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

In the Matter of the First Amended Petition to Revoke Probation Against: **Michael Anthony Rodriguez, M.D.** **Physician's & Surgeon's Certificate No G 68505** **Respondent.**	**Case No.:800-2020-071604**

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the Petition for Reconsideration, filed by Kevin D. Cauley, Esq. on behalf of Respondent, and the time for action having expired at 5:00 p.m. on April 4, 2022, the petition is deemed denied by operation of law.

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

In the Matter of the Petition to Revoke Probation Against: **Michael Anthony Rodriguez, M.D.** **Physician's & Surgeon's Certificate No. G 68505** **Respondent.**	**Case No. 800-2020-071604** **ORDER GRANTING STAY** **(Government Code Section 11521)**

Kevin D. Cauley, Esq., on behalf of Respondent Michael Anthony Rodriguez, M.D. M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of March 4, 2022, at 5:00 p.m.

Execution is stayed until April 4, 2022, at 5:00 p.m.

This stay is granted solely for the purpose of allowing the Respondent to file a Petition for Reconsideration.

DATED: February 24, 2022

William Prasifka
Executive Director
Medical Board of California

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

In the Matter of the Petition to Revoke Probation Against: Michael Anthony Rodriguez, M.D. Physician's and Surgeon's Certificate No. G 68505 Respondent.	Case No.: 800-2020-071604

DECISION

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

This Decision shall become effective at 5:00 p.m. on March 4, 2022.

IT IS SO ORDERED: February 4, 2022.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, M.D., Chair
Panel B

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

In the Matter of the First Amended Petition to Revoke Probation Against:

MICHAEL ANTHONY RODRIGUEZ, M.D., Respondent

Physician's and Surgeon's Certificate Number G 68505

Agency Case No. 800-2020-071604

OAH No. 2021010773

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on November 10, 2021, via video and telephone conference.

Petitioner was represented by Latrice R. Hemphill, Deputy Attorney General. Respondent appeared and was represented by his attorney, Kevin D. Cauley.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on November 10, 2021.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant William Prasifka filed and maintained the First Amended Petition to Revoke Probation (sometimes hereafter "FAP") in his official capacity as Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

2. Respondent Michael Anthony Rodriguez, M.D., is licensed by the Board as a physician and surgeon, holding Certificate number G 68505. He was first licensed by the Board on April 30, 1990. His license is current and will expire on April 30, 2022, unless renewed.

3. On August 17, 2017, an accusation was filed against Respondent, and subsequently a decision was issued by the Board, which disciplined his certificate. That decision, effective June 22, 2018, revoked Respondent's certificate, but the revocation was stayed and a probation term of four years was ordered, with various terms and conditions. The probation order provides that if Respondent violates probation, the Board may proceed against him so as to lift the stay of the revocation order, and impose revocation upon him.

4. The FAP alleges violations of the probation terms pertaining to drug testing and seeks to lift the stay of the revocation order. After being served with the

original Petition to Revoke Probation,[1] Respondent filed a Notice of Defense, contesting the claims, and seeking a hearing. Thereafter, the FAP was filed and served. The allegations of the FAP are deemed controverted as a matter of law. All jurisdictional requirements have been met.

The Underlying Decision that Imposed Discipline

5. (A) The underlying accusation alleged, as the basis for discipline, the fact that Respondent was twice convicted of driving under the influence of alcohol. It was alleged that the first conviction was entered in the Superior Court of California, County of Los Angeles on August 17, 2015. It was alleged that Respondent had, at the time of the arrest, driven with a blood alcohol content of approximately 0.12 percent.

(B) The underlying accusation also alleged that Respondent was again convicted for driving under the influence of alcohol, with approximate blood alcohol of 0.09 percent, the second conviction occurring on December 8, 2015. The second conviction was entered in the Superior Court of California, County of Solano.

6. A hearing on the underlying accusation was held on April 9, 2018, before ALJ Julie Cabos-Owen. During the hearing, Respondent stipulated that the each and every one of the charges in the accusation were true, and that his certificate was subject to discipline. Thus, Respondent admitted that he had twice been convicted of

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[1] OAH records show the original Petition to Revoke Probation was signed on January 8, 2021. The FAP was signed on July 1, 2021.

driving under the influence, and that he had violated Business and Professions Code[2] sections 2236, subdivision (a) (conviction of substantially related crimes); 2239 (use of alcoholic beverages in a manner to be dangerous to Respondent and the public); and 2234, subdivision (a) (unprofessional conduct).

7. The decision found that Respondent had ceased using alcohol in December 2015, with one small exception, that being a sip of champagne for a toast to his nephew's graduation. Respondent had participated in court-ordered programs for education about alcohol abuse. He had agreed to a psychological evaluation during the Board's investigation, and that examiner, a psychiatrist experienced in addiction medicine, found him to have mild alcohol use disorder which was in sustained remission. The examining psychiatrist, Markham Kirsten, M.D., found that restriction of Respondent's practice was not necessary, but deemed it prudent to require random blood tests, to monitor for future alcohol use.

8. The underlying decision found that Respondent was then not treating patients, excepting for a one-week period at a summer camp, where he would treat minor injuries such as scrapes or bee stings. Respondent was employed at UCLA Medical School, Department of Family Medicine, as a tenured professor and Vice Chair of Global Health. He was also Director of UCLA's Blum Center on Poverty and Health in Latin America. At that time, a majority of Respondent's work included research to identify means to strengthen health systems here and abroad. Respondent's work required him to travel extensively.

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[2] Further statutory references are to the Business and Professions Code unless otherwise noted.

9. The decision found that Respondent travelled internationally four to five times per year, the trips typically five days to five weeks, so that he was out of the country eight to ten weeks per year. At the time of the underlying proceeding, he was scheduled to present at conferences in Scotland and Brazil, and to visit places where students were placed for training, in cities in Mexico, Peru, and Nicaragua.

10. During the underlying proceeding, the parties stipulated that the Board could revoke Respondent's certificate, but the parties jointly recommended that revocation be stayed, and Respondent placed on four years of probation, with numerous terms of probation, of the type designed to respond to a licensee's issues with alcohol. The decision, as noted above, in fact imposed a four-year probation term.

11. The probation order contained standard probation terms, and those that are imposed when a licensee has issues with alcohol. Some of the usual terms were modified or tailored to account for Respondent's unique professional activities, including his travel obligations.

The Relevant Probation Terms

12. Probation term 9 pertains to violations of probation. It states:

> 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.

13. Probation term 19 also states, in part, that failure to comply with the terms and conditions of probation is a violation of probation.

14. Probation term 13 requires Respondent to abstain completely from use of products or beverages containing alcohol.

15. Probation term 17 obligates Respondent to submit to biological fluid testing. The most pertinent provisions of this probation term state:

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

16. Respondent's probation terms were modified from standard terms so that he could continue his professional activities. Thus, probation term 19 provided that during periods of documented business-related activity outside of the country, he was relieved of the testing requirement. He was obligated to notify the Board of such travel, which was limited to five weeks per year. Within five days after his return from trips abroad, Respondent was required to submit to blood test screening for Phosphatidyl Ethanol. Likewise, he was relieved of attendance at support group meetings while travelling for business abroad.

Respondent's Violation of Testing Requirements

17. Between June 26, 2018, and November 2, 2021, Respondent failed to check in to the testing service on 25 days. On three of those occasions, he was chosen for testing, but did not test in a timely manner. Eleven of the missed check-ins were in 2018, eight were in 2020, and six were in 2021. Respondent was in full compliance during 2019.

18. According to Respondent, as to two of the missed tests, he tested the next day with a blood test and the results were negative. The Board's monitor, Ms. Saucedo, testified that another test appeared positive, but there was a question of ingestion, so it was not treated as a violation. (The FAP does not allege any positive or "dirty" tests.) [3]

The Board's Prior Responses to the Violations of the Testing Requirements

19. The Board issued Non-Compliance letters to Respondent on seven occasions, noting his failure to comply, and reminding him of his obligations. Those letters were issued on July 3, 2018, March 27, 2020, August 10, 2020, November 12, 2020, December 30, 2020, February 16, 2021, and May 4, 2021. After the May 4, 2021 letter, Respondent failed to call in on September 17, 2021, and on November 2, 2021.

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[3] The Board's monitors noted that such a test, or a call-in after 5:00 p.m. would not appear on the list of missed call ins found at exhibit 12. Ms. Saucedo and Ms. Montano testified to the effect that Respondent belatedly tested.

20. (A) The Board issued four citation orders to Respondent: on August 16, 2018, October 5, 2018, March 14, 2019, and on May 13, 2021.

(B) The August 16, 2018 citation order was based on Respondent's failure to check in with the testing service on July 5, July 10, and July 18, 2018, and his failure to provide a biological fluid sample on July 10, 2018. He was ordered to pay the Board $350, which he did.

(C) The October 5, 2018 citation order was based upon Respondent's failure to check in with the testing service on August 16, 2018. Respondent was ordered to pay the Board $700, which he did.

(D) The March 14, 2019 citation order resulted from Respondent's failure to check in with the testing company on October 30, November 1, November 13, December 8, and December 19, 2018. Respondent was ordered to pay $1,400 to the Board, which he did.

(E) The May 13, 2021 citation order was based on Respondent's failure to check in with the testing company on November 11, December 24, and December 28, 2020, and for failing to check in on January 20, February 15, and April 17, 2021. Respondent was ordered to pay the Board $1,400, which he did.

21. On September 10, 2020, Complainant issued a cease practice letter to Respondent, pursuant to California Code of Regulations, title 16 (CCR), section 1361.5, subdivision (c)(1), for his failing to undergo biological fluid testing when ordered. He was ordered to cease practicing until notified that he could again resume practice. There is no documentary evidence that the Board notified Respondent that he could resume practicing medicine, although the probation monitor, Christine Montano,

indicated in testimony that she thought his period of cease practice had ended by the time that she took over supervision of his case in November 2020.[4]

Respondent's Case

22. Respondent admitted that he has failed to fully comply with the biological fluid testing requirements of his probation. He attributed his failings to allowing his rather busy professional endeavors to distract him from his duty. Respondent adduced evidence that his alcohol use disorder remains in remission and has been since December 24, 2015. He continues to participate in a support group, and he is treating with a psychotherapist. Respondent continues to engage in his efforts to promote public health and health equity. It does not appear that he is treating patients, his work being primarily academic.

23. (A) Gregory Kovacs, Ph.D., testified on Respondent's behalf, and wrote a letter in support of Respondent. Dr. Kovacs has been licensed as a psychologist in California for approximately 20 years. He has treated Respondent on a weekly basis, since May 10, 2019. Dr. Kovacs testified that he has seen no evidence that Respondent has relapsed, and in his opinion Respondent's alcohol use disorder is in remission. Dr.

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[4] The Cease Practice Order, exhibit 12, states that under the CCR the licensee must undergo a clinical diagnostic evaluation, and it also provides that Respondent must test negative for at least a month of biological fluid testing before he could be allowed to return to practice. There is no evidence of any positive tests since the cease practice letter issued, but it is not clear that Respondent underwent another clinical evaluation. Board monitor Saucedo, in her testimony, indicated Respondent had done so, but such an exam has no documentary support in the record.

Kovacs had also treated Respondent for anxiety, and he testified that Respondent has had significant progress on that front, with symptoms of anxiety and depression very much reduced. Treatment has helped Respondent deal with the dissolution of his marriage, and the associated stressors of it, such as parenting when divorced.

(B) Dr. Kovacs has had some interaction with Respondent regarding the issue of missed call-ins, and the three missed tests. He believes that Respondent allows himself to be distracted by work and other activities, and he conveyed that Respondent feels guilty for his failings.

24. (A) Helene O'Mahony, Ph.D., also testified on Respondent's behalf. She is a clinical psychologist, licensed in California for approximately 12 years, concentrating her practice in addiction treatment. She is clinical supervisor for one recovery program, and relevant to this case runs another program, Flying Knee Physicians Support Group (Flying Knee). Respondent has participated in Flying Knee since August 28, 2018. Dr. O'Mahoney testified that Respondent attends group meetings on a weekly basis, usually on Tuesdays, but sometimes other days, as his calendar allows. He has missed four group meetings in the three plus years that Respondent has participated in Flying Knee, but Dr. O'Mahoney finds him to be a good participant in the group process.

(B) Dr. O'Mahoney has not perceived any signs that Respondent is drinking, and she opined during the hearing that he remains sober. In response to questions from the ALJ, she acknowledged that professionals who treat addiction look for three to five years of sobriety as a benchmark for recovery, and continued sobriety. Dr. O'Mahoney finds Respondent open and above-board in the meeting process, and she noted his progress, and that he continues to work on his personal issues, including those arising from his divorce. She attributed some of Respondent's missed call ins to

the fact that Respondent moved out of the Los Angeles area, and changes in his child-care responsibilities, and she also is aware that his work has been demanding.

25. Respondent has an impressive background. He was the first person from his family to graduate from high school. From there he obtained a bachelor's degree in nutrition at UC Berkeley (1993), and he followed that up by obtaining his medical doctorate from UCLA in 1988. He was a resident in family medicine at UC San Francisco (UCSF), from 1988 through 1991, and then enrolled at Johns Hopkins University where he obtained a master's degree in public health while participating in a residency in preventative medicine at Johns Hopkins. From 1992 to 1994 he participated in a research fellowship with the Robert Wood Johnson Clinical Scholars Program, at Stanford University.

26. In addition to his positions with the UCLA medical school, referenced in Factual Finding 8, above, Respondent is a professor in the UCLA Fielding School of Public Health, in the Department of Community Health Sciences. Over the past 30 years, Respondent has held various teaching and research positions at institutions such as UCSF, UC Berkeley School of Public Health, and San Francisco General Hospital, and he has mentored many students, both undergraduate and medical students. Respondent has been involved in numerous research efforts, presentations at conferences and other educational endeavors. He has authored or co-authored scores of peer reviewed publications. He has served on the boards of numerous organizations, mainly focused on improving health care, especially among the disadvantaged. He is founding director of the UCLA Health Equity Network of the Americas.

27. Respondent introduced several documents pertaining to his activities promoting various aspects of public health, and especially health equity issues. One

publication, from August 2017, focused on promoting healthy communities (ex. D), and another from May 2020 being a proposal for a research project pertaining to gun violence. (Ex. G.) He provided evidence of his participation in a number of programs in 2020 and 2021, which were sponsored by the UCLA Justice & Equity in Health Initiative. (Ex. I.)

28. Respondent introduced a letter of support from Jeffrey Reynoso, Dr.PH, MPH, who is the Executive Director of the Latino Coalition for a Healthy California (LCHC). Reynoso's letter, authored in May 2021, confirmed Respondent's participation with the organization as a board member for over 25 years, and that Respondent has devoted many hundreds of hours to LCHC.

29. Respondent testified on his own behalf. He did not deny that he had failed to call in, and had on three occasions missed tests, though he had tested the next day for two of them, indicating he did a blood test. He testified that he has remained sober since 2015, and he expressed remorse for his failing to comply with the testing requirements. He recognizes that he allowed his other obligations to interfere with his duties under the probation grant. Respondent has been curtailing his professional activities and stepping away from some of the associations he has had in the past. He has relocated to northern California, and has full custody of his youngest daughter, who is 17. He is in line to take a position with the United States Department of Health and Human Services.

30. In August 2021, Respondent was able to obtain orders dismissing his two criminal convictions pursuant to Penal Code section 1203.4.

31. The Board's monitors, Ms. Saucedo and Ms. Montano testified to the effect that Respondent was communicative with them, and was polite, contrite, and respectful.

32. Respondent was forthright and respectful during his testimony. Petitioner's witnesses, Ms. Saucedo and Ms. Montano were also credible in their testimony in terms of their demeanor.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter pursuant to section 2227, and provisions of the underlying probation order, was established based on Factual Findings 1 through 4, and 12.

2. It was established that Respondent has violated the terms of his probation, and specifically Probation Terms 9, 17, and 19, by failing to comply with the provisions obligating him to participate in biological fluid testing, in that he failed to call the testing firm on 22 occasions, and as a result he missed three tests. This Conclusion is based on Factual Findings 12 through 15, 17, 18, and 22.

3. Cause has been established to set aside the order staying the revocation of Respondent's certificate, and to impose that order, based on Legal Conclusions 1 and 2, and their factual predicates.

4. (A) The purpose of proceedings of this type are to protect the public, and not to punish an errant licensee. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.)

(B) While public protection is the highest priority of the Board and the ALJ, the Board and the ALJ "shall, whenever possible, take action that is calculated to aid in the rehabilitation of the licensee,....." (§ 2229, subd. (b).) That rehabilitative effort must not endanger the public. (*Id.*, at subd. (c).)

5. The record shows that Respondent is a highly-qualified physician who whose professional efforts in research, advocacy, and education are focused on improving public health and the access of all persons to medical care; he does not treat patients in the usual sense. The record indicates that Respondent's alcohol abuse disorder has been in remission for six years. Missed call-ins and tests notwithstanding, the record indicates that Respondent is maintaining his sobriety. He has taken many tests since he was placed on probation, and they have not been positive. Dr. O'Mahoney testified that three to five years of sobriety is very indicative of control over addiction; here Respondent has been sober for a longer period. Neither Dr. O'Mahoney nor Dr. Kovacs perceive any alcohol misuse. All other probation terms have been complied with.

6. Based on the entirety of the record, it would be unduly punitive to revoke Respondent's license, and on balance he can do much more good with the license, even in a probationary status, than without it. That begs the question of what the Board's response should otherwise be.

7. Respondent's probation shall be extended, with a formal suspension of his license, until another psychiatric evaluation can occur. The record is ambiguous as to whether Respondent has had a second psychiatric evaluation following the cease practice letter; as noted in footnote 4, Ms. Saucedo believed that the second evaluation had been performed, and Respondent's attorney argued that one had occurred and that Respondent was cleared. In either event, a third party should

evaluate Respondent, and confirm that his alcohol use disorder remains in remission. If it is in continued remission, probation should terminate in one year, as it will have served its purpose. Some conditions, such as taking an ethics class, will not be repeated.

ORDER

The probation imposed upon Respondent's Physician's and Surgeon's Certificate, number G 68505, in case number 800-2015-014274, is hereby extended to one year after the effective date of this order, on the on the same terms and conditions as the original Probation Order, which are incorporated herein by reference, except that Respondent shall not be required to re-take a professionalism/ethics course (Condition 12), and the additional terms shall also apply:

1. Actual Suspension

Respondent is suspended from the practice of medicine for six months, beginning on the 16th day after the effective date of this decision.

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2. Clinical Diagnostic Evaluation

Respondent shall undergo a clinical diagnostic evaluation within 30 days of the effective date of this order to confirm that his alcohol use disorder remains in remission. The evaluation shall be performed in compliance with California Code of Regulations, title 16 (CCR), section 1361.5, subdivision (c)(1), i.e., the evaluation shall be conducted by a licensed physician and surgeon holding a valid and unrestricted license, that evaluator having three years' experience in providing evaluations of physicians and surgeons with substance abuse disorders; Respondent shall not practice medicine pending the evaluation report and its review by the Board, and Respondent shall continue biological fluid testing, at least two times per week until the evaluation has been made and the report reviewed by the Board.

DATE: 12/10/2021

Joseph Montoya
JOSEPH D. MONTOYA
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the First Amended Petition to Revoke Probation Against:	Case No. 800-2020-071604
MICHAEL ANTHONY RODRIGUEZ, M.D. **UCLA Dept. of Family Medicine** **10880 Wilshire Blvd., Suite 1800** **Los Angeles, CA 90024** **Physician's and Surgeon's Certificate** **No. G 68505** Respondent.	**FIRST AMENDED PETITION TO REVOKE PROBATION**

PARTIES

1. William Prasifka (Complainant) brings this First Amended Petition to Revoke Probation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about April 30, 1990, the Medical Board of California issued Physician's and Surgeon's Certificate Number G 68505 to Michael Anthony Rodriguez, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on April 30, 2022, unless renewed.

3. In a disciplinary action titled *In the Matter of the Accusation Against Michael Anthony Rodriguez, M.D.*, Case No. 800-2015-014274, the Medical Board of California, issued a Decision, effective June 22, 2018, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of four (4) years with certain terms and conditions. A copy of that Decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This First Amended Petition to Revoke Probation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. 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:
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> (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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> (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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FIRST CAUSE TO REVOKE PROBATION

(Biological Fluid Testing)

6. At all times after the effective date of Respondent's probation, Condition 17, Biological Fluid Testing, states in pertinent part:

> 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 testing is requested. 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...
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> A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and Respondent...

7. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 17, referenced above. The facts and circumstances regarding this violation are as follows:

A. On or about February 15, 2021; July 21, 2020; and July 10, 2018, Respondent failed to submit to biological fluid testing, when randomly selected by FirstSource Solutions.

B. Respondent failed to check-in with FirstSource Solutions to determine if he was required to submit to biological fluid testing on May 3, 2021; April 17, 2021; February 15, 2021; January 20, 2021; December 28, 2020; December 24, 2020; November 11, 2020; September 6, 2020; August 22, 2020; August 19, 2020; August 5, 2020; January 20, 2020; December 19, 2018; December 8, 2018; November 13, 2018; November 1, 2018; October 30, 2018; August 16, 2018; July 18, 2018; July 5, 2018; June 29, 2018; and June 26, 2018.

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SECOND CAUSE TO REVOKE PROBATION

(Violation of Probation)

8. At all times after the effective date of Respondent's probation, Condition 9, Violation of Probation, states:

> 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.

9. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 9, referenced above. The facts and circumstances regarding this violation are as follows:

A. Paragraphs 6 through 7, inclusive, above, are incorporated herein by reference.

THIRD CAUSE TO REVOKE PROBATION

(Violation of Probation Condition for Substance Abusing Licensees)

10. At all times after the effective date of Respondent's probation, Condition 19, Violation of Probation Condition for Substance Abusing Licensees, states in pertinent part:

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

11. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 19, referenced above. The facts and circumstances regarding this violation are as follows:

A. Paragraphs 6 through 9, inclusive, above, are incorporated herein by reference.

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DISCIPLINE CONSIDERATIONS

12. On or about May 13, 2021, in a prior action, the Board issued Citation No. 800-2021-077586 and ordered Respondent to pay an administrative fine amounting to $1,400.00, for violation of Probation Conditions 17 and 19. That Citation is incorporated by reference as if fully set forth.

13. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about September 10, 2020, the Medical Board of California issued a Cease Practice Order with Order of Abatement in Case No. 800-2015-014274, for violation of Probation Condition 19. Respondent was ordered to immediately cease practice, undergo a clinical diagnostic evaluation, and maintain thirty (30) days of clean biological fluid testing before resuming practice. Respondent complied with the conditions of the Order and was allowed to resume practice when the Cease Practice Order was terminated on October 19, 2020.

14. On or about March 14, 2019, in a prior action, the Board issued Citation No. 8002019053302 and ordered Respondent to pay an administrative fine amounting to $1,400.00, undergo a clinical diagnostic evaluation within thirty (30) days of the order, and maintain thirty (30) days of clean biological fluid testing, for violation of Probation Condition 17. That Citation is now final and is incorporated by reference as if fully set forth.

15. On or about October 5, 2018, in a prior action, the Board issued Citation No. 8002018048482 and ordered Respondent to pay an administrative fine amounting to $700.00, for violation of Probation Condition 17. That Citation is now final and is incorporated by reference as if fully set forth.

16. On or about August 16, 2018, in a prior action, the Board issued Citation No. 8002018046559 and ordered Respondent to pay an administrative fine amounting to $350.00, for violation of Probation Condition 17. That Citation is now final and is incorporated by reference as if fully set forth.

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PRAYER

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

1. Revoking the probation that was granted by the Medical Board of California in Case No. 800-2015-014274 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. G 68505 issued to Michael Anthony Rodriguez, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. G 68505, issued to Michael Anthony Rodriguez, M.D.;

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

4. Ordering Michael Anthony Rodriguez, M.D., if placed on probation, to pay the Medical Board of California, the costs of probation monitoring; and

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

DATED: JUL 01 2021

WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Medical Board of California Case No. 800-2015-014274

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

In the Matter of the Accusation Against: Michael Anthony Rodriguez, M.D. Physician's and Surgeon's Certificate No. G 68505 Respondent	)	Case No. 800-2015-014274

DECISION

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

This Decision shall become effective at 5:00 p.m. on June 22, 2018.

IT IS SO ORDERED: May 24, 2018.

MEDICAL BOARD OF CALIFORNIA

Kristina D. Lawson, 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
10/12/2020
Date

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

In the Matter of the Accusation Against: MICHAEL ANTHONY RODRIGUEZ, M.D. Physician's and Surgeon's Certificate No. G 68505 Respondent.	Case No. 800-2015-014274 OAH No. 2017090698

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, on April 9, 2018, in Los Angeles, California. Kimberly Kirchmeyer (Complainant) was represented by Nicholas B.C. Schultz, Deputy Attorney General. Michael Anthony Rodriguez, M.D. (Respondent) was represented by Thomas O'Neil, with Bonne, Bridges, Mueller, O'Keefe & Nichols.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on April 9, 2018.

FACTUAL FINDINGS

1. On August 17, 2017, Complainant filed the Accusation while acting in her official capacity as the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

2. Respondent filed a Notice of Defense requesting a hearing on the Accusation, and this matter ensued.

3. On April 30, 1990, the Board issued Physician's and Surgeon's Certificate Number G 68505 to Respondent. That certificate was in full force and effect at all relevant times and is scheduled to expire on April 30, 2018.

4. At the administrative hearing, Respondent stipulated as follows, "Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2015-014274. Respondent further agrees that his Physician's and Surgeon's Certificate is subject to discipline." (Exhibit 14, p. 2, para. 8.) The admitted factual allegations are set forth, in pertinent part, as follows:

> 11. On August 17, 2015, . . . in the Superior Court for the State of California, County of Los Angeles, Respondent, upon his plea of nolo contendere, was convicted of driving a vehicle while having a blood alcohol content of approximately 0.12 percent, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. . . . Respondent was placed on three years of probation with the following terms and conditions:
>
> A. Pay a fine of $390.00 or serve thirteen days in the Los Angeles County Jail with credit for one day already served in custody;
>
> B. Enroll, participate in and successfully complete a three month licensed first-offender alcohol and other drug education and counseling program;
>
> C. Attend five Alcoholics Anonymous [(AA)] meetings in addition to those required as part of the Alcohol Education Program;
>
> D. Enroll within twenty-one days of release from custody in an Assembly Bill 541 program;
>
> E. Not drive any vehicle with any measurable amount of alcohol or drugs in his blood or refuse to take and complete any blood alcohol or drug chemical test, any field sobriety test, and any preliminary alcohol screening test when requested by a peace officer;
>
> F. Not drive a motor vehicle without a valid driver's license in his possession or without liability insurance in at least the minimum amounts required by law;
>
> G. Comply with the supplemental terms of probation, including the installation of an ignition interlock device;
>
> H. Obey all laws, rules and regulations of the Superior Court; and
>
> I. Pay fines, fees, and restitution totaling $1,874.00 as directed by the Superior Court or, alternatively, perform twelve days of community labor.

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

A. At approximately 2:00 a.m. on May 17, 2015, law enforcement officers with the California Highway Patrol (CHP) were driving westbound on Interstate Highway 10 approaching Interstate Highway 405. The CHP officers observed a red [2007[1]] Toyota Camry driving in front of their patrol vehicle and weaving across adjacent traffic lanes. After observing that the vehicle failed to drive in the center most portion of the traffic lane, the CHP officers initiated a traffic stop. . . .

B. The CHP officers contacted Respondent in the driver's seat of the Toyota Camry. Respondent displayed symptoms of intoxication upon contact, including: a strong odor of alcohol emitting from his breath; bloodshot, watery eyes; poor balance; and difficulty following instructions. Standardized Field Sobriety Tests were conducted and Respondent displayed pronounced psycho-physical impairment. Respondent admitted to consuming one "vodka and Cranberry" mixed drink approximately one hour prior to the traffic stop, although he denied feeling the effects of the alcoholic beverage that he had consumed. Respondent indicated that he had consumed the alcoholic beverage in downtown Los Angeles before driving toward University of California – Los Angeles (UCLA).

C. Respondent consented to and provided two breath samples on the Preliminary Alcohol Screening (PAS) device. The first sample taken at 2:07 a.m. revealed that Respondent's breath alcohol concentration was approximately 0.142 percent. The second sample taken at 2:12 a.m. revealed that Respondent's breath alcohol concentration was approximately 0.126 percent.

D. Respondent was arrested for driving under the influence of alcohol. . . .

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[1] The Accusation incorrectly indicated that the vehicle model year was 2016, but the police report accurately documented that it was 2007.

13. On December 8, 2015, . . . in the Superior Court for the State of California, County of Solano, Respondent, upon his plea of nolo contendere, was convicted of driving while having a blood alcohol content of approximately 0.09 percent, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. . . . Respondent was placed on three years of probation with the following terms and conditions:

A. Serve ten days in the Solano County Jail with credit for one day already served;

B. Not drive any vehicle with any measurable amount of alcohol in his system;

C. Not drive a motor vehicle without a valid driver's license and liability insurance in at least the minimum amounts required by law;

D. Totally abstain from the use of alcohol;

E. Enroll in and successfully complete a Senate Bill 38 program and provide both proof of enrollment and completion to the Superior Court;

F. Submit to alcohol testing at any time requested by any peace officer or program representative;

G. Advise the Superior Court and/or probation department of any change in employment or residence location and telephone number within forty-eight hours;

H. Report all arrests, citations, or violations of law in writing to the Superior Court within forty-eight hours;

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

J. Pay fines, fees, and restitution totaling $1,878.00 as directed by the Superior Court.

14. The circumstances leading to Respondent's December 2015 conviction are as follows:

A. At approximately 12:20 a.m. on September 20, 2015, law enforcement officers with the [CHP] were driving eastbound on Interstate Highway 80 west of Travis Boulevard in Solano County, California. The CHP officers observed a black Chevrolet Traverse driving roughly 90 miles per hour in a 65 mile per hour speed zone on the highway. After observing that the vehicle was travelling at a high rate of speed and having difficulty maintaining its lane of travel, the CHP officers initiated a traffic stop. . .

B. The CHP officers contacted Respondent in the driver's seat of the Chevrolet Traverse. Respondent displayed symptoms of intoxication upon contact, including: a moderate odor of alcohol emitting from his breath; red, watery eyes; slurred speech; and difficulty following instructions. Standardized Field Sobriety Tests were conducted and Respondent displayed pronounced psycho-physical impairment. Respondent admitted to consuming three glasses of "red wine" between 7:00 p.m. and 10:30 p.m. that evening. Respondent indicated that he had consumed the alcoholic beverages at a restaurant in Berk[e]ley before driving to a family member's home in Fairfield. Respondent admitted feeling the effects of the alcoholic beverage that he had consumed that evening. . . .

C. Respondent consented to and provided two breath samples on the [PAS] device. The first sample taken at 12:37 a.m. revealed that Respondent's breath alcohol concentration was approximately 0.102 percent. The second sample taken at 12:39 a.m. revealed that Respondent's breath alcohol concentration was approximately 0.095 percent.

D. Respondent was arrested for driving under the influence of alcohol. . . .

(Exhibit 1, pp. 6-10.)

5. Respondent remains on criminal probation through December 2018. He has paid all fines and completed all the terms of his probations.[2]

6A. Respondent graduated from University of California (UC) Berkeley in 1983, and he obtained his medical degree from UCLA School of Medicine in 1988. He completed a residency in family medicine at UC San Francisco in 1991. Thereafter, he attended John's

[2] As part of his August 2015 conviction, Respondent was required to install an ignition interlock device on his vehicle. Records from Golden State Interlock, Inc. indicate that Respondent did not install the interlock device on his 2007 Camry until June 28, 2016. (He was driving a different vehicle -- a rental car -- when he was arrested for his second DUI in September 2015.)

Hopkins University simultaneously earning a Master's in Public Health degree while completing a residency in preventative medicine. From 1992 through 1994, Respondent completed a research fellowship at Stanford University.

6B. Respondent is currently employed at UCLA Medical School, Department of Family Medicine, as a tenured professor and Vice Chair of Global Health. He is also the Director of the UCLA Blum Center on Poverty and Health in Latin America. Respondent also helps train United States medical students, graduate nursing students, and graduate public health students by providing them with experience and innovative approaches working in low-income and low-resourced areas. A majority of Respondent's work includes research which identifies means to strengthen United States and international health systems by bolstering policies that promote health and addressing polices which may do harm. Respondent also acts as Faculty in Residence with the UCLA Office of Residential Life, providing support for undergraduate students housed at UCLA.

6C. Respondent has never been disciplined by the Board. He has never had his hospital privileges suspended, restricted or revoked, and he has never been sued for malpractice.

7A. In his testimony at the administrative hearing, Respondent's demeanor was forthright and respectful, and he presented as a very credible witness. He appeared passionate about his work and very eager to comply with any Board-ordered probationary terms.

7B. Prior to his 2015 DUIs, Respondent drank primarily at social gatherings. His May 2015 arrest occurred early Sunday morning while he was driving home from a social event at another physician's home. When he got into his vehicle to begin driving home, he did not think he was impaired or intoxicated. Although he stopped drinking alcohol hours prior to his arrest and ate throughout the evening in order to ensure that he was not driving while impaired, Respondent admitted that he miscalculated "big time." Despite his August 2015 conviction, Respondent was arrested in September 2015, again on a Sunday morning while driving from a social event earlier that evening. He again employed the same methods to avoid driving impaired. In hindsight, Respondent realizes that he exercised poor judgment when he assessed his level of intoxication and chose to drive. He also acknowledged that he placed himself and other motorists at risk.

7C. Respondent recalled that his second DUI "was another eye opening experience" which helped him understand the severity of his problem and the need to take steps to change his life. He recognized that, in addition to endangering himself and others, his DUIs (and subsequent Board discipline) jeopardized his ability to continue his "life's work" of helping others and promoting international health. Respondent realized that he could not rely on his judgment regarding the consumption of alcohol since he had two documented instances of poor choices. After coming to the full realization of how his alcohol use impacted him, and in order to avoid any further "bad decisions" regarding alcohol, Respondent decided to abstain from drinking alcohol. Since December 23, 2015,

Respondent has abstained from drinking alcohol, except for one occasion when he held up a glass of champagne to toast his nephew's graduation and took a small sip. Respondent does not intend to ever resume drinking alcohol.

8A. As part of his December 2015 criminal probation, Respondent was required to complete an SB-38 outpatient DUI program. Respondent attended the program offered by Driver Safety Schools, Inc., through which he attended 20 group therapy sessions, 21 individual counseling sessions, 10 hours of alcohol education, and nine AA meetings. As part of that program, Respondent was required to operate a vehicle equipped with an ignition interlock device for the duration of the program. Respondent completed the program on March 24, 2018, and the interlock device was removed from Respondent's vehicle on March 29, 2018.

8B. Through Driver Safety Schools program, Respondent learned to accept full responsibility for his actions and the role of alcohol in his life. He determined that it is best for him not to consume alcohol, and he found sources of support and other coping measures. He has created a more balanced and healthy lifestyle for himself to reduce the amount of potential stress. Respondent intends to continue attending AA meetings because they provide excellent social support, an opportunity for him to learn from others, and reinforcement of his decision to abstain from alcohol use.

8C. Program Director Arnold Abrams, M.D., and Counselor Robert Hines from Driver Safety Schools, Inc. submitted a letter confirming that Respondent appeared at every program activity without exhibiting signs of alcohol consumption, that he interacted extremely well with counseling staff, that he was active in groups, and that he was "developing a lifestyle predicated on sobriety." (Exhibit B.)

9. During the Board's investigation, Respondent agreed to submit to a psychological evaluation.[3] On June 26, 2017, Respondent was examined by Markham Kirsten, M.D., who is board certified in psychiatry, with a subspecialty in addiction psychiatry. Dr. Kirsten diagnosed Respondent with "mild alcohol use disorder in sustained remission." (Exhibit D.) Dr. Kirsten noted:

> Currently, [Respondent] does not have psychiatric disorder that interferes with his medical practice. The [Board] need not restrict his ability to practice. He is not a public safety hazard at this time. However, in the past, he did not take his first arrest for DUI seriously and did not follow the demands of probation. Recidivism is common among alcoholics. It is prudent to require [Respondent] to submit to several random blood tests annually . . . to detect signs of alcohol use.

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[3] A clinical diagnostic evaluation and report is one of the required probationary conditions in a case involving a substance-abusing licensee. (Cal. Code Regs., tit. 16, § 1361.5, subd. (c)(1).)

As a preventative measure I advise continued activity in AA or regulation sessions with a therapist. (Exhibit D.)

10. Respondent does not currently treat patients. The extent of his patient care involves his presence at a one-week-per-year children's camp in Catalina, treating mostly bee stings and minor abrasions from falls.

11. Since Respondent's 2015 convictions, he has continued to travel nationally and internationally as part of his employment. In the letter from Driver Safety Schools, Inc., Dr. Abrams and Mr. Hines noted that they had issued several leaves of absence to Respondent due to his business/employment travel. After each trip, they required Respondent to provide proof of actual business travel and the dates of travel, and Respondent complied each time.

12. On average, Respondent travels internationally four to five times per year, generally between five days to five weeks per trip. He is out of the country about eight to ten weeks per year.

13. Respondent is currently working on projects which will require his travel abroad in 2018. He has been invited to present at international conferences in Edinburgh, Scotland, and Rio De Janeiro, Brazil. He also plans to visit sites where students have been placed for training, including Mexico City, Mexico; Lima, Peru; and Leon, Nicaragua. Since he has stipulated to Board-imposed probation (see Factual Finding 15), Respondent intends to spend as little time abroad as possible.

14A. Respondent believes that nobody from UCLA or any other organization could adequately fill his role. If he is unable to travel abroad, Respondent believes that the projects on which he is working are at risk for failure.

14B. William Vega, M.D. testified credibly on Respondent's behalf. He has known Respondent for about 20 years, and he worked with him at UCLA from 2007 until 2010, After leaving UCLA to begin employment at the University of Southern California, Dr. Vega continued working with Respondent on projects involving global health programming in high-need, low income areas, particularly in Latin America. He believes that Respondent's work contributes greatly to the public welfare, and that instituting even simple changes make a big difference in treating health issues. Dr. Vega described Respondent's international travel as "fundamental to the whole effort." He noted that Respondent has the personal relationships, the knowledge, and the expertise to move the programming forward. The prestige of Respondent's professorship at UCLA also carries enormous weight, along with and the confidence of collaborative international organizations that have given him a leadership role. Dr. Vega confirmed Respondent's assertion that, if Respondent is unable to travel internationally, there would be a breakdown in continuity, and there would be nobody to carry the projects forward.

15A. The parties stipulated that "the Board may revoke [Respondent's] Physician's and Surgeon's Certificate," but "jointly recommend that the revocation be stayed and that Respondent be placed on probation for four years" on specified terms and conditions. (Exhibit 14, p. 3, para 12.) The probationary conditions include standard terms and conditions, completing an ethics course, abstaining from the use of alcohol and controlled substances, and several of the mandatory probationary conditions for substance abusing licensees: Notice of Employer or Supervisor Information; Worksite Monitor for Substance-Abusing Licensee; Violation of Probation Condition for Substance-Abusing Licensees). Although biological fluid testing is one of the mandatory probationary conditions for substance abusing licensees (see Legal Conclusion 5B), this condition is problematic for Respondent. While he is committed to his sobriety, and he intends to do whatever he can to fulfill any probationary requirements the Board imposes, he would also like to continue his "life's work" which necessarily involves travel abroad. During travel within the United States, Respondent is prepared to undergo biological fluid testing. However, during international travel, Respondent may not be able to comply with the biological fluid testing due to potential lack of approved testing facilities, and he does not want to risk being in violation of his probation. Respondent seeks an accommodation for the required biological fluid testing requirement which would allow him alternative means of testing during his travel abroad.

15B. Respondent assured the Board that he would continue to abstain from alcohol use while traveling abroad and that he does not treat patients when traveling internationally. As he did when taking leaves of absence from the California Safety School program, Respondent would notify the Board when he intends to travel abroad and would provide proof of the business purpose and length of his travel upon return.

15C. Respondent is also willing to obtain and use a Soberlink device for alcohol testing while traveling abroad. Soberlink is a portable device which can measure breath alcohol several times per day and can immediately report test results through the Internet. The Soberlink device has special functions such as facial recognition to ensure that the person providing the sample is the person who is supposed to be tested. Soberlink is used by entities throughout the United States, including programs which monitor physicians. However, Respondent did not provide details regarding how the Board or its designee could monitor Respondent's Soberlink test results, and it was unclear how this testing could be integrated into a probationary order.

LEGAL CONCLUSIONS[4]

1. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code sections 2236, subdivision (a), and

[4] At the administrative hearing, Respondent stipulated that his Physician's and Surgeon's Certificate is subject to disciplinary action as specified in Legal Conclusions 1, 2, and 3.

490, and California Code of Regulations, title 16, section 1360, on the grounds that Respondent has been convicted of crimes substantially related to the qualifications, functions and duties of a licensed physician and surgeon, as set forth in Factual Finding 4.

2. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code section 2239, on the grounds that Respondent used alcoholic beverages in such a manner as to be dangerous to Respondent and to the public, as set forth in Factual Finding 4.

3. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code section 2234, subdivision (a), on the grounds that Respondent engaged in unprofessional conduct, as set forth in Factual Finding 4.

4A. Pursuant to California Code of Regulations, title 16, section 1360.1:

> When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:
>
> (a) The nature and severity of the act(s) or offense(s).
>
> (b) The total criminal record.
>
> (c) The time that has elapsed since commission of the act(s) or offense(s).
>
> (d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
>
> (e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
>
> (f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

4B. Respondent's most current alcohol-related conviction occurred less than three years ago, and it was incurred while just weeks into his probation for his first DUI conviction. While at this point, Respondent's alcohol abuse has not infiltrated his professional life, the Board is not required to postpone imposition of discipline until Respondent's alcohol abuse problem begins to affect his work. (*In re Kelley* (1990) 52

Cal.3d 487, 495.) Although Respondent does not currently treat patients, his license allows him to resume doing so anytime, and even one instance of work-related alcohol use could pose a grave danger to patients.

4C. However, after the "eye opening experience" of his second DUI, Respondent was able to acknowledge the severity of his problem, and he took steps necessary to change his life. Respondent has chosen to abstain from drinking alcohol, and intends to continue attending AA meetings for social support and reinforcement of his decision to abstain from alcohol use. Respondent also willingly underwent a psychiatric evaluation by a Board-selected psychiatrist who found that Respondent "does not have psychiatric disorder that interferes with his medical practice," and "is not a public safety hazard at this time." (Exhibit D.) The evidence established that revocation of Respondent's license to practice medicine would constitute unduly harsh discipline. Given the foregoing, a probationary period with appropriate terms and conditions should provide adequate protection of the public health, safety and welfare.

5A. Although the parties agreed to virtually all of the probationary terms set forth in the order below, Respondent sought to have an accommodation provided regarding the biological testing requirement. Complainant noted correctly that probation must include the mandatory terms set forth in the Uniform Standards for Substance Abusing Licensees.

5B. The Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition/2016) has been supplemented by the Board's Uniform Standards for Substance Abusing Licensees (2015) as follows:

(1). California Code of Regulations, title 16, section 1361 (Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees), provides in pertinent part:

> (a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the Medical Board of California shall consider the disciplinary guidelines entitled "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (11th Edition/2011) which are hereby incorporated by reference. <u>Deviation from these orders and guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines by adoption of a proposed decision or stipulation that the facts of the particular case warrant such a deviation</u> – for example: the presence of mitigating factors; the age of the case; evidentiary problems.
>
> (b) <u>Notwithstanding subsection (a), the Board shall use the Uniform Standards for Substance-Abusing Licensees as provided in section 1361.5, without deviation,</u> for each individual determined to be a substance-abusing licensee. . . . (Emphasis added.)

(2). California Code of Regulations, title 16, section 1361.5 (Uniform Standards for Substance-Abusing Licensees), provides in pertinent part:

> (a) If the licensee is to be disciplined for unprofessional conduct involving the use of illegal drugs, the abuse of drugs and/or alcohol, or the use of another prohibited substance as defined herein, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code.
>
> (b) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board's disciplinary guidelines referenced in section 1361 that the Board determines is necessary for public protection or to enhance the rehabilitation of the licensee.
>
> (c) The following probationary terms and conditions shall be used without deviation in the case of a substance-abusing licensee: (1) Clinical Diagnostic Evaluations and Reports; [¶] (2) Notice of Employer or Supervisor Information; [¶] (3) Biological Fluid Testing; [¶] (4) Group Support Meetings; [¶] (5) Worksite Monitor Requirements and Responsibilities; [¶] and (6) The licensee must remain in compliance with all terms and conditions of probation. . . . (Emphasis added.)

5C. However, the Uniform Standards allow for modification of the required probationary conditions.

(1). California Code of Regulations 1361.5 (c)(3)(I) sets forth "Exceptions to Testing Frequency Schedule." These include:

> 4. Tolling. A Board may postpone all testing for any licensee whose probation is placed in a tolling status while the licensee is not residing in California, provided the overall length of the probationary period is also tolled. A licensee shall notify the Board upon the licensee's return to California and shall be subject to biological fluid testing as provided in this section. If the licensee returns to employment in a health care field and has not previously met the first-year testing frequency requirements, the licensee shall be subject to completing a full year at the first-year testing frequency requirements, otherwise the second-year testing frequency requirements shall be in effect.

5. Substance Abuse Disorder Not Diagnosed. In cases where no current substance abuse disorder diagnosis is made, a lesser period of monitoring and biological fluid testing may be adopted by the Board, but shall not be less than 24 times per year.

(2). California Code of Regulations 1361.5 (c)(4) provides modifications for the group support meetings requirement as follows:

Group Support Meetings. If the Board requires a licensee to participate in group support meetings, the following shall apply:

(A) When determining the frequency of group support meetings to be attended, the Board or the evaluator shall give consideration to the following:

1. The licensee's history;

2. The documented length of sobriety/time that has elapsed since substance use;

3. The recommendation of the clinical evaluator;

4. The scope and pattern of use;

5. The licensee's treatment history; and

6. The nature, duration, and severity of substance abuse.

5D. The language of California Code of Regulations, title 16, sections 1361 and 1361.5 indicates that, although the Uniform Standards for Substance-Abusing Licensees must be followed "without deviation," this means that enumerated probationary conditions must be imposed but the language of those mandatory conditions may be modified and tailored to the individual probationer. This allows the Board to maintain the purpose of the mandatory probationary conditions without creating unmanageable or unnecessary obligations for probationers.

6A. In this case, Respondent is subject to discipline for unprofessional conduct involving the abuse of alcohol, and he is presumed to be a substance-abusing licensee. Consequently, the Uniform Standards for Substance-Abusing Licensees require the imposition of probationary conditions including a clinical diagnostic evaluation, biological fluid testing, and group support meetings.

6B. As set forth in Factual Finding 9, the requirement of a clinical diagnostic evaluation has already been satisfied and need not be included in the order below.

6C. Respondent argued persuasively that an accommodation for his crucial international travel is warranted. Additionally, given that his mild substance abuse disorder is "in sustained remission" (Exhibit D), a modified period of biological fluid testing may be utilized. (See Legal Conclusion 5C(1).) Modification to the biological fluid testing requirement is appropriate as long as this includes the safeguard of follow-up testing upon Respondent's return to the United States. The modifications, summarized in Legal Conclusion 6E and included in the order below (in bold and italicized type), will maintain the purpose of the biological fluid testing, which is to confirm Respondent's continued abstinence from use of alcohol.

6D. The parties did not include the mandatory probationary condition of group support meetings in their stipulation. However, this term is required by the Uniform Standards for Substance-Abusing Licensees (see Legal Conclusion 5B(2)(c)), and the parties failed to address why this mandatory term should not be included in the order below. Nevertheless, modification of this term should apply since Respondent's essential international travel will likely impact his attendance at group meetings. The modification of this term is summarized in Legal Conclusion 6E and included in the order below (in bold and italicized type).

6E. The modifications for both the biological fluid testing and group support include: tolling those probationary requirements while Respondent is on international business travel required for his employment, not to exceed five weeks per year; Respondent's submission to a blood test for Phosphatidyl Ethanol[5] within five days of returning to the United States from international travel; and Respondent's notifying the Board or its designee in writing when he intends to travel internationally, and providing proof of the business purpose and length of that travel upon his return.

6D. The totality of the evidence established that the following order is sufficient to protect the public health, safety and welfare.

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[5] Levels of Phosphatidyl Ethanol in blood are used as markers of previous alcohol consumption.

ORDER

Physician's and Surgeon's Certificate Number G 68505, issued to Respondent, Michael Anthony Rodriguez, M.D., is revoked. However, the revocation is stayed, and Respondent is placed on probation for four years upon the following terms and conditions.

1. Notification

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

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

2. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

3. 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.

4. 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.

5. 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.

6. Interview with the Board or Its Designee

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

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

8. 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.

9. 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.

10. 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.

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11. 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.

11. Solo Practice

Respondent is prohibited from engaging in the solo practice of medicine.

12. 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 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 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 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.

13. Alcohol - Abstain From Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

14. 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.

15. Notice of Employer or Supervisor Information

Within seven (7) days of the effective date of this Decision, Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's worksite monitor, and Respondent's employers and supervisors to communicate regarding respondent's work status, performance, and monitoring. For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when Respondent has medical staff privileges.

16. Worksite Monitor for Substance-Abusing Licensee

Within thirty (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring the Respondent at work.

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

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

Respondent shall pay all worksite monitoring costs.

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

The worksite monitor shall verbally report any suspected substance abuse to the Board and Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours,

the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; Respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) Respondent's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance; (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by Respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite 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 fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor within sixty (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.

17. 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 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 tResting shall be done on a random basis. The cost of biological fluid testing shall be borne by espondent.

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

from increasing the number of random tests to the first-year level of frequency for any reason.

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

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

(b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines

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

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

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

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

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

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

(i) It maintains testing sites located throughout California.

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

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

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

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

Prior to changing testing locations for any reason, including during vacation or other travel ***within the United States***, 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 or herself a prohibited substance, the Board shall order Respondent to cease practice and instruct respondent to leave any place of work where Respondent is practicing medicine or providing medical services. The Board shall immediately notify all of Respondent's employers, supervisors and work monitors, if any, that Respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

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

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

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

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by Respondent and approved by the Board, alcohol, or any other substance the

Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself or herself.

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

Notwithstanding the provisions above, Respondent's periods of documented business-related travel outside the United States will relieve Respondent of the responsibility to comply with the requirement of biological fluid testing. Respondent shall notify the Board or its designee in writing at least five calendar days prior to any anticipated business-related travel outside the United States. This written notification shall include documentation verifying the business purpose and the length of the international travel.

Respondent's total time period of relief from biological fluid testing during business-related travel outside the United States shall not exceed five weeks per year.

Within five days of Respondent's return to the United States following business-related travel outside the United States, Respondent shall submit to a blood test screening for Phosphatidyl Ethanol. This test shall be subject to all the requirements of biological fluid testing set forth above.

18. Substance Abuse Support Group Meetings

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

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

The facilitator shall provide a signed document to the Board or its designee showing Respondent's name, the group name, the date and location of the meeting, Respondent's attendance, and Respondent's level of participation and progress. The facilitator shall report

any unexcused absence by Respondent from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

Notwithstanding the provisions above, Respondent's periods of documented business-related travel outside the United States will relieve Respondent of the responsibility to comply with the requirement of substance abuse support group meetings. Respondent shall notify the Board or its designee in writing at least five calendar days prior to any anticipated business-related travel outside the United States. This written notification shall include documentation verifying the business purpose and the length of the international travel.

Respondent's total time period of relief from substance abuse support group meetings during business-related travel outside the United States shall not exceed five weeks per year.

19. Violation of Probation Condition for Substance-Abusing Licensees.

Failure to fully comply with any term or condition of probation is a violation of probation.

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

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

(2) Increase the frequency of biological fluid testing.

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

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

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

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

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

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

20. Completion of Probation

Respondent shall comply with all financial obligations (e.g., 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.

DATED: April 27, 2018

DocuSigned by:
Julie Cabos-Owen
JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Aug 17 2017
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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MICHAEL ANTHONY RODRIGUEZ, M.D. UCLA Department of Family Medicine 10880 Wilshire Boulevard, Suite 1800 Los Angeles, California 90024 Physician's and Surgeon's Certificate No. G 68505, Respondent.	Case No. 800-2015-014274 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 April 30, 1990, the Board issued Physician's and Surgeon's Certificate Number G 68505 to Michael Anthony Rodriguez, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2018, 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 unless otherwise indicated.

4. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

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

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

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

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

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

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

5. Section 2234 of the Code, states:

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

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"(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.

"..."

6. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality[1] of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

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

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

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

7. Section 2239 of the Code states:

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

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

8. Section 490 of the Code states:

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

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

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

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

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

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

9. Section 493 of the Code states:

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

"..."

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

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

FACTUAL SUMMARY

11. On August 17, 2015, in the case entitled *The People of the State of California v. Michael Anthony Rodriguez*, case number 5MP05381, in the Superior Court of California, County of Los Angeles, Respondent, upon his plea of nolo contendere, was convicted of driving a vehicle while having a blood alcohol content of approximately 0.12 percent, in violation of Vehicle Code Section 23152, subdivision (b), a misdemeanor.[3] The remaining criminal charge was dismissed as part of Respondent's plea agreement with the Los Angeles City Attorney's Office. Respondent was placed on three years of probation with the following terms and conditions:

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

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

C. Attend five Alcoholics Anonymous meetings in addition to those required as part of the Alcohol Education Program;

D. Enroll within twenty-one days of release from custody in an Assembly Bill 541 program;

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

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

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

G. Comply with the supplemental terms of probation, including the installation of an ignition interlock device;

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

I. Pay fines, fees, and restitution totaling $1,874.00 as directed by the Superior Court or, alternatively, perform twelve days of community labor.

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

A. At approximately 2:00 a.m. on May 17, 2015, law enforcement officers with the California Highway Patrol (CHP) were driving westbound on Interstate Highway 10 approaching Interstate Highway 405. The CHP officers observed a red 2016 Toyota Camry driving in front of their patrol vehicle and weaving across adjacent traffic lanes. After observing that the vehicle failed to drive in the center most portion of the traffic lane, the CHP officers initiated a traffic stop at Cotner Avenue near Santa Monica Boulevard in Los Angeles, California.

B. The CHP officers contacted Respondent in the driver's seat of the Toyota Camry. Respondent displayed symptoms of intoxication upon contact, including: a strong odor of alcohol emitting from his breath; bloodshot, red and watery eyes; poor balance; and difficulty following instructions. Standardized Field Sobriety Tests were conducted and Respondent displayed pronounced psycho-physical impairment. Respondent admitted to consuming one "vodka and cranberry" mixed drink approximately one hour prior to the traffic stop, although he denied feeling the effects of the alcoholic beverage that he had consumed. Respondent indicated that he had consumed the alcoholic beverage in downtown Los Angeles before driving toward University of California - Los Angeles (UCLA).

C. Respondent consented to and provided two breath samples on the Preliminary Alcohol Screening (PAS) device. The first sample taken at 2:07 a.m. revealed that Respondent's

breath alcohol concentration was approximately 0.142 percent. The second sample taken at 2:12 a.m. revealed that Respondent's breath alcohol concentration was approximately 0.126 percent.

D. Respondent was arrested for driving under the influence of alcohol. Respondent was transported to the Los Angeles Police Department 77th Division for a chemical test of his blood. A blood sample was collected from Respondent's left arm and Respondent was booked at the Los Angeles Police Department.

13. On December 8, 2015, in the case entitled *The People of the State of California v. Michael Anthony Rodriguez*, case number FCR317116, in the Superior Court of California, County of Solano, Respondent, upon his plea of nolo contendere, was convicted of driving a vehicle while having a blood alcohol content of approximately 0.09 percent, in violation of Vehicle Code Section 23152, subdivision (b), a misdemeanor. Respondent was also charged with driving a vehicle while under the influence of alcohol, in violation of Vehicle Code Section 23103, subdivision (a), a misdemeanor. Additionally, Respondent was initially charged with driving a vehicle while his driving privileges were suspended for previously driving under the influence of an alcoholic beverage, in violation of Vehicle Code Section 14601.2, subdivision (a), a misdemeanor. However, both the driving under the influence of alcohol and the driving while suspended charges were dismissed as part of Respondent's plea agreement with the Solano County District Attorney's Office. Respondent was placed on three years of probation with the following terms and conditions:

A. Serve ten days in the Solano County Jail with credit for one day already served in custody;

B. Not drive any vehicle with any measurable amount of alcohol in his system;

C. Not drive a motor vehicle without a valid driver's license and liability insurance in at least the minimum amounts required by law;

D. Totally abstain from the use of alcohol;

E. Enroll in and successfully complete a Senate Bill 38 program and provide both proof of enrollment and completion to the Superior Court;

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F. Submit to alcohol testing at any time requested by any peace officer or program representative;

G. Advise the Superior Court and/or probation department of any change in employment or residence location and telephone number within forty-eight hours;

H. Report all arrests, citations, or violations of law in writing to the Superior Court within forty-eight hours;

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

J. Pay fines, fees, and restitution totaling $1,878.00 as directed by the Superior Court.

14. The circumstances leading to Respondent's December 2015 conviction are as follows:

A. At approximately 12:20 a.m. on September 20, 2015, law enforcement officers with the California Highway Patrol (CHP) were driving eastbound on Interstate Highway 80 west of Travis Boulevard in Solano County, California. The CHP officers observed a black 2016 Chevrolet Traverse driving roughly 90 miles per hour in a 65 miles per hour speed zone on the highway. After observing that the vehicle was travelling at a high rate of speed and having difficulty maintaining its lane of travel, the CHP officers initiated a traffic stop at Alaska Avenue near Heath Drive in Fairfield, California.

B. The CHP officers contacted Respondent in the driver's seat of the Chevrolet Traverse. Respondent displayed symptoms of intoxication upon contact, including: a moderate odor of alcohol emitting from his breath; red and watery eyes; slurred speech; and difficulty following instructions. Standardized Field Sobriety Tests were conducted and Respondent displayed pronounced psycho-physical impairment. Respondent admitted to consuming three glasses of "red wine" between 7:00 p.m. and 10:30 p.m. that evening. Respondent indicated that he had consumed the alcoholic beverages at a restaurant in Berkley before driving to a family member's home in Fairfield. Respondent admitted to feeling the effects of the alcoholic beverage that he had consumed that evening. During this investigation, the CHP officers learned that Respondent's driver's license was suspended based upon his recent conviction for driving under the influence in the Superior Court of California, County of Los Angeles, in August 2015.

C. Respondent consented to and provided two breath samples on the Preliminary Alcohol Screening (PAS) device. The first sample taken at 12:37 a.m. revealed that Respondent's breath alcohol concentration was approximately 0.102 percent. The second sample taken at 12:39 a.m. revealed that Respondent's breath alcohol concentration was approximately 0.095 percent.

D. Respondent was arrested for driving under the influence of alcohol. Respondent was transported to the Solano County Jail for additional breath testing. Two breath samples were collected from Respondent revealing that his blood alcohol level was approximately 0.09 percent within two hours of driving. Respondent was booked at the Solano County Jail.

FIRST CAUSE FOR DISCIPLINE

(Convictions of Substantially Related Crimes)

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

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

SECOND CAUSE FOR DISCIPLINE

(Use of Alcoholic Beverages in a Dangerous Manner)

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

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

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

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

20. Respondent's acts and/or omissions as set forth in paragraphs 11 through 14 above, whether proven individually, jointly, or in any combination thereof, constitute Respondent's convictions of crimes substantially related to the qualifications, functions, or duties of a physician and surgeon; use of alcoholic beverages to the extent, or in such a manner, as to be dangerous and injurious to himself, or to any other person or to the public; and more than one misdemeanor conviction involving the use, consumption, or self-administration of alcoholic beverages pursuant to Section 2234, subdivision (a) of the Code.

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 Number G 68505, issued to Michael Anthony Rodriguez, M.D.;

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

3. If place on probation, ordering Michael Anthony Rodriguez, M.D. 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: August 17, 2017

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

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