioning for reinstatement of his license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Second Amended Petition to Revoke Probation No. 800-2018-046243 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Disciplinary Order and have fully discussed it with my attorney John D. Martin, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 5/20/19 Thomas S. Powers, M.D.

THOMAS S. POWERS, M.D.
Respondent

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I have read and fully discussed with Respondent Thomas S. Powers, M.D., the terms and conditions and other matters contained in this Stipulated Surrender of License and Disciplinary Order. I approve its form and content.

DATED: 5/20/2019

JOHN D. MARTIN, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated:

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

CHRISTINE A. RHEE
Deputy Attorney General
Attorneys for Petitioner

I have read and fully discussed with Respondent Thomas S. Powers, M.D., the terms and conditions and other matters contained in this Stipulated Surrender of License and Disciplinary Order. I approve its form and content.

DATED: _____ _____
JOHN D. MARTIN, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: 5/21/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

CHRISTINE A. RHEE
Deputy Attorney General
Attorneys for Petitioner

Exhibit A

Second Amended Petition to Revoke Probation No. 800-2018-046243

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Attorneys for Petitioner

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO MAY 20 2019
BY ANALYST

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

In the Matter of the Second Amended Petition to Revoke Probation Against: **THOMAS S. POWERS, M.D.** **2221 E. 4th St., Ste. C147** **Santa Ana, CA 92705-3804** **Physician's and Surgeon's Certificate No. G15640,** Respondent.	Case No. 800-2018-046243 OAH No. 2018110856 **SECOND AMENDED PETITION TO REVOKE PROBATION**

Petitioner alleges:

PARTIES

1. Kimberly Kirchmeyer (Petitioner) brings this Second Amended Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about October 18, 1968, the Medical Board of California issued Physician's and Surgeon's Certificate No. G15640 to Thomas S. Powers, M.D. (Respondent). Physician's

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and Surgeon's Certificate No. G15640 was in effect at all times relevant to the charges brought herein, and will expire on August 31, 2019, unless renewed.

DISCIPLINARY HISTORY

3. On or about May 27, 2009, the Medical Board of California issued a Public Letter of Reprimand for Case No. 06-2007-184451, disciplining Respondent for failing to maintain adequate and accurate records for the care and treatment of three (3) patients. Respondent was ordered to successfully complete a medical record keeping course.

4. In a disciplinary action entitled, "In the Matter of Accusation Against: Thomas S. Powers, M.D.," Case No. 04-2013-235019, the Medical Board of California, issued a decision, effective July 14, 2017, in which Respondent's Physician's and Surgeon's Certificate No. G15640 was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate No. G15640 was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A, and is incorporated by reference as if fully set forth herein.

5. On or about August 18, 2017, the Medical Board of California issued and served a Cease Practice Order against Respondent, immediately prohibiting him from engaging in the practice of medicine pending a final decision on a petition to revoke probation. That Cease Practice Order was based on Respondent's failure to comply with Condition No. 4, Biological Fluid Testing, of his probation in Case No. 04-2013-235019.

6. In a disciplinary action entitled, "In the Matter of the Petition to Revoke Probation Against: Thomas S. Powers, M.D." Case No. 800-2017-035603, the Medical Board of California issued a decision, effective May 2, 2018, in which Respondent's Physician's and Surgeon's Certificate No. G15640 was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate No. G15640 was placed on one additional year of probation with certain terms and conditions, which runs consecutive to the term of probation previously ordered in the Decision and Order in Case No. 04-2013-235019. A copy of that decision is attached as Exhibit A, and is incorporated by reference as if fully set forth herein.

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JURISDICTION

7. This Second Amended Petition to Revoke Probation, which supersedes the First Amended Petition to Revoke Probation filed on April 4, 2019, is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws and the Board's Decisions and Orders in Case No. 04-2013-235019 and Case No. 800-2017-035603. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

8. Section 2227 of the Code states, in pertinent part:

"(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.

"..."

9. At all times after the effective dates of Respondent's probation in Case No. 04-2013-235019 and Case No. 800-2017-035603, Condition No. 19 and Condition No. 23, respectively, of Respondent's probation provided the following:

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"VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. 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."

FIRST CAUSE TO REVOKE PROBATION
(Failure to Comply with Required Biological Fluid Testing)

10. At all times after the effective date of Respondent's probation in Case No. 800-2017-035603, Condition No. 14 of Respondent's probation provided:

"14. 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 of 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

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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 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, recommended 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.

"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."

11. Respondent's probation is subject to revocation because he failed to comply with Probation Condition No. 14, referenced above. The facts and circumstances regarding this violation are as follows:

12. Pursuant to Condition No. 14 of Respondent's probation in Case No. 800-2017-035603, and the agreement entered into between Respondent and FirstSource Solutions, Respondent was required to submit to random biological fluid tests administered by FirstSource Solutions. In order to ascertain whether he had been selected to be tested on any particular day, Respondent was required to make daily contact with FirstSource Solutions, through the FirstSource Solutions website, the FirstSource Solutions mobile app, or by telephone to the FirstSource Solutions Interactive Voice Response system. If selected for testing, Respondent was then required to report to a FirstSource Solutions-approved testing site and be tested that same day.

13. On or about April 18, 2018, Respondent met with his probation inspector and went over the Decision and Order in Case No. 800-2017-035603. Respondent acknowledged that he received a copy of the Decision and Order in Case No. 800-2017-035603 and that he understood what was required of him while he was on probation.

14. On or about May 10, 2018, the Board mailed Respondent a letter advising him that he needed to enroll with FirstSource Solutions for his biological fluid testing.

15. On or about May 17, 2018, Respondent was scheduled to check in with FirstSource Solutions. Respondent failed to check in from on or about May 17, 2018 through May 27, 2018.

16. On or about May 23, 2018, FirstSource Solutions notified the Board that Respondent was having difficulty accessing the system through FirstSource Solution's website and mobile application from on or about May 17, 2018 through May 22, 2018. FirstSource Solutions verified that there were no issues with Respondent's passcode.

17. Respondent failed to check in with FirstSource Solutions on or about the following days:

a. June 14, 2018;

b. June 15, 2018;

c. June 17, 2018;

d. June 24, 2018;

e. June 28, 2018;

f. September 29, 2018;

g. October 16, 2018;

h. November 1, 2018;

i. December 2, 2018;

j. December 12, 2018;

k. December 20, 2018;

l. December 23, 2018;

m. December 26, 2018;

n. January 22, 2019;

o. January 28, 2019;

p. March 12, 2019;

q. March 20, 2019; and

r. April 30, 2019.

18. Respondent failed to check in with FirstSource Solutions and failed to report to a FirstSource-approved testing site to provide a biological fluid sample, on or about the following days:

a. June 16, 2018;

b. June 26, 2018;

c. July 5, 2018; and

d. March 24, 2019.

SECOND CAUSE TO REVOKE PROBATION
(Failure Notify the Board of Respondent's Return to Practice)

19. At all times and after the effective date of Respondent's probation in Case No. 800-2017-035603 and Case No. 04-2013-235019, Condition No. 21 of Respondent's probation provided:

"21. 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 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. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. 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 the Federation of State Medical Boards' Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment 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 for a Respondent residing outside of California 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; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Controlled Substances; and Biological Fluid Testing."

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20. Respondent's probation is subject to revocation because he failed to comply with Probation Condition No. 21, referenced above. The facts and circumstances regarding this violation are as follows:

21. On or about January 30, 2019, a probation monitor for the Board met with Respondent for his first quarterly meeting for 2019. Respondent told the probation monitor that he was in a period of non-practice.

22. On or about April 24, 2019, the same probation monitor met with Respondent for his second quarterly meeting for 2019. Respondent informed the Board probation monitor that he started working with another physician, K.L, M.D., in Santa Ana, in or around January or February 2019. Respondent failed to inform the Board that he had resumed practice within 15 calendar days of Respondent's return to practice.

THIRD CAUSE TO REVOKE PROBATION
(Failure to Obey All Laws)

23. At all times after the effective dates of Respondent's probation in Case No. 800-2017-035603 and Case No. 04-2013-235019, Condition No. 13 of Respondent's probation provided:

> "13. 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."

24. Respondent's probation is subject to revocation because he failed to comply with Probation Condition No. 13, referenced above. The facts and circumstances regarding these violations are as follows:

25. On or about August 10, 2017, the Board issued Citation Order No. 8002017035359 for failing to check in for biological fluid testing on approximately four (4) occasions on or about July 25, 2017, July 28, 2017, July 29, 2017, and July 30, 2017, and failing to submit to biological fluid testing on or about July 30, 2017. The Board ordered Respondent to pay a $350.00 fine within 30 days of receipt of the citation. Citation Order No. 8002017035359 was served on Respondent by certified mail on or about September 18, 2017, September 25, 2017, and July 20,

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2018. An electronic copy of Citation Order No. 8002017035359 was e-mailed to Respondent on or about May 29, 2018. Respondent failed to pay the fine.

26. On or about July 3, 2018, the Board issued Citation Order No. 8002018045408 for failing to check in for biological fluid testing on approximately seven (7) occasions from on or about May 17, 2018 through May 22, 2018, and May 27, 2018, and failing to submit to biological fluid testing on or about May 23, 2018. The Board ordered Respondent to pay a $700.00 fine. Citation Order No. 8002018045408 was served on Respondent by certified mail on or about July 3, 2018 and July 20, 2018. Respondent failed to pay the fine.

PRAYER

WHEREFORE, Petitioner 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 the probation that was granted by the Medical Board of California in Case Nos. 04-2013-235019 and 800-2017-035603, and imposing the disciplinary orders that were stayed, thereby revoking Physician's and Surgeon's Certificate No. G15640 issued to Respondent Thomas S. Powers, M.D.;

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

3. Ordering Respondent Thomas S. Powers, M.D., if placed on probation, to pay the Medical Board of California the costs of probation monitoring; and

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

DATED: May 20, 2019

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

Exhibit A

Decision and Order

Medical Board of California Case No. 800-2017-035603

Decision and Order

Medical Board of California Case No. 04-2013-235019

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

In the Matter of the Petition to Revoke Probation Against: THOMAS S. POWERS, M.D. Physician's and Surgeon's Certificate No. G 15640 Respondent	)	Case No. 800-2017-035603

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order 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 May 2, 2018.

IT IS SO ORDERED: April 2, 2018.

MEDICAL BOARD OF CALIFORNIA

Kristina Lawson

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

MEDICAL BOARD OF CALIFORNIA
I do hereby certify that this document is a true and correct copy of the original on file in this office.
S. Woods
Signature
For Custodian of Records
Title
7/18/2018
Date

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
CHRISTINE A. RHEE
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Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Petition to Revoke Probation Against: THOMAS S. POWERS, M.D. 2112 E. 4th Street, Ste. 100 Santa Ana, CA 92705 Physician's and Surgeon's Certificate No. G15640, Respondent.	Case No. 800-2017-035603 STIPULATED SETTLEMENT AND DISCIPLINARY ORDER

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

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Christine A. Rhee, Deputy Attorney General.

2. Respondent Thomas S. Powers, M.D. (Respondent) is represented in this proceeding by attorney John D. Martin, Esq., whose address is: 319 Harvard Avenue, Claremont, CA 91711.

3. On or about October 18, 1968, the Board issued Physician's and Surgeon's Certificate No. G15640 to Thomas S. Powers, M.D. (Respondent). Physician's and Surgeon's Certificate No. G15640 was in full force and effect at all times relevant to the charges brought in Petition to Revoke Probation No. 800-2017-035603, and will expire on August 31, 2019, unless renewed.

JURISDICTION

4. Petition to Revoke Probation No. 800-2017-035603 was filed before the Board, and is currently pending against Respondent. The Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on September 14, 2017. Respondent timely filed his Notice of Defense contesting the Petition to Revoke Probation.

5. On or about October 16, 2017, the Board issued an Order Correcting *Nunc Pro Tunc* Condition 3 of the Decision and Order in Case No. 04-2013-235019.

6. A copy of Petition to Revoke Probation No. 800-2017-035603 is attached as Exhibit A and is incorporated by reference herein.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Petition to Revoke Probation No. 800-2017-035603. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Petition to Revoke Probation; 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.

9. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

10. Respondent admits the truth of each and every charge and allegation in Petition to Revoke Probation No. 800-2017-035603.

11. Respondent agrees that his Physician's and Surgeon's Certificate No. G15640 is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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 stipulation and settlement, 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, 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 agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Board does not, in its discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party

hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

14. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

15. The parties agree that copies of this Stipulated Settlement and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

16. 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. G15640 issued to Respondent Thomas S. Powers, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation on the following terms and conditions:

1. ONE (1) YEAR OF ADDITIONAL PROBATION. Respondent is placed on probation for one (1) year, which grant of additional probation shall run consecutive to the term of probation previously ordered in Stipulated Settlement and Disciplinary Order in Case No. 04-2013-235019.

2. ACTUAL SUSPENSION. As part of probation, Respondent is suspended from the practice of medicine for 30 days as of the effective date of this decision.

3. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent shall not order, prescribe, dispense, administer, furnish, or possess any Schedule II or Schedule III controlled substances as defined by the California Uniform Controlled Substances Act, except for anabolic steroids pursuant to California Health and Safety Code Section 11056, subdivision (f).

Respondent further agrees that he will only order, prescribe, dispense, administer, furnish, or possess Suboxone to treat patients for substance dependence or addiction only.

4. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: (1) the name and address of the patient; (2) the date; (3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

5. 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 or recommended to Respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed or recommended medications, Respondent shall notify the Board or its designee of the following: (1) issuing practitioner's name, address, and telephone number; (2) medication name, strength, and quantity; and (3) issuing pharmacy name, address, and telephone number.

6. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at

correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

7. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course 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 course would have been approved by the Board or its designee had the course 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 course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

8. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course

not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course 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 course would have been approved by the Board or its designee had the course 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 course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

9. 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 1358.1. 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.

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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.

10. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

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If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the Respondent did not successfully complete the clinical competence assessment program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.]

11. PSYCHIATRIC EVALUATION. Within 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 the 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 15 calendar days after being notified by the Board or its designee.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that Respondent is mentally 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.

12. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the effective date of this Decision, and on a periodic 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 provided by the Board or designee and any other information

the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee. Respondent shall provide the evaluating physician with 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 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 that 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.

Respondent shall not engage in the practice of medicine until notified in writing by the Board or its designee of its determination that Respondent is medically fit to practice safely.

13. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical

Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision, Petition to Revoke Probation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Petition to Revoke Probation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Petition to Revoke Probation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine, and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

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

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

14. 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

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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 of 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.

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(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 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, recommended 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.

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.

15. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and the Petition to Revoke Probation 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.

16. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

17. 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.

18. 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.

19. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

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.

20. 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.

21. 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 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. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. 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 the Federation of State Medical Boards' Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment 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 for a Respondent residing outside of California 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; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Controlled Substances; and Biological Fluid Testing.

22. 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.

23. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. 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.

24. 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.

25. 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.

ACCEPTANCE

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

DATED: 1-16-18 Thomas S. Powers M.D.
THOMAS S. POWERS, M.D.
Respondent

I have read and fully discussed with Respondent Thomas S. Powers, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 1-16-18
JOHN D. MARTIN, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated:

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

CHRISTINE A. RHEE
Deputy Attorney General
Attorneys for Complainant

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California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

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

DATED: _____

THOMAS S. POWERS, M.D.
Respondent

I have read and fully discussed with Respondent Thomas S. Powers, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

JOHN D. MARTIN, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: 1/17/18

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

CHRISTINE A. RHEE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Petition to Revoke Probation No. 800-2017-035603

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
CHRISTINE A. RHEE
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO September 14 2017
BY Robyn Fitzwater ANALYST

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

In the Matter of the Petition to Revoke Probation Against: Thomas S. Powers, M.D. 2112 E. 4th Street, Ste. 100 Santa Ana, CA 92705 Physician's and Surgeon's Certificate No. G15640, Respondent.	Case No. 800-2017-035603 PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

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

2. On or about October 18, 1968, the Medical Board issued Physician's and Surgeon's Certificate No. G15640 to Thomas S. Powers, M.D. (Respondent). Respondent's Physician's and Surgeon's Certificate No. G15640 was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2019, unless renewed.

DISCIPLINARY HISTORY

3. In a previous disciplinary action entitled, *In the Matter of the Accusation Against: Thomas S. Powers, M.D.*, Case No. 04-2013-235019, the Board issued a Decision and Order, effective July 14, 2017, in which Respondent's Physician's and Surgeon's Certificate No. G15640 was revoked. The revocation was stayed, however, and Respondent's Physician's and Surgeon's Certificate No. G15640 was placed on probation for a period of three (3) years with certain terms and conditions. A true and correct copy of that Decision and Order is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

4. At all times after the effective date of Respondent's probation in Case No. 04-2013-235019, Condition No. 19 of Respondent's probation provided:

> "19. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. 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."

5. On or about August 18, 2017, the Board issued and served a Cease Practice Order against Respondent, immediately prohibiting him from engaging in the practice of medicine pending a final decision on the instant Petition to Revoke Probation. That Cease Practice Order was based on Respondent's failure to obey Probationary Condition No. 4 of the Board's Decision and Order in Case No. 04-2013-235019.

6. On or about September 23, 2016, the Board issued Citation Order No. 8002016021352, citing Respondent for violating Business and Professions Code section 2225, subdivision (a), for failing to maintain adequate records for the case and treatment of five (5) patients.

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7. On or about May 27, 2009, the Board issued a Public Letter of Reprimand for Case No. 06-2007-184451, for violating Business and Professions Code section 2266, for failing to maintain adequate and accurate records for the care and treatment of three (3) patients. Respondent was ordered to successfully complete a medical record keeping course.

JURISDICTION

8. This Petition to Revoke Probation is brought before the Board under the authority of the following laws and the Board's Decision and Order in Case No. 04-2013-235019. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

9. 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.

"..."

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FIRST CAUSE TO REVOKE PROBATION

(Failure to Comply with Required Biological Fluid Testing)

10. At all times after the effective date of Respondent's probation in Case No. 04-2013-235019, Condition No. 4 of Respondent's probation provided:

"4. 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. 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. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours 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 Respondent fails to cooperate in a random biological fluid testing program within the specified time frame, 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 the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 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 in writing to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its

Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. 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 30 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 of cease practice shall be dissolved."

11. On or about July 19, 2017, Respondent entered into an agreement with FirstSource Solutions.

12. Pursuant to Condition No. 4 of Respondent's probation and the agreement entered into between Respondent and FirstSource Solutions, Respondent was required, among others, to submit to random biological fluid tests administered by FirstSource Solutions. In order to ascertain whether he had been selected to be tested on any particular day, Respondent was required to make daily contact with FirstSource Solutions, through the FirstSource Solutions website, the FirstSource Solutions mobile app, or by telephone to the FirstSource Solutions Interactive Voice Response system. If selected for testing, Respondent was then required to report to a FirstSource Solutions-approved testing site and be tested that same day.

13. On or about August 2, 2017, Respondent failed to check in with FirstSource Solutions.

14. On or about August 6, 2017, Respondent failed to check in with FirstSource Solutions. On or about August 6, 2017, Respondent additionally failed to report to a FirstSouce approved testing site to provide a biological fluid sample, as he had been selected to test that day.

15. On or about August 7, 2017, Respondent failed to check in with FirstSource Solutions.

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16. On or about August 8, 2017, Respondent failed to check in with FirstSource Solutions.

17. On or about August 11, 2017, Respondent failed to check in with FirstSource Solutions. On or about August 11, 2017, Respondent additionally failed to report to a FirstSouce approved testing site to provide a biological fluid sample, as he had been selected to test that day.

18. On or about August 12, 2017, Respondent failed to check in with FirstSource Solutions.

19. On or about August 24, 2017, Respondent failed to check in with FirstSource Solutions.

20. On or about August 26, 2017, Respondent failed to check in with FirstSource Solutions.

21. On or about August 27, 2017, Respondent failed to check in with FirstSource Solutions.

22. On or about August 28, 2017, Respondent failed to check in with FirstSource Solutions.

23. On or about August 29, 2017, Respondent failed to check in with FirstSource Solutions.

24. On or about August 30, 2017, Respondent failed to check in with FirstSource Solutions. On or about August 30, 2017, Respondent additionally failed to report to a FirstSouce approved testing site to provide a biological fluid sample, as he had been selected to test that day.

25. On or about August 31, 2017, Respondent failed to check in with FirstSource Solutions.

26. On or about September 1, 2017, Respondent failed to check in with FirstSource Solutions.

27. On or about September 2, 2017, Respondent failed to check in with FirstSource Solutions. On or about September 2, 2017, Respondent additionally failed to report to a FirstSouce approved testing site to provide a biological fluid sample, as he had been selected to test that day.

28. On or about September 3, 2017, Respondent failed to check in with FirstSource Solutions.

29. On or about September 4, 2017, Respondent failed to check in with FirstSource Solutions.

30. On or about September 5, 2017, Respondent failed to check in with FirstSource Solutions.

31. On or about September 6, 2017, Respondent failed to check in with FirstSource Solutions.

32. On or about September 7, 2017, Respondent failed to check in with FirstSource Solutions.

33. Respondent's probation is subject to revocation because he failed to comply with Condition No. 4 of his probation in Case No. 04-2013-235019.

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. G15640, issued to Respondent Thomas S. Powers, M.D.;

2. Revoking the probation that was granted by the Medical Board of California in Case No. 04-2013-235019, and imposing the disciplinary order that was stayed, thereby revoking Physician's and Surgeon's Certificate No. G15640, issued to Respondent Thomas S. Powers, M.D.;

3. Revoking, suspending or denying approval of Respondent Thomas S. Powers, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice nurses;

4. Ordering Respondent Thomas S. Powers, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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5. Taking such other and further action as deemed necessary and proper.

DATED: September 14, 2017

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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Exhibit A:

Decision and Order for Case No. 04-2013-235019

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

In the Matter of the Accusation Against:	)	
	)	
Thomas S. Powers, M.D.	)	MBC File # 04-2013-235019
	)	
Physician's & Surgeon's Certificate No. G 15640	)	
	)	
Respondent.	)	

ORDER CORRECTING NUNC PRO TUNC
CONDITION 3 OF THE DECISION

On its own motion, the Medical Board of California (hereafter "Board") finds that there are clerical errors in the first and second paragraphs of Condition 3 of the Stipulated Settlement and Disciplinary Order in the above-entitled matter, and that such clerical errors should be corrected.

IT IS HEREBY ORDERED that the first and second paragraphs of Condition 3 of the Stipulated Settlement and Disciplinary Order be amended as follows:

"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 or recommended to Respondent by another practitioner for a bona fide illness or condition."

"Within 15 calendar days of receiving any lawfully prescribed or recommended medications, Respondent shall notify the Board or its designee of the following: (1) the issuing practitioner's name, address, and telephone number; (2) medication name, strength, and quantity; and (3) issuing pharmacy name, address, and telephone number."

IT IS HEREBY FURTHER ORDERED that the Stipulated Settlement and Disciplinary Order, as amended herein, remains in effect as of July 14, 2017, and all the balance of the Decision remain operative and unaffected.

IT IS HEREBY FURTHER ORDERED that the Decision ordered on September 28, 2017, is nullified and shall have no effect.

October 13, 2017

Michelle Anne Bholat, M.D.
Chair
Panel B

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

In the Matter of the Accusation Against:	)	
Thomas S. Powers, M.D.	)	Case No. 04-2013-235019
Physician's and Surgeon's Certificate No. G 15640	)	
Respondent	)	

DECISION

The attached Stipulated Settlement and Disciplinary Order 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 July 14, 2017.

IT IS SO ORDERED: June 14, 2017.

MEDICAL BOARD OF CALIFORNIA

Michelle Anne Bholat, M.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
CHRISTINE A. RHEE
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600 West Broadway, Suite 1800
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Attorneys for Complainant

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

In the Matter of the Accusation Against: THOMAS POWERS, M.D. 2112 E. 4th Street, Ste. 100 Santa Ana, CA 92705-3849 Physician's and Surgeon's Certificate No. G15640, Respondent.	Case No. 04-2013-235019 OAH No. 2016110016 STIPULATED SETTLEMENT AND DISCIPLINARY ORDER

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

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Christine A. Rhee, Deputy Attorney General.

2. Respondent Thomas S. Powers, M.D. (Respondent) is represented in this proceeding by attorney John D. Martin, Esq., whose address is: 319 Harvard Avenue, Claremont, CA 91711.

3. On or about October 18, 1968, the Board issued Physician's and Surgeon's Certificate No. G15640 to Respondent. Physician's and Surgeon's Certificate No. G15640 was in full force and effect at all times relevant to the charges brought in Accusation No. 04-2013-235019, and will expire on August 31, 2017, unless renewed.

JURISDICTION

4. Accusation No. 04-2013-235019 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 2, 2016. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 04-2013-235019 is attached as Exhibit A and incorporated by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 04-2013-235019. 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. Having the benefit of counsel, 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. 04-2013-235019.

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10. Respondent agrees that his Physician's and Surgeon's Certificate No. G15640 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

11. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Board does not, in its discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

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ADDITIONAL PROVISIONS

13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

14. 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.

15. 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. G15640 issued to Respondent Thomas S. Powers, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions from the effective date of the Decision:

1. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent shall not order, prescribe, dispense, administer, furnish, or possess any Schedule II or Schedule III controlled substances as defined by the California Uniform Controlled Substances Act, except for the following: anabolic steroids pursuant to California Health and Safety Code Section 11056, subdivision (f). Respondent further agrees that he will only order, prescribe, dispense, administer, furnish, or possess Suboxone to treat patients for substance dependence or addiction only.

2. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: (1) the name and

address of patient; (2) the date; (3) the character and quantity of controlled substances involved; and (4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

3. 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 following: (1) the issuing practitioner's name, address, and telephone number; (2) medication name, strength, and quantity; and (3) 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 the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 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 the Respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard

by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory ordersw issued by the Board. 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 30 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

4. 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. 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. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours 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 Respondent fails to cooperate in a random biological fluid testing program within the specified time frame, 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 the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practise. 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. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within

15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. 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 30 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

5. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

6. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing

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practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course 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 course would have been approved by the Board or its designee had the course 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 course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

7. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course 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 course would have been approved by the Board or its designee had the course 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 course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

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8. 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 1358.1. 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.

9. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the Program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision, Accusation,

and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If Respondent did not successfully complete the clinical competence assessment program, Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

10. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to

compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision, Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine, and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceeding quarter.

If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility

within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

11. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the 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.

12. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

13. 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.

14. 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.

15. 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, subdivision (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 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.

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16. 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.

17. 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 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. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. 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 the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment 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 for a Respondent residing outside of California 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;

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General Probation Requirements; Quarterly Declarations; Abstain from the Use of Controlled Substances; and Biological Fluid Testing.

18. 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.

19. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. 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.

20. 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.

21. 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.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, John D. Martin, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G 56440. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 4/5/17

THOMAS S. POWERS, M.D.
Respondent

I have read and fully discussed with Respondent Thomas S. Powers, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 4/5/17

JOHN D. MARTIN, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: 4/5/17

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

CHRISTINE A. LEE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 04-2013-235019

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Sept 2 20 16
BY D. Richards ANALYST

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

In the Matter of the Accusation Against: Thomas S. Powers, M.D. 2001 East 4th Street, Suite 200 Santa Ana, CA 92705 Physician's and Surgeon's Certificate No. G15640, Respondent.	Case No. 04-2013-235019 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 October 18, 1968, the Medical Board issued Physician's and Surgeon's Certificate No. G15640 to Thomas S. Powers, M.D. (Respondent). Physician's and Surgeon's Certificate No. G15640 was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2017, unless renewed.

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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 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."

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5. 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.

"(b) Gross negligence.

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

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

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

"..."

6. Unprofessional conduct under section 2234 of the Code is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Bd. of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

7. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

8. Section 2239 of the Code states, in pertinent part:

"(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. . .

"..."

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

10. Section 11170 of the Health and Safety Code states: "No person shall prescribe, administer, or furnish a controlled substance for himself."

11. Section 4021 of the Code states: "'Controlled Substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

12. Section 4022 of the Code states, in pertinent part:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.

"..."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

13. Respondent has subjected his Physician's and Surgeon's Certificate No. G15640 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of

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the Code, in that he committed gross negligence in his care and treatment of patients N.D., T.C., D.C., and M.W., as more particularly alleged hereinafter:

Patient N.D.

14. Sometime between December 2011, through December 2013, Respondent began treating patient N.D. Over the years, Respondent prescribed patient N.D. various narcotic medications for unknown medical ailments, including but not limited to, varying amounts of Hydrocodone Bitartrate Acetaminophen,[1] Hydromorphone,[2] Alprazolam,[3] Dilaudid, and Promethazine HCL Codeine Phosphate.[4]

15. Between on or about December 21, 2011, through on or about December 10, 2013, Respondent prescribed patient N.D. approximately 10 prescriptions of Alprazolam 2 mg, for a total of 910 tablets.

16. Between on or about December 21, 2011, through on or about December 10, 2013, Respondent prescribed patient N.D. approximately 14 prescriptions for Hydrocodone Bitartrate Acetaminophen 325 mg-10 mg, for a total of 1,550 tablets.

17. Between on or about December 21, 2011, through on or about December 10, 2013, Respondent prescribed patient N.D. approximately 7 prescriptions for Hydromorphone 4 mg, for a total of 940 tablets.

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[1] Hydrocodone Bitartrate Acetaminophen, brand name Norco, contains acetaminophen and hydrocodone bitartrate, and is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone Bitartrate Acetaminophen 325 mg-10 mg contains 10 mg of hydrocodone and 325 mg of acetaminophen.

[2] Hydromorphone, brand name Dilaudid, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

[3] Alprazolam, brand name Xanax, is a benzodiazepine and is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

[4] Promethazine HCL Codeine Phosphate, contains codeine and is a Schedule V controlled substance pursuant to Health and Safety Code section 11058, subdivision (c), and a dangerous drug pursuant to Business and Professions Code section 4022.

18. Between on or about December 21, 2011, through on or about December 10, 2013, Respondent prescribed patient N.D. approximately 10 prescriptions for Dilaudid 4 mg, for a total of 1,360 tablets.

19. Between on or about December 21, 2011, through on or about December 10, 2013, Respondent prescribed patient N.D. approximately 3 prescriptions for Promethazine HCL Codeine Phosphate 6.25 mg.

20. Respondent was unable to provide any medical records[5] for patient N.D. and was unable to recollect patient N.D.'s treatment and care, including whether any history or physical exam was taken, any diagnoses, any medical indications, any prescriptions prescribed, any pain assessments that were conducted, any objectives for treatment, any review of patient N.D.'s CURES,[6] or any other risk assessment tools that may have determined the risk of potential substance-abusing behaviors by patient N.D.

21. Respondent committed gross negligence in his care and treatment of patient N.D. which included, but was not limited to, the following:

a. Paragraphs 14 through 20, above, are hereby incorporated by reference as if fully set forth herein; and

b. Respondent failed to maintain adequate and accurate medical records for patient N.D., including documentation for the following: a history and physical exam; a treatment plan and management goals; informed consent regarding the risks and benefits of using controlled substances; and ongoing monitoring while prescribing controlled substances.

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[5] After Complainant's requests for medical records for patients N.D., T.C, D.C., and M.W., Respondent informed Complainant in or about August 2015 that Respondent lost all of his patients' records in a landlord-tenant dispute at his practice located in Huntington Beach, California. Respondent subsequently provided a certification of no records for patients N.D., T.C., D.C., and M.W. on or about March 29, 2016.

[6] The Controlled Substance Utilization Review and Evaluation System (CURES), is a database of Schedule II, III and IV controlled substance prescriptions dispensed in California serving the public health, regulatory oversight agencies, and law enforcement.

Patient T.C.

22. Sometime between 2011 and 2014, Respondent began treating patient T.C. Over the years, Respondent prescribed patient T.C. various narcotic medications for back pain and insomnia, including but not limited to Hydromorphone, Ketamine,[7] Oxycodone,[8] and Hydrocodone Bitartrate Acetaminophen.

23. Between on or about October 13, 2011, and on or about October 10, 2014, Respondent prescribed patient T.C. approximately 2 prescriptions for Hydromorphone 8 mg, for a total of 240 tablets.

24. Between on or about October 13, 2011, and on or about October 10, 2014, Respondent prescribed patient T.C. approximately 2 prescriptions for Hydromorphone 4 mg, for a total of 240 tablets.

25. Between on or about October 13, 2011, and on or about October 10, 2014, Respondent prescribed patient T.C. approximately 28 prescriptions for Oxycodone 30 mg, for a total of 3,980 tablets.

26. Between on or about October 13, 2011, and on or about October 10, 2014, Respondent prescribed patient T.C. approximately 2 prescriptions for Oxycodone 15 mg, for a total of 200 tablets.

27. Between on or about October 13, 2011, and on or about October 10, 2014, Respondent prescribed patient T.C. approximately 1 prescription for Ketamine.

28. Between on or about October 13, 2011, and on or about October 10, 2014, Respondent prescribed patient T.C. approximately 4 prescriptions for Hydrocodone Bitartrate Acetaminophen 325 mg-10 mg, for a total of 330 tablets.

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[7] Ketamine HCL, brand name Ketalar, is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (f), and a dangerous drug pursuant to Business and Professions Code section 4022.

[8] Oxycodone HCL, brand name Oxycontin, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

29. Respondent was only able to produce one page of medical records documenting one office visit dated October 10, 2014, for patient T.C., in which Respondent prescribed patient T.C. Dilaudid 8 mg, quantity 120 tablets qid[9] for back pain and insomnia. Respondent was able to recall that during his treatment and care of patient T.C., patient T.C. once reported that his brother stole his prescription medication. Respondent was otherwise unable to recollect other aspects of patient T.C.'s treatment and care, including any history or physical exam taken, any medical indications for prescribing Ketamine, any other prescriptions prescribed, any pain assessments undertaken, any objectives for treatment made, any review of patient T.C.'s CURES, or any other risk assessment tools that may have determined the risk of substance-abusing behaviors by patient T.C.

30. Respondent committed gross negligence in his care and treatment of patient T.C. which included, but was not limited to, the following:

a. Paragraphs 22 through 29, above, are hereby incorporated by reference as if fully set forth herein; and

b. Respondent failed to maintain adequate and accurate medical records for patient T.C., including documentation for the following: a history and physical exam; treatment plan and management goals; informed consent regarding the risks and benefits of using controlled substances; and ongoing monitoring.

<u>Patient D.C.</u>

31. Sometime between 2011 through 2014, Respondent began treating patient D.C. Over the years, Respondent prescribed patient D.C. various narcotic medications for unknown medical ailments, including but not limited to, Oxycodone, Carisoprodol,[10] Hydrocodone Bitartrate Acetaminophen, and Promethazine HCL Codeine Phosphate.

32. Between on or about November 9, 2012, through on or about November 27, 2013, Respondent prescribed patient D.C. approximately 13 prescriptions for Oxycodone HCL 30 mg,

[9] "Qid" stands for "*quater in die*" which is Latin for four times a day.

[10] Carisoprodol, brand name Soma, is a Schedule IV controlled substance pursuant to 21 C.F.R. § 1308, and is a dangerous drug pursuant to Business and Professions Code section 4022.

for a total of 1,670 tablets.

33. Between on or about November 9, 2012, through on or about November 27, 2013, Respondent prescribed patient D.C. approximately 8 prescriptions of Carisoprodol 350 mg, for a total of 720 tablets.

34. Between on or about November 9, 2012, through on or about November 27, 2013, Respondent prescribed patient D.C. approximately 8 prescriptions for Hydrocodone Bitartrate Acetaminophen 325 mg-10 mg, for a total of 730 tablets.

35. Between on or about November 9, 2012, through on or about November 27, 2013, Respondent prescribed patient D.C. approximately 3 prescriptions of Promethazine HCL Codeine Phosphate 6.25 mg.

36. Respondent was unable to provide any medical records for patient D.C. and was unable to recollect patient D.C.'s treatment and care, including any history or physical exam taken, any diagnoses, any medical indications, any prescriptions prescribed, any pain assessments undertaken, any objectives for treatment made, any review of patient D.C.'s CURES, or any other risk assessment tools that may have determined the risk of substance-abusing behaviors by patient D.C.

37. Respondent committed gross negligence in his care and treatment of patient D.C., which included, but was not limited to, the following:

a. Paragraphs 31 through 36 above, are hereby incorporated by reference as if fully set forth herein; and

b. Respondent failed to maintain adequate and accurate medical records for patient D.C., including documentation for the following: a history and physical exam; treatment plan and management goals; informed consent regarding the risks and benefits of using controlled substances; and ongoing monitoring.

Patient M.W.

38. Sometime between 2012 through 2013, Respondent began treating patient M.W. According to patient M.W.'s autopsy report, Respondent treated patient M.W. for degenerative disc disease in the neck and back, radiating pain, and herniated discs. Respondent prescribed

patient M.W. narcotic medications, including but not limited to, Oxycodone and Hydrocodone Bitartrate Acetaminophen.

39. Between on or about March 20, 2012, through on or about February 20, 2013, Respondent prescribed patient M.W. approximately 11 prescriptions of Oxycodone 30 mg, for a total of 1,420 tablets.

40. Between on or about March 20, 2012, through on or about February 20, 2013, Respondent prescribed patient M.W. approximately 2 prescriptions of Hydrocodone Bitartrate Acetaminophen 750 mg-7.5 mg,[11] for a total of 180 tablets.

41. Respondent was unable to provide any medical records for patient M.W. and was unable to recollect patient M.W.'s treatment and care, including any history or physical exam taken, any diagnoses, any medical indications, any prescriptions prescribed, any pain assessments undertaken, any objectives for treatment made, any review of patient M.W.'s CURES, or any other risk assessment tools that may have determined the risk of substance-abusing behaviors by patient M.W.

42. Respondent committed gross negligence in his care and treatment of patient M.W. which included, but was not limited to, the following:

a. Paragraphs 38 through 41, above, are hereby incorporated by reference as if fully set forth herein; and

b. Respondent failed to maintain adequate and accurate medical records for patient M.W., including documentation for the following: a history and physical exam; treatment plan and management goals; informed consent regarding the risks and benefits of using controlled substances; and ongoing monitoring.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

43. Respondent has further subjected his Physician's and Surgeon's Certificate No. G15640 to disciplinary action under sections 2227 and 2234, as defined by section 2234,

[11] Hydrocodone Bitartrate Acetaminophen 750 mg-7.5 mg contains 7.5 mg of hydrocodone and 750 mg of acetaminophen.

subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of patients N.D., T.C., D.C., and M.W., as more particularly alleged in paragraphs 14 through 42, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

44. Respondent has further subjected his Physician's and Surgeon's Certificate No. G15640 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that he failed to maintain adequate and accurate medical records in his care and treatment of patients N.D., T.C., D.C., and M.W. as more particularly alleged in paragraphs 14 through 43, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Self Prescribing of a Controlled Substance)

45. Respondent has further subjected his Physician's and Surgeon's Certificate No. G15640 to disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a), of the Code, in that he has prescribed controlled substances, to wit: Suboxone[12] and Carisoprodol, to himself.

FIFTH CAUSE FOR DISCIPLINE

(Violation of State Laws Regulating Controlled Substances)

46. Respondent has further subjected his Physician's and Surgeon's Certificate No. G15640 to disciplinary action under sections 2227 and 2234, as defined by section 2238 of the Code, in that he has violated state laws regulating controlled substances and dangerous drugs, to wit: section 2239, subdivision (a), and Health and Safety Code section 11170, as more

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[12] Suboxone, a combination of buprenorphine and naloxone, is a Schedule V controlled substance pursuant to California Health and Safety Code 11058, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

particularly alleged in paragraph 45, above, which is hereby incorporated by reference and re-alleged as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

47. Respondent has further subjected his Physician's and Surgeon's Certificate No. G15640 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 14 through 46, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

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. G15640, issued to Respondent Thomas S. Powers, M.D.;

2. Revoking, suspending or denying approval of Respondent Thomas S. Powers, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Respondent Thomas S. Powers, 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: September 2, 2015

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

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