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

In the Matter of the First Amended Accusation Against: Oliver Ghitea, M.D. Physician's and Surgeon's Certificate No. A 62680 Respondent.	Case No. 800-2021-076770

DECISION

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

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

IT IS SO ORDERED July 28, 2022.

MEDICAL BOARD OF CALIFORNIA

William Prasifka,
Executive Director

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
CAROLYNE EVANS
Deputy Attorney General
State Bar No. 289206
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3448
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **OLIVER GHITEA, M.D.** **12615 SW 21st Ct.** **Lake Oswego, OR 97035-1118** **Physician's and Surgeon's Certificate No.** **A 62680** Respondent.	Case No. 800-2021-076770 OAH No. 2021080338 **STIPULATED SURRENDER OF LICENSE AND ORDER**

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

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Carolyne Evans, Deputy Attorney General.

///

2. OLIVER GHITEA, M.D. (Respondent) is represented in this proceeding by attorney Michael F. Ball, whose address is: McCormick Barstow LLP, 7647 North Fresno Street, Fresno, CA 93720-8912.

3. On June 13, 1997, the Board issued Physician's and Surgeon's Certificate No. A 62680 to OLIVER GHITEA, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2021-076770 and will expire on March 31, 2023, unless renewed. Respondent is subject to an Order issued by the Office of Administrative Hearings on December 3, 2021 prohibiting him from practicing as a physician and surgeon in California until there is a final disposition of this matter.

JURISDICTION

4. First Amended Accusation No. 800-2021-076770 was filed before the Board on January 25, 2022, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were timely and properly served on Respondent. Respondent timely filed his Notice of Defense contesting the First Amended Accusation. A copy of First Amended Accusation No. 800-2021-076770 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2021-076770. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision;

and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

8. Respondent understands that the charges and allegations in First Amended Accusation No. 800-2021-076770, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. For the purpose of resolving the First Amended Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the First Amended Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

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

CONTINGENCY

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

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

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

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

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 62680, issued to Respondent OLIVER GHITEA, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

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

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

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in First Amended Accusation No. 800-2021-076770 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of $4,388.75 (four thousand three hundred eighty-eight dollars and seventy-five cents) prior to issuance of a new or reinstated license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in the First Amended Accusation, No. 800-2021-076770 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

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

DATED: July 4, 2022

OLIVER GHITEA, M.D.
Respondent

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

DATED: July 4, 2022

MICHAEL F. BALL
Attorney for Respondent

ENDORSEMENT

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

DATED: July 6, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

Carolyne Evans

CAROLYNE EVANS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2021-076770

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
CAROLYNE EVANS
Deputy Attorney General
State Bar No. 289206
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3448
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Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **OLIVER GHITEA, M.D.** **Oregon Anesthesiology Grp.** **707 SW Washington St., Ste. 700** **Portland, OR 97205** **Physician's and Surgeon's Certificate No. A 62680,** Respondent.	Case No. 800-2021-076770 **FIRST AMENDED ACCUSATION**

PARTIES

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

2. On or about June 13, 1997, the Board issued Physician's and Surgeon's Certificate Number A 62680 to Oliver Ghitea, 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 March 31, 2023, unless renewed. Respondent is subject to an Order issued by the Office of Administrative Hearings on December 3, 2021 prohibiting him from practicing as a physician and surgeon in California until there is a final disposition of this matter.

JURISDICTION

3. This First Amended Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

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

5. Section 2234 of the Code provides that the Board shall take action against any licensee who is charged with "unprofessional conduct," which includes but is not limited to, "[v]iolating . . . any provision of this chapter."

6. Section 2305 of the Code provides, in pertinent part, that the revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California, shall constitute grounds for disciplinary action for unprofessional conduct.

7. Section 141 of the Code provides:

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government or another country.

COST RECOVERY

8. Effective January 1, 2022, Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

CAUSE FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Another State)

9. On March 18, 2021, the Oregon Medical Board issued an interim stipulated order (Oregon Order) Case No. MD21941, which restricts and/or disciplines Respondent's Oregon medical license. The Oregon Medical Board concluded that it was necessary that "licensee agree to cease the practice of medicine . . . pending the Board's investigation into his ability to safely and competently practice medicine." (Oregon Order attached as Exhibit A).

10. On December 21, 2021, the Oregon Medical Board filed a Complaint and Notice of proposed Disciplinary Action" (Oregon Complaint). The Complaint alleges that:

On March 11, 2021, Respondent was the attending anesthesiologist at a dental practice, providing sedation for a patient, who was undergoing a three-to-four-hour dental procedure. The Respondent was observed to be impaired by the end of the procedure and was offered a ride home. Respondent appeared drowsy and unsteady with slurred speech, poor motor skills when preparing medications, and difficulty completing medication records.

Respondent attributed his behavior to being overly tired and declined assistance in getting home. However, after leaving the dental clinic, Respondent was observed crossing multiple lanes of oncoming traffic and crashing his vehicle into a tree. Respondent was determined to be

impaired in the field sobriety test, and a needle was found in Respondent's shirt pocket. Respondent was arrested for Driving Under the Influence of Intoxicants (drugs).

As a result of Respondent's arrest, a urine drug screen was performed the afternoon of March 11, 2021, which was positive for norfentanyl (a fentanyl metabolite), midazolam (Versed), and alpha-hydroxmidazolam, a metabolite, and diphenhydramine (Benadryl).

Respondent claimed that he had solicited and ingested pills he believed to be oxycodone he had obtained from an unnamed acquaintance. Respondent stated that he consumed the pills for treatment for flu-like symptoms several days leading up to March 11, 2021. Respondent was not prescribed these pills or any other opioid medications and described himself as "opioid naïve." Respondent reportedly destroyed the remaining pills after learning that his toxicology screening was positive for fentanyl.

The Oregon Complaint Toxicology testing of Respondent's hair performed on or around March 29, 2021 was positive for fentanyl at a level suggesting chronic use or a use exceeding Respondent's reported three to five opioid pills three weeks prior. The time course of the deterioration of Respondent's mental acuity and behavior is inconsistent with having consumed any fentanyl and/or midazolam remotely, i.e., more than 12 hours prior to driving under the influence of intoxicants, but rather is consistent with consumption (in any form) at a time proximally associated with the delivery of health care. (Oregon Complaint attached as Exhibit B).

11. Respondent's foregoing conduct and the actions of the Oregon Medical Board, as set forth in paragraphs 9 and 10, above, and Exhibit A and Exhibit B constitute cause for discipline, pursuant to section 2234 and/or section 2305 and/or 141 of the Code.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 62680, issued to Respondent Oliver Ghitea, M.D.;

2. Revoking, suspending or denying approval of Respondent Oliver Ghitea, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Oliver Ghitea, M.D. to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

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

DATED: JAN 25 2022

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

EXHIBIT A

Oregon
Kate Brown, Governor

Medical Board
1500 SW 1st Avenue, Suite 620
Portland, OR 97201-5847
(971) 673-2700
FAX (971) 673-2670
www.oregon.gov/omb

Certification of True Copy

I certify that the enclosed documents are true and correct copies of the originals on file with the Oregon Medical Board.

RE: Oliver Ghitea, MD21941

License verification & Order included:
Interim Stipulated Order Active 03/18/2021

Signature

April 13, 2021
Date

Angela Allen
Accounts Receivable

OREGON MEDICAL BOARD
ORGANIZED
MAY 28, 1889
STATE OF OREGON

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of OLIVER GHITEA, MD LICENSE NO. MD21941	)))))	INTERIM STIPULATED ORDER

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain healthcare providers, including physicians, in the State of Oregon. Oliver Ghitea, MD (Licensee) is a licensed physician in the State of Oregon.

2.

The Board received credible information regarding Licensee that resulted in the Board initiating an investigation. The results of the Board's investigation to date have raised concerns to the extent that the Board believes it necessary that Licensee agree to cease the practice of medicine until the investigation is completed.

3.

In order to address the concerns of the Board, Licensee and the Board agree to enter into this Interim Stipulated Order, which is not an admission of any wrongdoing on the part of the Licensee, and provides that Licensee shall comply with the following conditions effective the date this Order is signed by Licensee:

3.1 Licensee voluntarily withdraws from the practice of medicine and his license is placed in Inactive status pending the completion of the Board's investigation into his ability to safely and competently practice medicine.

3.2 Licensee understands that violating any term of this Order will be grounds for disciplinary action under ORS 677.190(17).

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4.

At the conclusion of the Board's investigation, Licensee's status will be reviewed in an expeditious manner. Following that review, if the Board determines that Licensee shall not be permitted to return to the practice of medicine, Licensee may request a hearing to contest that decision.

5.

This Order is issued by the Board pursuant to ORS 677.265(1) and (2) for the purpose of protecting the public, and making a complete investigation in order to fully inform itself with respect to the performance or conduct of the Licensee and Licensee's ability to safely and competently practice medicine. Pursuant to ORS 677.425, Board investigative materials are confidential and shall not be subject to public disclosure. However, as a stipulation this Order is a public document and is reportable to the National Practitioner Data Bank and the Federation of State Medical Boards.

6.

This Order becomes effective the date it is signed by the Licensee.

IT IS SO STIPULATED THIS 18th day of March, 2021.

[redacted]

OLIVER GHITEA, MD

IT IS SO ORDERED THIS 18th day of March, 2021.

State of Oregon
OREGON MEDICAL BOARD

[redacted]

NICOLE KRISHNASWAMI, JD
EXECUTIVE DIRECTOR

EXHIBIT B

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of OLIVER GHITEA, MD LICENSE NO. MD21941	)))))	COMPLAINT AND NOTICE OF PROPOSED DISCIPLINARY ACTION

1.

Parties

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the State of Oregon. Oliver Ghitea, MD (Licensee) is a physician licensed in the State of Oregon.

2.

Proposed Sanctions

Based on the facts and violations below, the Board proposes to take disciplinary action against Licensee pursuant to ORS 677.205(2), including the revocation of license; a $10,000 civil penalty per violation; and assessment of costs of any contested case hearing on the matter not to exceed $40,000. The Board proposes to take this disciplinary action for violations of the Medical Practice Act, to wit: ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined in ORS 677.188(4)(a) any conduct or practice contrary to recognized standards of ethics of the medical profession, or any conduct or practice which does or might constitute a danger to the health or safety of a patient, or any conduct, practice, or condition which does or might adversely affect a physician's ability to safely and skillfully practice medicine; ORS 677.190(7) impairment as defined in ORS 676.303(1)(b) and OAR 847-010-0073(3)(c)(A); and ORS 677.190(13) gross negligence in the practice of medicine.

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3.

Jurisdiction

3.1 Under ORS chapter 677, the Board has the duty to protect the public and the authority to exercise general supervision over the practice of medicine.

3.2 At all relevant times, Licensee was licensed to practice medicine in the State of Oregon, board certified by the American Board of Anesthesiology, and practicing in Portland, Oregon.

3.3 As a Licensee of the Oregon Medical Board, Licensee is subject to the laws, rules, and standards established by the Oregon Medical Board, including but not limited to Oregon Revised Statutes chapters 676 and 677 and Oregon Administrative Rules chapter 847.

3.4 The current, recognized standards of ethics for the medical profession are found in the 2016 edition of the American Medical Association's Code of Ethics (AMA Code of Ethics).

4.

Facts

4.1 On March 11, 2021, Licensee was the attending anesthesiologist at a Beaverton dental practice, providing sedation for Patient A who was undergoing a three- to four-hour dental procedure. Licensee was observed to be impaired by the end of the procedure and was offered a ride home. Specifically, Licensee appeared drowsy and unsteady with slurred speech, poor motor skills when preparing medications, and difficulty completing medication records. Providing sedation to a patient when exhibiting drowsiness, unsteadiness, slurred speech, poor motor skills when preparing medications, and difficulty completing medication records puts the patient at risk of harm.

4.2 Licensee attributed his behavior to being overly tired and declined assistance in getting home. However, after leaving the dental clinic, Licensee was observed crossing multiple lanes of oncoming traffic and crashing his vehicle into a tree in Beaverton, Oregon. Licensee

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1 was determined to be impaired in the field sobriety test, and a needle was found in Licensee's
2 shirt pocket. Licensee was arrested for Driving Under the Influence of Intoxicants (drugs).
3 4.3 As a result of Licensee's arrest, a urine drug screen was performed the afternoon
4 of March 11, 2021, which was positive for norfentanyl (a fentanyl metabolite), midazolam
5 (Versed), and alpha-hydroxymidazolam, a metabolite, and diphenhydramine (Benadryl).
6 4.4 On March 16, 2021, upon notification of the events of March 11, 2021, the Board
7 opened an investigation. On March 18, 2021, Licensee entered into an Interim Stipulated Order
8 in which he voluntarily agreed to withdraw from the practice of medicine and place his license in
9 Inactive status pending the completion of the Board's investigation into his ability to safely and
10 competently practice medicine.
11 4.5 On March 19, 2021, Licensee voluntarily surrendered his Drug Enforcement
12 Administration license to prescribe controlled substances.
13 4.6 Throughout the investigation, Licensee stated that he had solicited and ingested
14 pills he believed to be oxycodone he had obtained from an unnamed acquaintance. Licensee
15 stated he consumed them for the treatment of flu-like symptoms several days leading up to
16 March 11, 2021. Licensee was not prescribed these or any other opioid medications and
17 described himself as "opioid naïve." Both Licensee and his acquaintance reportedly destroyed
18 the remaining pills after learning that his toxicology screening was positive for fentanyl.
19 4.7 Toxicology testing of Licensee's hair performed on or around March 29, 2021,
20 was positive for fentanyl at a level suggesting chronic use or use exceeding Licensee's reported
21 three to five opioid pills three weeks prior.
22 4.8 The time course of the deterioration of Licensee's mental acuity and behavior is
23 inconsistent with having consumed any fentanyl and/or midazolam remotely, i.e., more than 12
24 hours prior to driving under the influence of intoxicants, but rather is consistent with
25 consumption (in any form) at a time proximally associated with the delivery of health care.
26 Sedating a patient while under the influence of intoxicants and displaying the impaired behaviors
27 ///

described in paragraph 4.1 are errors of such magnitude that a willful indifference to the consequences of that act may be inferred

4.9 The AMA Code of Ethics Opinion 9.3.1 states, in pertinent part, that physicians should:

> *"(b) Take appropriate action when their health or wellness is compromised, including:*
> *1. Engaging in honest assessment of their ability to continue practicing safely.*
> *2. Taking measures to mitigate the problem.*
> ** * **
> *3. Seeking appropriate help as needed, including help in addressing substance abuse.*
> *4. Physicians should not practice if their ability to do so safely is impaired by use of a controlled substance, alcohol, other chemical agent or a health condition."*

5.

Applicable Law and Standards

5.1 ORS 677.190(1)(a) authorizes the Board to discipline a licensee for unprofessional or dishonorable conduct, which is defined as "conduct unbecoming a person licensed to practice medicine * * * or detrimental to the best interests of the public." Under ORS 677.188(4)(a), unprofessional or dishonorable conduct includes:

5.1.1 "Any conduct or practice contrary to recognized standards of ethics of the medical profession."

5.1.2 "Any conduct or practice which does or might constitute a danger to the health or safety of a patient or the public."

5.1.3 "Any conduct, practice, or condition which does or might adversely affect a physician's ability safely and skillfully to practice medicine."

5.2 ORS 677.190(7) authorizes the Board to discipline a licensee for the reason of impairment as defined in ORS 676.303(1)(b).

5.2.1 Under ORS 676.303(1)(b), "impairment" means "an inability to practice with reasonable competence and safety due to the habitual or excessive use of drugs or alcohol, other chemical dependency or a mental health condition."

5.2.2 OAR 847-010-0073(3)(c)(A) further defines "impairment" as "the use of alcohol, drugs, prescribed medication, or other substances while on or off duty which causes impairment when on duty...."

5.3 ORS 677.190(13) authorizes the Board to discipline a licensee for gross negligence in the practice of medicine. Professional gross negligence in Oregon is an error "of such magnitude or recurrence" that a willful indifference to the consequences of the act may be inferred. *Hambleton v. Bd. of Engineering Examiners*, 40 Or App 9, 12, 594 P2d 416 (1979).

5.4 ORS 677.205(1)(a) and (b) and (2)(b) to (f) authorize the Board to take disciplinary action for each of the violations listed in the foregoing paragraphs. In issuing discipline, the Board may refuse to grant, place conditions on, suspend, revoke, or limit a license to practice, order probation, and issue other such disciplinary action as the Board in its discretion finds proper, including assessment of the costs of the disciplinary proceedings as a civil penalty or assessment of a civil penalty not to exceed $10,000 per violation, or both.

6.

Violations – Impairment

6.1 As demonstrated by drowsiness, unsteadiness, slurred speech, poor motor skills, and decreased ability to complete documentation while providing anesthesia care for Patient A on March 11, 2021, Licensee was unable to practice medicine with reasonable competence and safety. Because Licensee was unable to practice medicine with reasonable competence and safety due to the habitual or excessive use of substances on or off duty, as confirmed by toxicology testing on March 11, 2021, and March 29, 2021, Licensee was impaired as defined in ORS 676.303(1)(b) and OAR 847-010-0073(3)(c)(A). Impairment is grounds for discipline under ORS 677.190(7).

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7.

Violations – Unprofessional or Dishonorable Conduct

Medical Ethics

7.1 By providing patient care while impaired, Licensee violated AMA Code of Ethics Opinion 9.3.1, thereby committing unprofessional or dishonorable conduct as defined in ORS 677.188(4)(a), which is grounds for discipline under ORS 677.190(1)(a),

Danger to Health and Safety

7.2 By providing anesthesia care (conscious sedation) that put Patient A at risk of harm, Licensee engaged in conduct or a practice that might constitute a danger to the health or safety of a patient, thereby committing unprofessional conduct as defined in ORS 677.188(4)(a), which is grounds for discipline under ORS 677.190(1)(a).

Ability to Safely and Skillfully Practice Medicine

7.3 Because impairment renders a physician unable to practice medicine with reasonable competence and safety, Licensee's impairment adversely affected Licensee's ability to safely and skillfully practice medicine. By practicing medicine as in impaired physician, Licensee thereby committed unprofessional conduct as defined in ORS 677188(4)(a), which is grounds for discipline under ORS 677.190(1)(a).

8.

Violations – Gross Negligence

Because providing anesthesia (conscious sedation) to Patient A while Licensee was under the influence of intoxicants and impaired is an error of such magnitude that a willful indifference to the consequences of Licensee's conduct may be inferred, Licensee committed gross negligence in the practice of medicine, which is grounds for discipline under ORS 677.109(13).

9.

Committing dishonorable or unprofessional conduct, gross negligence in the practice of medicine, and practicing medicine while impaired, all as described above, are grounds for license discipline up to and including revocation, civil penalties up to $10,000 per violation, and the

costs of the proceeding under ORS 677.205(1) and (2). Pursuant to OAR 137-003-0505(1)(i), the Board may impose the maximum penalties against Licensee without amending its notice, up to and including revocation of license, a $10,000 civil penalty per violation, and the costs of the proceeding.

10.

Licensee is entitled to a hearing as provided by the Administrative Procedures Act (ORS chapter 183), Oregon Revised Statutes. Licensee may be represented by counsel at the hearing. If Licensee desires a hearing, the Board must receive Licensee's written request for hearing within twenty-one (21) days of the mailing of this Notice to Licensee. Upon receipt of a request for a hearing, the Board will notify Licensee of the time and place of the hearing.

11.

If Licensee requests a hearing, Licensee will be given information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing as required under ORS 183.413(2) before commencement of the hearing.

12.

In the event of a hearing, the Board proposes to assess against Licensee the Board's costs of this disciplinary process and action, including but not limited to all legal costs from the Oregon Department of Justice, all hearing costs from the Office of Administrative Hearings, all costs associated with any expert or witness, all costs related to security and transcriptionist services for the hearing and administrative costs specific to this proceeding in an amount not to exceed $40,000, pursuant to ORS 677.205(2)(f).

13.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office

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through http://legalassistance.law.af.mil. The Oregon Military Department does not have a toll-free telephone number.

14.

Failure by Licensee to timely request a hearing, failure to appear at any hearing scheduled by the Board, withdrawal of the request for hearing, or failure to appear at any hearing scheduled by the Board on time will constitute waiver of the right to a contested case hearing. Waiver of the right to a contested case hearing may result in a default order by the Board, including the potential revocation of Licensee's medical license and assessment of such penalty and costs as the Board deems appropriate under ORS 677.205. If the Board issues a final order by default, the Board designates the discoverable material which comprises the file, including all submissions by Licensee, as the record for the purpose of proving a prima facie case.

15.

Licensee may appeal any final order issued in this case by filing a petition for review with the Oregon Court of Appeals within 60 days after it is served upon Licensee. See ORS 183.480 et seq.

Dated this 21 day of December, 2021.

OREGON MEDICAL BOARD
State of Oregon

Nicole Krishnaswami

NICOLE KRISHNASWAMI, JD
Executive Director