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

In the Matter of the First Amended Accusation Against: Thomas L. Blair, M.D. Physician's and Surgeon's Certificate No. G 45575 Respondent.	Case No. 800-2019-055478

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 Wednesday, September 21, 2022.

IT IS SO ORDERED August 22, 2022 .

MEDICAL BOARD OF CALIFORNIA

Laurie Rose Lubiano, J.D. , Chair
Panel A

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

In the Matter of the First Amended Accusation Against:

THOMAS L. BLAIR, M.D., Respondent

Physician's and Surgeon's Certificate No. G 45575

Case No. 800-2019-055478

OAH No. 2022031037

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video/telephone conference on April 20 to 22, 2022, due to the COVID-19 pandemic.

Martin W. Hagan, Deputy Attorney General, represented complainant, William J. Prasifka, Executive Director of the Medical Board of California (board).

Thomas L. Blair M.D., respondent, represented himself.

The matter was submitted on April 22, 2022.

SUMMARY

Complainant asserts that respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a physician; he used drugs to an extent and in a manner dangerous to himself and others; he prescribed drugs by subterfuge and violated laws governing the prescribing of drugs; and he engaged in unprofessional behavior. Complainant also asserts that respondent is unable to practice medicine safely due to a mental health condition. In addition, complainant asks that a citation issued to respondent for failing to comply with the request for patient medical records be affirmed. The citation is affirmed in part. After considering the record as a whole, it is determined that revocation is needed to ensure public protection. Reasonable costs are awarded.

PROTECTIVE ORDER

At the start of the hearing the parties asked that a protective order sealing numerous exhibits be issued because these exhibits contain sensitive personal information regarding respondent and patients. That motion was granted, and a protective order sealing these exhibits has been issued and served on the parties.

In addition, in any transcription of this matter, R.C., who testified in this proceeding will be identified only by his initials.

FACTUAL FINDINGS

Jurisdiction and Summary of Charges in First Amended Accusation

1. On April 5, 2022, complainant filed the First Amended Accusation in his official capacity.[1] Respondent previously had filed a Notice of Defense to the Accusation and under the Government Code was not required to file an additional response to the First Amended Accusation.

2. Complainant alleges in this pleading that respondent used dangerous drugs to an extent or manner that was dangerous to himself and the public (First Cause for Discipline); he was convicted of driving under the influence of drugs (DUI) on March 10, 2020, a crime substantially related to qualifications, functions, or duties of a physician (Second Cause for Discipline); he obtained a controlled substance by subterfuge and violated laws governing the prescription of controlled substances (Third and Fourth Causes for Discipline); he committed acts of dishonesty or corruption (Fifth Cause for Discipline); and he engaged in unprofessional behavior (Sixth Cause for Discipline).

In addition to these causes, complainant asserts that respondent is impaired in his ability to practice medicine safely due to a mental illness or physical illness affecting his competency.

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[1] Reji Varghese, Deputy Director, signed the First Amended Accusation on complainant's behalf.

3. Complainant asks further that a civil penalty be assessed against respondent because he failed to provide medical records for three patients after he was served with signed releases. Complainant seeks the recovery of costs for the investigation and prosecution of this matter.

Respondent's Objection to the Use of CaseLines and Motion to Dismiss

4. Respondent objected to complainant's submission of documents through the CaseLines digital platform,[2] and he refused to submit documents through this platform due to his concerns regarding the safety of this platform. He asked at the hearing that the matter against him be dismissed. As respondent wrote in an April 13, 2022, email to Deputy Attorney General Hagan, he did not trust the "State's computers as they have been a known source of malware and Mr. Hagan can not [*sic*] guarantee that his computer would not be a risk to me." He also referenced a "heightened state of risk of Russian Hacking . . . " as another reason for his concern. In response to his concerns, the Attorney General's Office sent respondent all discovery through a secure file transfer server and also sent respondent by an overnight delivery service a compact disc with these materials.

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[2] CaseLines is a digital platform which allows the parties to upload documents in digital format. OAH provided the parties with instructions regarding how to use and access CaseLines. To assist respondent, the Attorney General's Office submitted to OAH 103 pages of documents respondent identified as materials respondent may offer in possible support of his response.

At the hearing respondent's motion to dismiss the action against him was denied. Respondent was given complainant's hearing materials outside the CaseLines platform. He elected not to use CaseLines.

License History

5. On July 22, 1981, the board issued Physician's and Surgeon's Certificate No. G 45575 to respondent. The certificate was in full force and effect at all times relevant to the charges in this matter, and will expire on September 30, 2022, unless renewed. OAH in an order dated November 2, 2021, suspended respondent's certificate pending a hearing. Respondent testified during the hearing that he considers himself retired and does not intend to return to the practice of medicine. Respondent has no history of discipline.

Respondent's 2020 Conviction for Driving Under the Influence of Dangerous Drugs and the Underlying Facts and Circumstances

6. The facts of respondent's 2020 DUI conviction and the circumstances of his arrest for this offense are found in court documents, and a Newport Beach Police Department report admitted as evidence pursuant to *Lake v. Reed* (1997)16 Cal.4th 448. These documents show the following:

On March 10, 2020, in the matter entitled *People of the State of California v. Thomas L. Blair*, Orange County Superior Court Case No. 19HM05993, respondent pled guilty to one count of violating Vehicle Code section 23152, subdivision (f), driving while under the influence of a dangerous drug.

The court suspended the imposition of respondent's sentence for three years and he was placed on informal probation, under various terms and conditions, which

included completing a three-month alcohol and drug program, and the payment of fines and fees.

7. Regarding the facts and circumstances of respondent's arrest, the Newport Beach police report provides the following details:

8. On April 28, 2019, at 12:24 a.m., a Newport Beach Police Officer was dispatched to investigate a citizen report of a car swerving on the road. The responding officer identified the car and observed it was swerving left to right, and braking and slowing for no reason. The officer conducted an enforcement stop and contacted the driver, who he later identified as respondent. The officer observed that respondent had slurred speech, low-hanging eyelids, and had troubling unbuckling his seat belt. When he exited the car at the officer's direction, respondent almost fell over. The officer did not smell alcohol on respondent's breath or person. But a horizontal gaze nystagmus test, one of the field sobriety tests used to assess sobriety, was performed, and respondent was unable to track the officer's finger. The officer attempted to have respondent complete field sobriety tests, which respondent was not able to complete and were cancelled for respondent's safety. The officer administered to respondent a breathalyzer test, and this test registered a 0.00 percent breath alcohol content.

9. Respondent told the officer he was a doctor, he was driving from his office, and he had fallen earlier in the evening. The officer however observed no signs of a head injury.

10. Based on his symptoms of intoxication, his erratic driving, and the officer's observations at the scene, respondent was arrested for violating Vehicle Code section 23152, subdivision (f) [driving under the influence of a drug or drugs].

11. After he was arrested, and pursuant to the search incident to respondent's arrest, the officer found a clear plastic baggy with approximately twenty white oval pills in one of respondent's pockets. The officer identified these pills, based on their markings from a search he conducted of Drugs.com, as Tylenol (acetaminophen) with codeine.[3] Respondent told the officer that "he was prescribed these pills . . . ," and because he said he was prescribed them, the officer allowed respondent to keep the medications.

12. After his arrest, respondent was taken to Hoag Hospital for further evaluation because, in part, he said he fell and hit his head.

13. While at the hospital, the officer conducted a Drug Recognition Evaluation (DRE) of respondent. Respondent told the officer that he consumed two Tylenol with codeine pills about two hours prior to driving. According to respondent, the medication made him feel drowsy, but he still thought it was okay to drive and that he "is a doctor and felt his driving and sobriety were not impaired." Respondent told the officer that he was safe to drive under the influence of Tylenol with codeine. In response to the question if he would drive with young children in his condition, he stated, "yes." In response to the question if he would drive with a family member or loved one in his condition, he stated, "yes." Respondent reiterated that he is a doctor and felt his driving and sobriety were not impaired.

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[3] Tylenol with codeine is commonly referred to as acetaminophen with codeine, a combination analgesic drug. It is referenced in the evidence of record as "Tylenol with codeine," "Tylenol #3," or "Tylenol #4."

14. The officer in his report wrote, "[b]ased on my training and experience as a Drug Recognition Expert it is my opinion that [respondent] was under the influence of a Narcotic Analgesic and could not safely operate a motor vehicle with the caution and characteristic of a sober person." A vial of blood was drawn for further testing by the Orange County Crime Lab.

15. While at Hoag Hospital, respondent was evaluated by the admitting and attending physicians in the Emergency Department. According to the certified medical records, "[t]he patient [respondent] admits to Tylenol #3 and tramadol. He notes he takes one tramadol per day. However, CURES[4] shows he gets 120/month."

16. At the hospital respondent said he had fallen and hit his head prior to his DUI stop. But on examination there was "no obvious bleeding or hematoma on scalp." Respondent was noted to be "lethargic, slurring words and unsteady of feet." A urine toxicology screen was done that was positive for barbiturates. A CT was done which reported an "ill-defined hyperdense area in [the] right parietal lobe" with an MRI recommended for further evaluation. The MRI was reported as "Normal MRI brain [and] No evidence of intracranial hemorrhage or other significant abnormality." Respondent was discharged at 7:05 a.m. and transferred to an Orange County detention facility.

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[4] "CURES" is an acronym for Controlled Substance Utilization Review and Evaluation System a prescription drug monitoring program which tracks Schedule II, III and IV controlled substance prescriptions that are dispensed in California. (See Health & Saf. Code, § 11165, subd. (a).)

17. As noted, certified toxicology results for the blood sample taken from respondent at Hoag from the Orange County Crime Lab were positive for acetaminophen, butalbital, caffeine, Fioricet, dextrorphan, and levorphanol.

Official Notice of Nature and Characteristics of Drugs

18. At complainant's request, official notice was taken pursuant to Government Code section 11515 and Evidence Code section 452 of the nature and characteristics of the drugs identified in this decision including: Fioricet, dextrorphan, levorphanol, "Tylenol with Codeine," tramadol and alprazolam as follows:

19. Tramadol hydrochloride (Ultram, Ultracet, Conzip, and other brand names), an opioid I analgesic, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (c)(2), and is a dangerous drug pursuant to Business and Professions Code section 4022. It is used for the treatment of moderate to severe pain. Tramadol is similar to other opioid medications and poses the risk for development of tolerance dependence and abuse. If used in higher doses, or with other opioids, there is a dose-related risk of overdose, respiratory depression, and death. However, unlike other opioid medications, tramadol use also carries a risk of seizure and serotonin syndrome, particularly if used with other serotonergic medications. According to the Drug Enforcement Agency (DEA), "[t]ramadol is most commonly abused by narcotic addicts, chronic pain patients, and health professionals." (Drug Enforcement Administration, Diversion Control Division, Drug & Chemical Evaluation Section Publication for Tramadol [March 2020].)

20. Dextrorphan is a metabolite of dextromethorphan (DXM), a psychoactive drug of the morphinan class, which acts as a cough suppressant and is a dissociative hallucinogen that is subject to abuse. "DXM is abused in high doses to experience

euphoria and visual and auditory hallucinations. Users take various amounts depending on their body weight and the effect they are attempting to achieve . . . DXM is a legally marketed cough suppressant that is neither a controlled substance nor a regulated chemical under the Controlled Substances Act." (Department of Justice/Drug Enforcement Agency, Drug Fact Sheet [April 2020] for DXM.)

21. Fioricet is a combination product that includes acetaminophen, butalbital, and caffeine. Fioricet is not federally scheduled as a controlled substance. However, because Fioricet contains butalbital, a barbiturate, it is a Schedule III controlled substance under Health and Safety Code section 11056, subdivision (c)(3), and a dangerous drug under Business and Professions Code section 4022. When properly prescribed and indicated, Fioricet provides relief for tension headaches. Fioricet contains a warning that butalbital, "a short to intermediate-acting barbiturate . . . is habit forming and potentially abusable" and that "[t]olerance, psychological dependence, and physical dependence may occur especially follow prolonged use of high doses of barbiturates." (Labeling information submitted to Food and Drug Administration.) Additionally, one of the precautions for Fioricet is that "[t]his product may impair mental and/or physical abilities required for the performance of potentially hazardous tasks such as driving a car or operating machinery" and that "[s]uch tasks should be avoided while taking this product." (*Ibid.*)

22. Levorphanol, a potent NMDA antagonist,[5] interferes with serotonin uptake and, when used concomitantly with other opioids, may result in "profound sedation, respiratory depression, coma, and death." (Labeling information submitted to

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[5] NMDA receptor antagonists are a class of drugs that work to antagonize, or inhibit the action of, the N-Methyl-D-aspartate receptor (NMDAR).

Food and Drug Administration.) Levorphanol is a Schedule II controlled substance and "[i]t can be abused in a manner similar to other opioid agonists, legal or illicit." (*Ibid.*) When properly prescribed and indicated, levorphanol is used for the management of moderate to severe pain or as a preoperative medication where an opioid analgesic is appropriate. Levorphanol is a substance with a high potential for abuse similar to other opioids and is subject to misuse, addiction, and criminal diversion. *(Ibid.)*

23. "Tylenol with Codeine (or Tylenol #3 or Tylenol #4)", an acetaminophen codeine phosphate combination product, is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used "for the management of mild to moderate pain, where treatment with an opioid is appropriate and for which alternative treatments are inadequate." (Labeling information submitted to Food and Drug Administration.) There is a risk of drug abuse and dependence associated with acetaminophen and codeine phosphate tablets which "contain codeine, a substance with a high potential for abuse similar to other opioids, including fentanyl, hydrocodone, hydromorphone, methadone, morphine, oxycodone, oxymorphone, and tapentadol. Acetaminophen and codeine phosphate tablets can be abused and [are] subject to misuse, addiction, and criminal diversion." (*Ibid.*)

24. Alprazolam is a benzodiazepine and a Schedule IV controlled substance. It has the brand name Xanax. Benzodiazepines are a class of drugs that produce central nervous system depression and that are most commonly used to treat insomnia and anxiety. There is the potential for dependence on and abuse of benzodiazepines particularly by individuals with a history of multi-substance abuse.

(Drug Enforcement Administration Diversion Control Division, Drug & Chemical Evaluation Section Publication for Benzodiazepines [December 2019].)

Investigation

25. Due to respondent's arrest for driving under the influence of dangerous drugs, the board opened an investigation. This investigation led to the board ordering respondent to submit to mental and physical examinations.

Initially, Sarah Peters, Special Investigator with the board (S/I Peters), was assigned to the matter. Subsequently, the investigation was assigned to Connor Thaete, an investigator with the Health Quality Investigation Unit Division (HQIU) of the Division of Investigation of the Department of Consumer Affairs. The following is a summary of the board's and HQIU's investigation, and the information these investigations obtained regarding respondent, his prescribing practices, the drugs he was prescribed, and his competency to practice medicine safely as assessed by a psychiatrist per a board ordered exam.

SUBJECT INTERVIEW

26. S/I Peters with board medical consultant James Nuovo, M.D., interviewed respondent by phone on September 11, 2020. CURES reports were obtained for respondent as a patient and prescribing doctor. After the interview, due to Dr. Nuovo's concerns about respondent's prescribing practices, respondent was asked to submit voluntarily to mental and physical examinations. He agreed initially to undergo these exams but later withdrew his consent. The board issued an order compelling mental and physical examinations.

CURES REPORTS

27. As part of the investigation, CURES reports as noted were obtained for respondent as a patient and as a prescribing doctor.

A CURES report was also obtained for R.C., who was respondent's patient and also his houseguest (as respondent referred to him). Investigator Thaete interviewed R.C., and complainant called R.C. as a witness in this matter.

28. According to the CURES report for respondent, he was prescribed 120 pills of 50 mg tramadol for the period (in 15-day supplies) from February 25, 2018, to December 9, 2020, and from April 13, 2021 to March 7, 2022, for the same amount and dosage in 30-day supplies (and in one instance in a 22-day supply.)[6] The CURES reports admitted as evidence do not document that respondent was prescribed Tylenol with codeine.

29. CURES also shows that respondent was prescribing R.C. 300/60 mg acetaminophen with codeine phosphate in quantities ranging from 90 pills to 200 pills for the period from February 2018 to June 7, 2021. In addition, respondent was prescribing R.C. the benzodiazepine alprazolam 2 mg (4 pills per day), tramadol, and butalbital and acetaminophen with caffeine consistently during this period.

30. Investigator Thaete talked to R.C. by phone on February 18, 2021. R.C. told Investigator Thaete he was in a bad accident, needed a place to stay, and was

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[6] One of respondent's patients, J.D., who is a nurse practitioner, wrote most of the prescriptions for tramadol for respondent from February 25, 2018, to December 9, 2020.

living at respondent's home. R.C. also told Investigator Thaete that respondent was prescribing him tramadol and "Codeine" for approximately two years, but R.C. has never taken the prescriptions. R.C. said he gives these drugs to respondent because he feels pressure to do so and does not want to lose his access to healthcare and a place to live. R.C. described respondent as a "drug addict" dependent on prescription drugs.

R.C. testified in this matter as detailed later in this decision. He did not deny he told Investigator Thaete he gave respondent the Tylenol with codeine or that he referred to respondent as a "drug addict."

31. In addition, R.C. told Investigator Thaete that respondent advised him to sign the medical release for his records in a "sloppy" manner so that respondent could challenge the legibility of the signature. R.C. refused to provide a written statement and said he did not want to be involved in the case. R.C. confirmed in his testimony that respondent told him to sign his release in a "sloppy" manner.

RESPONDENT'S REFUSAL TO SUPPLY PATIENT MEDICAL RECORDS

32. Investigator Thaete also obtained written authorizations from respondent's patients, R.B., which R.B. signed on January 20, 2021; L.C., which L.C. signed on January 8, 2021; and T.A., which T.A. signed on January 4, 2021.

33. Investigator Thaete sent letters to respondent on January 28, 2021, with these signed authorizations asking that he supply certified copies of the complete medical records of these three patients. Respondent was advised in these letters that his failure to produce these records by February 15, 2021, could result in civil penalties under Sections 2225 and 2225.5.

34. Respondent did not comply with these record requests. In a rambling, single spaced five page letter (including fax cover sheet) dated February 15, 2021, respondent stated he did not have to comply because he questioned the authenticity of the signatures of the three patients, and he did not accept the patient signatures as "valid."[7] He said the "signature match [needed to] be close to 100%," and he suggested a handwriting expert should be retained to validate the signatures. His assertions are not factually or legally cognizable.

35. In a three-page single spaced letter dated February 24, 2021, to "Supervisor of Connor Thaete," respondent argued the board's authorization forms violated California and federal law. He stated that the investigators were required to provide "written explanations and a written set of instructions." He demanded that the "Department's" "forms" be reviewed by "a competent legal advisor in relation to the current legal environment." His assertions here are again not factually or legally cognizable.

36. Investigator Thaete sent a final request for these records on April 2, 2021, to respondent. Respondent faxed to Investigator Thaete a three-page letter on April 16, 2021, objecting to the request.

37. During the hearing in this matter, respondent maintained his view that the authorizations were not valid. He testified that HQIU was required to have the signatures verified by a notary or verified in some other way to his satisfaction. He

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[7] Respondent covers a very wide range of topics in his detailed letter to Investigator Thaete.

insisted the signatures were not signed by the three patients. But he did not provide proof of this assertion.

38. Eventually, HQIU obtained the records after subpoenas were served upon respondent for them.

39. On June 3, 2021, the board issued an Order Compelling Mental and Physical Examinations of respondent pursuant to Business and Professions Code Section 820. Mohan Nair M.D., a board-certified psychiatrist, was assigned to evaluate respondent for mental fitness. He conducted the mental examination on July 7, 2021, and prepared a report and a supplemental report summarizing his findings. As discussed earlier, respondent initially, on October 2, 2020, agreed to undergo voluntary mental and physical examinations, but he later withdrew his agreement.

40. As detailed later in this decision, Dr. Nair found that respondent has mental health conditions that make him unable to practice medicine safely.

RESPONDENT'S WRITINGS

41. Respondent sent numerous communications where he details his grievances concerning the conduct of individuals involved in the investigation and prosecution of the matter against him. These writings are often single spaced in small font and lengthy. As part of his mental evaluation of respondent, Dr. Nair reviewed respondent's writings and considered them important information concerning respondent's mental state and ability to practice medicine safely.

42. In his extensive communications respondent attacked almost every person involved in the investigation and prosecution of this matter, including Dr. Nuovo, the emergency room doctor at Hoag who evaluated him, Investigator Thaete,

Deputy Attorney General Hagan, the Administrative Law Judge who issued the suspension order, the doctor who conducted the physical evaluation of respondent, and Dr. Nair. In these communications, respondent repeatedly made sweeping, personal, and caustic accusations about most of the persons involved in the investigation and prosecution of this matter.[8] He maintained this attitude in his testimony.

43. As one salient example of this attitude, with relevance to his mental capacity to practice medicine, in his October 9, 2021, two-page correspondence sent to Dr. Nair, he advised Dr. Nair that Dr. Nair might have dementia and advised him on the treatments he should receive for this condition. In an October 25, 2021, email he sent to Deputy Attorney General Hagan, he concluded that Dr. Nair has "advanced dementia."

44. In addition to claiming without basis Dr Nair suffers from advanced dementia, respondent accused Deputy Attorney General Hagan of misconduct and demanded a full investigation, including a financial audit, and he threatened him with a "500 million dollar lawsuit." In an email dated October 25, 2021, to Deputy Attorney Hagan, respondent wrote: "you have been report [*sic*] for fraud to the ca. DOJ." In a 12-page email dated February 25, 2022, respondent referred to Mr. Hagan as a "legal idiot" or "sociopath" and sought his "disbarment." He referred to the Administrative Law Judge who presided over the hearing on the petition for an interim suspension order as "inept" and "judicially incompetent."

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[8] The only person involved in the investigation he did not criticize was S/I Peters.

45. In the October 25, 2021, email respondent wrote that Investigator Thaete is a "world class idiot" and a "bully." In a fax to Investigator Thaete and "Mr. Hagan" on April 12, 2022, he wrote on the fax cover sheet in handwriting "I am very serious about having you arrested!" He accused Mr. Hagan of illegal and unethical behavior. He attached a 13-page single spaced letter in which he stated he would have Mr. Hagan and Investigator Thaete arrested "[i]f anything happens" to R.C. R.C. was lawfully subpoenaed to appear as a witness in this matter, and respondent was concerned about R.C.'s mental state.

46. Regarding medical consultant Dr. Nuovo, in a 12-page email dated October 5, 2020, to S/I Peters, respondent accused him of being sexist, bigoted, and acting like a "NAZI Gestapo Agent."[9] He said that Dr. Nuovo was a "bogus medical consultant," and he did not understand how he ever qualified to be a "Qualified Medical Consultant."

47. Respondent said that the emergency room doctor was a "clown," who must be investigated for "grossly fraudulent activity." He wrote he wanted an "OFFICIAL INVESTIGATION" into this "so-called doctor."

48. As further indicative of his mindset, in his February 25, 2022, email respondent copied the following real and fictional persons and entities: Office of the Governor, Office of the Attorney General, California Medical Board, Department of Investigation, "Committee to repeal CURES", "Committee to end Domestic Spying in

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[9] Respondent added the following: "He can pretend to be a Nazi on his own time. There is no need to conduct the business of the Medical Board in that way (as a NAZI)."

California", "Committee to reform the Ca. Medical Board", "Tucker Carleson [*sic*], Fox Media", and "Associated Media Release." Respondent admitted in his hearing testimony that a "Committee to repeal CURES," a "Committee to end Domestic Spying in California," and a "Committee to reform the Ca. Medical Board" do not exist except as entities he would like to form because of the injustice he feels.

R.C.'s Testimony

49. R.C., as noted, was subpoenaed to testify by complainant. His relevant testimony is summarized as follows:

R.C. is a respondent's friend and until recently was respondent's houseguest. R.C. was also respondent's patient. Respondent was treating R.C. for a variety of medical conditions. As mentioned above, respondent prescribed R.C. the following drugs between February 2018 and June 7, 2021: 300/60 mg acetaminophen with codeine phosphate in quantities ranging from 90 pills to 200 pills, the benzodiazepine alprazolam, tramadol, bultapilal with acetaminophen and caffeine, and other drugs.

R.C. confirmed in his testimony, as he told Investigator Thaete, R.C. gave respondent the Tylenol with codeine that respondent prescribed to R.C. R.C. stated he was not able to take this drug because it made him sick to his stomach. He testified he left the drug "out" for respondent during the pandemic, and he agreed he "enabled" respondent's use of the drug. R.C. however said he was taking the tramadol because of his hip problems, and he did not share this drug with respondent. He did not deny he told Investigator Thaete that respondent was a "drug addict." He only said he did not recall if he told this to Investigator Thaete.

Additionally, R.C. testified he "assumed" that respondent told him to sign his name in a "sloppy" manner.

50. After R.C. completed his testimony, he made a statement in which he cursed out everyone involved in this matter. He said he objected to "all of you, and everything," and "fuck you all."

Testimony of Mohan Nair, M.D.

51. Complainant called Dr. Nair as an expert witness concerning whether respondent can safely practice medicine. Dr. Nair is a psychiatrist who holds certifications from the American Board of Psychiatry and Neurology in psychiatry, child psychiatry, and forensic psychiatry. Since 1983 he has had a psychiatric practice. He also performs psychiatric consultations and fitness for duty evaluations.

52. The board asked Dr. Nair to evaluate respondent pursuant to its order that required respondent to undergo mental and physical evaluations. Dr. Nair reviewed materials obtained during the HQIU and board investigation of respondent related to his 2020 arrest. These materials included respondent's numerous writings as summarized above. Respondent refused to authorize Dr. Nair to obtain medical records from his pain management doctor.

53. Dr. Nair administered the following psychological tests to respondent on July 7, 2021: the Minnesota Multiphasic Personality Inventory (MMPI-2), Millon Clinical Multiaxial Inventory, the Michigan Alcohol Screening Test, and the Structured Inventory of Malingered Symptomology. Dr. Nair found the results of the MMPI-2 invalid due to respondent's non-cooperative approach to the test. Dr. Nair also conducted a Mental Status Examination of respondent. As part of the evaluation respondent submitted to a urine screen, which was negative.

54. After evaluating respondent, Dr. Nair prepared a report and supplemental report. His testimony was consistent with what he wrote in his reports. The following is a summary of Dr. Nair's testimony:

55. Based on his forensic evaluation of respondent, Dr. Nair diagnosed respondent with opioid dependence based on respondent's long-term use of tramadol, a mood disorder not otherwise specified, and possible frontotemporal dementia. Dr. Nair opined that consistent with the information he reviewed, frontotemporal dementia and opioid abuse disorder are the most appropriate diagnoses, and these conditions make respondent a threat to the public welfare. Dr. Nair believes respondent's continued practice of medicine poses a present danger and threat to the public health welfare and safety.

Dr. Nair's opinion at the hearing differs somewhat from the opinion he reached after his initial evaluation of respondent on July 7, 2021. After his July 7, 2021, evaluation, in a report dated April 2, 2022, Dr. Nair reviewed respondent's extensive written communications and concluded that respondent is unsafe to practice medicine. In his initial report Dr. Nair suggested that respondent may be able to practice medicine safely with certain specific conditions. But Dr. Nair changed his view based on respondent's writings which he detailed in his supplemental report and are part of the evidence of record.

56. Dr. Nair cited these reasons for his conclusions that respondent is unsafe to practice medicine due to a mental health condition: First, he noted as a physician with an opioid abuse disorder respondent poses a risk to the public. In addition, during his evaluation of respondent, respondent displayed emotional lability, cognitive impairment, impulsivity, and lack of insight. He found respondent irritable and non-responsive to specific questions. Respondent's responses consisted of long

statements, not directly connected to the questions, that were more like lectures on topics he wished to lecture about.

57. Of particular concern to Dr. Nair, respondent denied everything in the officer's report, including information he was intoxicated when he was arrested on April 28, 2019. Dr. Nair found his insistence he was safe to drive, despite clear evidence he was impaired, indicative of a marked lack of insight and judgment. When Dr. Nair read from the police report to respondent that police observed he was unable to get out of his car, respondent insisted he was safe to drive at that time. Dr. Nair also referenced respondent's statement to the police officer that he thought he was okay to drive, and "that he is a doctor and felt his driving and sobriety were not impaired." Dr. Nair questioned if respondent's belief that he was not impaired when he was arrested was due to a delirious state from this medication, or perhaps another medication, or a neurological condition.

58. As a further basis for his opinion, Dr. Nair cited respondent's use of tramadol without clear justification. He said tramadol can cause problems with alertness as noted earlier. Tramadol contains a component that increases serotonin levels and can cause delirium.

59. Dr. Nair, moreover, found it concerning that per the lab report, respondent was taking several drugs that act on the central nervous system and, that in Dr. Nair's view, caused respondent to engage in actions dangerous to himself and others. Specifically, those drugs were levorfenal, Fioricet, and dextrorphan.

As referenced earlier, levorfenal is an opioid used to treat pain and carries the same risks as other opioids in terms of the loss of motor coordination. His use of this drug was concerning to Dr. Nair because respondent was also taking tramadol.

Dextrorphan, Dr. Nair noted, is a "dissociative hallucinogen" and can cause an altered mental state and dissociation. Fioricet contains a barbiturate that causes mental dulling, an inability to have proper reflexes, and symptoms similar to driving under the influence.

60. As information Dr Nair found important regarding his opinion that respondent has a mental illness that makes him unable to practice medicine safely, Dr. Nair cited respondent's extensive writings. Dr. Nair opined, to a reasonable degree of medical certainty, that these writings reflect that respondent's mental state deteriorated since he evaluated him on July 7, 2021.

61. Dr. Nair said these writings show that respondent's mental state is "disorganized," "disordered," "uncontrolled," and "frenzied," with features of paranoia, grandiosity, and "excitability, irritability, flight of ideas/tangentiality, circumstantiality and delusional thinking seen in individuals who have mood disorders such [as] mania, similar mental states caused by the use/misuse of street drugs or prescription medications. . . ." Dr. Nair found that respondent, in his various communications, lacked the ability to meaningfully communicate.

62. Dr. Nair commented that respondent's writings and behavior can be "a manifestation of behavioral variant of frontotemporal dementia or strokes." Frontotemporal dementia is a progressive brain disorder that effects a person's capacity for higher level thinking and decision making and moods. It presents more as emotional and behavioral disorganization, and manifests itself as socially or sexually inappropriate behavior.

63. Respondent did not materially dispute Dr. Nair's opinions regarding his mental condition, or that he is unable to practice medicine safely. Dr. Nair's opinions are supported by the evidence of record in this matter and found persuasive.

Respondent's Testimony and Evaluation of His Testimony

64. Respondent's testimony is summarized as follows:

Respondent stressed he is retired, he does not plan to return to the practice of medicine, and he does not care if he gets his license back. Respondent said he plans to open an art gallery.

65. Regarding the circumstances of his arrest for driving under the influence of drugs, respondent stated he was very tired and fatigued at the office, had fallen and hit his head, and fell asleep on the floor. He said the fall made him feel "woozy." Respondent said he mistakenly took the Fioricet from the cabinet at his office.

When respondent went to his car to drive the 17 miles from the office to his home, he could not stay awake, was weak and could not stand up. Respondent said he was fully aware of the situation. By the time he was in the car driving, he felt overwhelmingly tired and fatigued. Respondent denied he was driving over 100 mph as reported to the police.

66. Respondent seemed to deny he was under the influence of a drug or drugs when he drove, and cited his elevated white cell count at the hospital as evidence of this claim. He criticized the emergency room doctors for their workup of him at the hospital. He said he pleaded guilty to the charge of being under the influence of drugs because he was very busy closing his office and was retired. He commented he was under duress due to his head injury.

67. Respondent spent considerable time during the hearing trying to explain the pharmacology of the drugs found in his system, and the interactions of these drugs with other drugs. He suggested that some of the metabolites were from cold medicine he was taking at the time he was arrested. He submitted materials to support his contentions, and those materials were admitted as administrative hearsay to the extent they supplement or explain his beliefs regarding the pharmacology of these drugs. His assertions in this area were hard to follow and are not credited.

68. At the end of his testimony, respondent stated, in retrospect, he should have taken an Uber. He said he waited 12 hours after he took the Fioricet before he drove.

69. Otherwise, regarding the drugs he was taking when arrested, respondent argued that Fioricet should not be considered a scheduled drug in California because federal law does not recognize the drug as a scheduled drug, and only federal law governs whether a drug is a controlled and scheduled drug. Respondent did not cite any law or authority for his argument, and his assertion on this issue is not found persuasive.

70. Regarding his use of tramadol, respondent said that the drug is more like the antidepressant Prozac than an opioid. In his experience, he said he has never seen the use of tramadol as an indication of an opioid abuse disorder.

71. Regarding the Tylenol with codeine pills the officer identified, respondent said the officer misquoted him that he took Tylenol with codeine. He told the officer he took Fioricet. He said the officer was wrong because the website the officer used to identify the drug as Tylenol with codeine does not correctly identify the drug. He said he told the emergency room doctor that he "may have" taken Tylenol with codeine. In

response to R.C.'s statement to Investigator Thaete that R.C. diverted Tylenol with codeine to respondent, respondent denied R.C. diverted the drug to him per the "objective evidence."

72. Respondent referred to R.C. as a person with serious psychological issues, including paranoia and schizophrenia, that required respondent to monitor him on an hourly basis at his house.[10] He testified R.C. thought Investigator Thaete was a flesh-eating lizard, and aliens were communicating with him. He said that Investigator Thaete and Deputy Attorney General Hagan engaged in abusive behavior towards R.C., and as a result, he would have them arrested. He said R.C. was "impaired" when he spoke to Investigator Thaete.

73. Respondent's testimony in other respects is summarized as follows:

Respondent repeated his claim that the signatures of the three patients were not valid. He asserted further that Investigator Thaete had "blocked out" the time the releases were in effect. This is not true. The copies of releases received as evidence do not show any language was "blocked out." Respondent also claimed the signatures were obtained outside the statute of limitations. Respondent does not cite any authority for this. His assertion of a statute of limitations violation is not credited. (See Business and Professions Code section 2230.5.)

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[10] Dr. Nair in his testimony expressed concern that if R.C. suffers from schizophrenia, respondent's prescribing of the opioids Tylenol with codeine and tramadol to him was highly inappropriate.

Respondent did not deny he urged R.C. to sign his signature in a "sloppy" manner.

Respondent asserted that CURES is damaging people in need of pain medications because it has made it more difficult for pain patients to get drugs to control their pain. One of the things on his list is to get rid of CURES.

Respondent asserted he continues to believe that Dr. Nair has dementia and is very concerned about him. He said Dr. Nair should not be consulting. He also said he was not diagnosing him with this condition, but he commented that only Dr. Nair will suffer unless he receives treatment for this condition.

Respondent said 95 percent of psychological tests are fraudulent, and Dr. Nair's use of these tests was fraudulent. He accused Investigator Thaete of a "conspiracy" with Dr. Nair.

Respondent accused Investigator Thaete of operating a "slush fund" because Investigator Thaete paid respondent with cash for patient records respondent submitted to HQIU per subpoenas served upon him.

Respondent accused Investigator Thaete of operating a "rogue operation."

He said he went to HQIU's Tustin Office and found it "unsecured," which made him very concerned, and he reported this to the Attorney General.

Respondent repeated his assertions that Dr. Nuovo acted like a Nazi Gestapo agent.

Respondent acknowledged he referred to Investigator Thaete as "investigator boy," and a "world class idiot," he called the emergency room doctor a "clown," and

the Deputy Attorney General "a legal idiot" or "sociopath." He explained he is 65 years old and retired and can say anything he damn well pleases, as he put it. Respondent denied he has a mood disorder. He said he is just angry.

74. To the extent respondent's testimony conflicts with the evidence of record, it is not found credible. Specifically, his testimony he did not use Tylenol with codeine, and he was not in possession of this drug, are contradicted by his statements to the reporting police officer, and the emergency room doctor. He told the officer he consumed two Tylenol with codeine pills, and he told the emergency room doctor he was taking Tylenol with codeine. Also, respondent prescribed R.C. this drug, and R.C. testified he made the drug available to respondent. Respondent, in turn, was not prescribed Tylenol with codeine. Thus, it is reasonable to conclude he obtained Tylenol with codeine from R.C. from the prescriptions for this drug respondent provided R.C.

75. Regarding his testimony that he was not impaired from drugs, this testimony is also not found credible. Respondent pled guilty to driving under the influence of drugs, lab results confirmed he had drugs in his system, and his behavior was consistent with being under the influence of a drug. His arguments regarding the pharmacology of the drugs found in his system are not found persuasive.

76. In assessing respondent's credibility, his attitude at the hearing, and his expressions of anger are considered factors against finding him a credible witness. It is clear respondent does not care what the facts from his arrest are, or the concerns the circumstances of his arrest raise regarding his ability to practice medicine safely. He wanted to use the hearing as his platform to attack anyone involved in the investigation and enforcement of this matter, regardless of the facts. As respondent put it, he is 65 years old, retired, and he can say what he wants. His diagnosis of Dr. Nair with a serious medical condition without basis, and his repeated insults to

Investigator Thaete, Dr. Nuovo, and Deputy Attorney General Hagan are salient examples of his desire to express himself as he sees fit. With this noted, it needs to be recognized that his anger and responses are likely expressions of his mental health condition, as Dr. Nair found.

Costs of Enforcement

77. Complainant seeks recovery of enforcement costs of $35,854.25 pursuant to Business and Professions Code section 125.3.

78. In support of the request for recovery of enforcement costs, the Deputy Attorney General who prosecuted the case signed a declaration on April 20, 2022, requesting $32,865.25 relating to the billed legal work, plus $2,989.00 in costs. Attached to the declaration is a document entitled "Master Time Activity by Professional Type." This document identifies the tasks performed, the dates legal services were provided, who provided the services, the time spent on each task, and the hourly rate of a Supervising Deputy Attorney General, the Deputy Attorney General, a paralegal, analyst, and legal analyst from January 1, 2022, through April 19, 2022, for a total of $32,865.25 in prosecution costs. Additionally, in his declaration, the Deputy Attorney General identified $789 for the cost of obtaining the transcript of the hearing on the interim suspension petition, and $2,200.00 for the expert Dr. Nair. Invoices for these services were attached to the declaration.

79. California Code of Regulations, title 1, section 1042, subdivision (b), requires that this declaration must include "specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs."

80. The declaration with the attachments complies with the requirements specificity of section 1042, subdivision (b), and are found to be reasonable.

Accordingly, the total reasonable costs of enforcement of this matter are $35,854.25. Respondent did not present any evidence regarding his ability to pay costs.

Parties' Arguments

81. In closing arguments, complainant argued that probation is not an appropriate disposition, and respondent's license needs to be revoked due to his erratic behavior and the evidence of his conduct as detailed in the charges against him. Complainant noted that respondent did not present any character evidence or evidence of rehabilitation or mitigation.

82. Respondent in closing argued that there was no objective evidence he was impaired, and he did not test positive for codeine and tramadol, only Dayquil and Fioricet. He said the toxicology report was misinterpreted, and the emergency room doctor mistreated him. He added that the police officer misquoted him regarding the statement that he told the officer he was taking Tylenol with codeine. Respondent stressed that he was only found to have taken Fioricet, and Fioricet is not a controlled substance because respondent said he was obligated to follow federal law.

In his closing comments, respondent again attacked Dr. Nair, stating that something was "dreadfully wrong" with him, and he also attacked Deputy Attorney General Hagan. He said that the case is not about him practicing medicine because he is retired, and he plans to open an art gallery. Respondent added that he is just trying to make things better at this stage of his life.

83. Complainant, in reply, asserted that respondent's failure to comply with the medical records requests was an effort to obstruct the investigation, and that civil penalties should be imposed.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. The purpose of the Medical Practice Act (Chapter I, Division 2, of the Business and Professions Code) is to assure the high quality of medical practice; in other words, to keep unqualified and undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.) The purpose of administrative discipline is not to punish, but to protect the public by eliminating those practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

Standard of Proof

2. Complainant bears the burden of proof of establishing that the charges in the first amended accusation are true.

The standard of proof in an administrative action seeking to suspend or revoke a physician's certificate is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Applicable Statutes Regarding Causes to Impose Discipline

3. Section[11] 2227, subdivision (a), states:

> 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.

[11] References are to the Business and Professions Code unless otherwise stated.

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

4. Section 2234 subdivision (a) provides as follows:

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

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

5. Section 2236 states in pertinent part as follows:

(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 [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

[¶] . . . [¶]

(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.

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

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

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a

> subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

Case Law Regarding Unprofessional Conduct

7. In *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575, the appellate court noted that "unprofessional conduct," as that term was used in Business and Professions Code section 2361 (now section 2234), included certain enumerated conduct. (*Id.* at p. 575.) The court further stated (*Ibid.*):

> This does not mean, however, that an overly broad connotation is to be given the term "unprofessional conduct;" it must relate to conduct which indicates an unfitness to practice medicine. [Citations.] Unprofessional conduct is that conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession. [Citation.]

Disposition Regarding Causes for Discipline

CAUSE EXISTS TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE

8. Complainant proved by clear and convincing evidence that respondent used a dangerous drug or drugs to the extent and manner dangerous to himself and to the public on April 28, 2019. On this date he drove with his judgment and ability to drive safely severely impaired. He was reported to be driving at an excessive speed,

and a police officer found him swerving in traffic. When police stopped him, they found him to be visibly impaired. He was in possession of 20 Tylenol with codeine pills and was prescribed tramadol. He told both the reporting officer and an emergency room doctor that he had taken Tylenol with codeine. Lab results taken from a blood sample showed that respondent had levorfenal, Fioricet, and dextrorphan in his system.

9. Complainant proved by clear and convincing evidence that respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a physician and surgeon pursuant to Sections 2227, 2234 subdivision (a), and 2236, when he was convicted on March 10, 2020, of violating Vehicle Code section 23152 subdivision (f), driving under the influence of a dangerous drug.

10. Complainant proved by clear and convincing evidence under the Third and Fourth Causes for Discipline that respondent obtained a controlled substance, Tylenol with codeine, by subterfuge in violation of statutes regulating the prescription of dangerous drugs pursuant to Health and Safety Code sections 11517 and 11173 subdivision (a). Health and Safety Code section 11517prohibits a person from issuing a false or fictitious prescription in any respect. Health and Safety Code section 11173, subdivision (a), prohibits a person from obtaining a prescription by fraud, deceit, misrepresentation, or subterfuge.

Respondent obtained Tylenol with codeine by agreement with his roommate, R.C. Respondent prescribed this drug for R.C. with the understanding that R.C. would make available this drug to respondent. R.C. in fact provided respondent with this drug.

11. Complainant proved by clear and convincing evidence under the Fifth Cause for Discipline pursuant to Section 2234, subdivision (e), that respondent committed acts of dishonesty in the following respects: when he prescribed Tylenol with codeine to R.C. in order to obtain this drug from R.C., when he told R.C. to sign the authorization for R.C.'s medical records in a "sloppy" manner to allow respondent to challenge the legitimacy of the authorization for R.C.'s records, and when he refused to accept the signed authorizations for the medical records of three patients without any basis.

12. Complainant proved by clear and convincing evidence the allegations alleged under the Sixth Cause for Discipline for general unprofessional conduct based on the findings immediately above.

Cause Exists Under Section 822

13. Complainant further proved by clear and convincing evidence that respondent is impaired due to a mental condition that effects his ability to practice medicine safely pursuant to Business and Professions Code section 822. Section 822 authorizes the board to revoke or suspend respondent's Physician's and Surgeon's certificate, or place him on probation, if it determines that respondent's "ability to practice his . . . profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency. . . ."

The conclusion that respondent is unable to practice medicine due to a mental health condition that affects his judgment is based on Dr. Nair's persuasive testimony. Dr. Nair's opinion is fully supported by the evidence of record.

Cause Exists in Part to Impose a Civil Penalty Upon Respondent

14. Complainant proved by clear and convincing evidence that respondent violated Section 2225.5 when he failed to provide medical records for three patients despite signed authorizations from these patients. Section 2225.5 authorizes the board to impose a penalty for a licensee's refusal to comply with a request for certified medical records based on the patient's signed authorization. This statute authorizes the board to impose a fine up to $10,000.

Respondent refused to comply with the request for the certified medical records of three of R.C.'s patients within 15 days. The requests included the signed authorizations of the three patients. Respondent's assertion that the board was required to provide him, to his satisfaction, proof that the patient signatures were authentic is baseless. Respondent's goal appeared to be merely to obstruct the investigation into his prescription practices.

In terms of assessing the amount of the civil penalty, a civil penalty of $10,000 is deemed appropriate for his refusal to provide the records for all three patients. Although Section 2225.5 authorizes a maximum civil penalty of $10,000 per patient, respondent concurrently refused to provide the records of the three patients.

The Board's Disciplinary Guidelines and Evaluation Regarding the Degree of Discipline

15. With causes for discipline having been found, the determination now must be made regarding the degree of discipline and the terms and conditions to impose. There are two sets of guidelines the board has promulgated that must be considered in this matter to fashion any discipline with appropriate terms and conditions: The board's Manual of Model Disciplinary Orders and Disciplinary

Guidelines (12th Edition 2016), and the board's Uniform Standards for Substance Abusing Licensees (2015).

The board's Manual of Model Disciplinary Orders and Disciplinary Guidelines provides the following directive regarding the applicability and use of the guidelines:

> The Board expects that, absent mitigating or other appropriate circumstances such as early acceptance of responsibility, demonstrated willingness to undertake Board-ordered rehabilitation, the age of the case, and evidentiary problems, Administrative Law Judges hearing cases on behalf of the Board and proposed settlements submitted to the Board will follow the guidelines, including those imposing suspensions. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure.

16. 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.

17. Under these guidelines, the recommended penalty range for excessive use of controlled substances and a substantially related conviction is a minimum of five years' probation to a maximum of revocation. The recommended terms and conditions of probation include biological fluid testing. The recommended terms and conditions for dishonest conduct unrelated to patient care and violations of drug control laws range from five years' probation to revocation with specific terms and conditions including restrictions on the ability to prescribe controlled substances.

Disposition

18. Based on the totality of the evidence, it is determined that revocation of respondent's license to practice medicine is required to protect the public.

This determination is made based on the evidence of record that respondent suffers from a mental health condition that leaves him unable to practice medicine

safely. Dr. Nair found, based in large part on respondent's writings, that respondent has a "disorganized," "disordered," "uncontrolled," and "frenzied," mental state, and he lacks the judgment necessary to practice medicine safely. Respondent's prescribing of Tylenol with codeine to his houseguest R.C., so R.C. would provide respondent with this drug, and his attitude towards the investigation of this matter and those involved in it, are ample proof of this finding. His "diagnosis" of Dr. Nair with dementia is further evidence of this lack of judgment.

With respect to his driving under the influence of drugs, respondent does not accept responsibility for his conduct, and he offered no mitigating evidence. He regards himself as retired, and he does not intend to practice medicine.

Costs of Enforcement

19. Under Business and Professions Code section 125.3, complainant may request that an administrative law judge "direct a licentiate 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." "A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case." (Bus. & Prof. Code, § 125.3, subd. (c).)

20. The Office of Administrative Hearings has enacted regulations for use when evaluating an agency's request for costs under Business and Professions Code section 125.3. (Cal. Code Regs., tit. 1, § 1042.) Under the regulations, a cost request must be accompanied by a declaration or certification of costs. For services provided by persons who are not agency employees, the declaration must be executed by the

person providing the service and describe the general tasks performed, the time spent on each task, and the hourly rate. In lieu of the declaration, the agency may attach copies of the time and billing records submitted by the service provider. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(2).)

21. Another consideration in determining costs is *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. In *Zuckerman*, the California Supreme Court decided, in part, that in order to determine whether the reasonable costs of investigation and enforcement should be awarded or reduced, the Administrative Law Judge must decide: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct. The scope of the investigation was appropriate to the allegations. The charges were sustained, and respondent provided no evidence regarding his ability to pay the costs.

22. After consideration of the factors under *Zuckerman, supra,* no reduction in the amount of reasonable costs of $35,854.25 for the prosecution of this is matter is appropriate. It is determined that respondent must pay this sum.

ORDER

Physician's and Surgeon's Certificate Number G45575 issued to respondent Thomas L. Blair, M.D. is revoked.

Respondent shall pay to the board $10,000.00 as a civil penalty pursuant to Business and Professions Code section 2225.5 for failure to provide patient medical records.

Respondent shall pay to the board costs associated with its enforcement of this matter pursuant to Business and Professions Code Section 125.3 in the amount of $35,854.25.

DATE: May 23, 2022

ABRAHAM M. LEVY
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 Accusation Against: **THOMAS L. BLAIR, M.D.** **725 W La Veta Ave., STE. 110** **ORANGE, CA 92868-4445** **Physician's and Surgeon's Certificate No. G 45575,** Respondent.	Case No. 800-2019-055478 **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 July 22, 1981, the Board issued Physician's and Surgeon's Certificate Number G 45575 to Thomas L. Blair, 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 September 30, 2022, unless renewed.

JURISDICTION

3. This First Amended Accusation, which supersedes Accusation No. 800-2019-055478 filed on November 30, 2021, is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.
>
> (b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

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:
>
> (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.
>
> . . .
>
> (e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

. . . .

6. Section 2225.5 of the Code states:

(a) (1) A licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

. . .

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code).

(f) For purposes of this section, certified medical records means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

7. 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 [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

. . .

(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.

8. Section 2238 of the Code states:

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

9. 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 Division of Medical Board may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

10. Section 11157 of the Health and Safety Code states:

No person shall issue a prescription that is false or fictitious in any respect.

11. Section 11173, subdivision (a), of the Health and Safety Code states:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

12. Section 822 of the Code states:

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing section shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

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13. Unprofessional conduct is conduct which breaches rules or ethical codes of a profession or conduct which is unbecoming a member in good standing of a profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3rd 564, 575.)

COST RECOVERY

14. 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.

DEFINITIONS

15. Alprazolam (Xanax), a benzodiazepine, is a centrally acting hypnotic-sedative that is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. The Drug Enforcement Administration (DEA) has identified benzodiazepines, such as Xanax, as a drug of abuse. (Drugs of Abuse, DEA Resource Guide (2020 Edition), at p. 71.)

16. Dextrorphan is a metabolite of dextromethorphan (DXM), a psychoactive drug of the morphinan class, which acts as a cough suppressant and is a dissociative hallucinogen that is subject to abuse. "DXM is abused in high doses to experience euphoria and visual and auditory hallucinations. Users take various amounts depending on their body weight and the effect they are attempting to achieve...DXM is a legally marketed cough suppressant that is neither a controlled substance nor a regulated chemical under the Controlled Substances Act." (DEA Drug Fact Sheet [April 2020] for DXM.)

17. Fioricet is a combination product that includes acetaminophen, butalbital, and caffeine. Fioricet is not federally scheduled as a controlled substance. However, because Fioricet contains butalbital, a barbiturate, it is a Schedule III controlled substance under Health and Safety Code section 11056, subdivision (c)(3) and a dangerous drug under Business and Professions Code section 4022. When properly prescribed and indicated, Fioricet provides relief for tension

headaches. Fioricet contains a warning that butalbital, "a short to intermediate-acting barbiturate...is habit forming and potentially abusable" and that "[t]olerance, psychological dependence, and physical dependence may occur especially follow prolonged use of high doses of barbiturates." Additionally, one of the precautions for Fioricet is that "[t]his product may impair mental and/or physical abilities required for the performance of potentially hazardous tasks such as driving a car or operating machinery" and that "[s]uch tasks should be avoided while taking this product."

18. Levorphanol, a potent NMDA antagonist, interferes with serotonin uptake and, when taken with tramadol, may result in an altered mental status and/or a delirious state. Levorphanol, is a Schedule II controlled substance and "[i]t can be abused in a manner similar to other opioid agonists, legal or illicit." When properly prescribed and indicated, Levorphanol is used for the management of moderate to severe pain or as a preoperative medication where an opioid analgesic is appropriate. Levorphanol is a substance with a high potential for abuse similar to other opioids and is subject to misuse, addiction, and criminal diversion.

19. Phendimetrazine tartrate is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (b)(6), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used as a short-term adjunct in a regimen of weight reduction based on caloric restriction in patients. "Phendimetrazine tartrate is related chemically and pharmacologically to amphetamines. Amphetamines and related stimulant drugs have been extensively abused, and the possibility of abuse of phendimetrazine should be kept in mind when evaluating the desirability of including a drug as part of a weight reduction program."

20. Tylenol, an acetaminophen codeine phosphate combination product, is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used "for the management of mild to moderate pain, where treatment with an opioid is appropriate and for which alternative treatments are inadequate." There is a risk of drug abuse and dependence associated with acetaminophen and codeine

phosphate tablets which " contain codeine, a substance with a high potential for abuse similar to other opioids, including fentanyl, hydrocodone, hydromorphone, methadone, morphine, oxycodone, oxymorphone, and tapentadol. Acetaminophen and codeine phosphate tablets can be abused and [are] subject to misuse, addiction, and criminal diversion."

21. Tramadol hydrochloride (Ultram, Ultracet, Conzip, and other trade names), an opioid analgesic, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (c)(2), and is a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used for the treatment of moderate to severe pain. Similar to other opioid medications, tramadol poses a risk for development of tolerance, dependence and abuse. If used in higher doses, or with other opioids, there is a dose-related risk of overdose, respiratory depression, and death. However, unlike other opioid medications, tramadol use also carries a risk of seizure and serotonin syndrome, particularly if used with other serotonergic medications. According to the DEA, "[t]ramadol is most commonly abused by narcotic addicts, chronic pain patients, and health professionals." (DEA Diversion Control Division, Drug and Chemical Evaluation, for Tramadol (March 2020).

FIRST CAUSE FOR DISCIPLINE

(Use of Controlled Substances or Dangerous Drugs)

22. Respondent is subject to disciplinary action under sections 2227, and 2234, as defined by section 2239, subdivision (a), of the Code, in that he has used dangerous drugs to an extent, or in a manner, as to be dangerous or injurious to himself, to another person, to the public, or to the extent that such use impairs his ability to practice medicine safely, as more particularly alleged hereinafter:

23. On or about April 28, 2019, Respondent was arrested for driving under the influence of a drug or drugs, in violation of Vehicle Code section 23152, subdivision (f). A Newport Beach Police Officer was dispatched on April 28, 2019, at 12:24 a.m., to investigate a possible drunk driver. The reporting party stated he was following a yellow Camaro that was swerving down the road. The officer was able to catch up with the Camaro and noticed it swerving left to right and braking and slowing for no reason. The officer conducted an enforcement stop and contacted the

driver who was identified as Respondent. Respondent had slurred speech, low-hanging eyelids, seemed highly impaired, and required assistance as he exited the vehicle because he was almost falling over. The officer did not smell alcohol on Respondent's breath or person. A horizontal gaze nystagmus test was performed with Respondent unable to track the officer's finger. Respondent informed the officer he was a doctor, stated he was driving from his office, and that he had fallen earlier in the evening. The officer found no signs of trauma. The officer attempted to have Respondent complete field sobriety tests which were ultimately cancelled for Respondent's safety.

24. Respondent submitted to a Preliminary Alcohol Screening (PAS) test which registered a .00% breath alcohol content. Based on his symptoms of intoxication, his erratic driving, and the officer's observations at the scene, Respondent was placed under arrest for violating of Vehicle Code section 23152, subdivision (f) [driving under the influence of a drug or drugs]. While conducting a search, the officer found a clear plastic baggy with approximately 20 white oval pills in one of Respondent's pockets. The pills were visually identified as Tylenol (acetaminophen) with codeine.

25. After his arrest, Respondent was taken to Hoag Hospital for further evaluation based, among other things, his earlier statement of falling and hitting his head. While at the hospital, the officer obtained a statement from the reporting party. The reporting party stated Respondent's vehicle passed him at over 100 mph on the freeway. The reporting party further stated the Camaro was also weaving and swerving, and almost collided with other vehicles, which prompted him to call 911. The officer conducted a Drug Recognition Evaluation (DRE) on Respondent while at the hospital. As part of the DRE, Respondent stated he only consumed Tylenol with Codeine and consumed two pills approximately two hours prior to driving. According to Respondent, the medication made him feel drowsy, but he still thought it was okay to drive and "that he is a doctor and felt his driving and sobriety were not impaired." The officer documented "[b]ased on my training and experience as a Drug Recognition Expert it is my opinion that [Respondent] was under the influence of a Narcotic Analgesic and could not safely

operate a motor vehicle with the caution and characteristic of a sober person." A vial of blood was drawn for further testing by the Orange County Crime Lab.

26. While at Hoag Hospital, Respondent was evaluated by the admitting and attending physicians in the Emergency Department. According to the certified medical records, "[t]he patient [Respondent] admits to Tylenol #3 and tramadol. He notes he takes one tramadol per day. However CURES[1] shows he gets 120/month." Respondent reported he had fallen and hit his head prior to his DUI stop but on examination there was "no obvious bleeding or hematoma on scalp." Respondent was noted to be "lethargic, slurring words and unsteady of feet." Respondent claimed "that he may have caught a 'bug that makes you sleep for days' from his roommate." A urine toxicology screen was done that was positive for barbiturates. A CT was done which reported an "ill-defined hyperdense area in [the] right parietal lobe" with an MRI recommended for further evaluation. The MRI was reported as "Normal MRI brain [and] No evidence of intracranial hemorrhage or other significant abnormality." Respondent was discharged at 7:05 a.m. and transferred to an Orange County detention facility.

27. Following his arrest for DUI (drugs), the Board opened an investigation concerning Respondent. During the course of the investigation, relevant documents were obtained, possible witnesses were interviewed, reports were obtained from CURES, attempts were made to obtain medical records from Respondent, and there were communications between Respondent and the assigned investigators.

28. On or about September 19, 2019, certified toxicology results from the Orange County Crime Lab were received for the blood sample taken from Respondent on April 28, 2019. The analysis of the blood draw was positive for acetaminophen-butalbital-caffeine (Fioricet); dextrorphan; and levorphanol.

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[1] California's Controlled Substance Utilization Review and Evaluation System (CURES) is a prescription drug monitoring program which tracks Schedule II, III and IV controlled substance prescriptions that are dispensed in California. One of the explicit purposes of the CURES database is to assist "law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances." (Health & Saf.Code, § 11165, subd. (a); *Medical Board of California v. Chiarottino* (2014) 225 Cal.App.4th 623, 629; *Lewis v. Superior Court* (2017) 3 Cal.5th 561, 566.)

29. On or about March 10, 2020, Respondent pled guilty to violating Vehicle Code section 23152, subdivision (f), driving under the influence of a drug or drugs. The execution of Respondent's sentence was suspended for three years and he was placed on informal probation, under various terms and conditions, which included paying a fine and various fees, and completing a three month alcohol and drug program.

30. On or about December 30, 2020, Investigator C.T. reviewed a list of patient names identified by Dr. J.N. (a medical consultant) after his review of the patient activity CURES report; and sent Notice to Consumer letters and medical record releases to some of Respondent's patients seeking to obtain a copy of their medical records in furtherance of the investigation.

31. On or about January 11, 2021, Investigator C.T. sent out Notice to Consumer letters with medical record releases to a select number of other patients identified by Dr. J.N. after his review of the patient activity CURES report.

32. On or about January 28, 2021, Investigator C.T. sent Respondent medical releases signed by four of Respondent's patients (T.A., R.B., G.B.[2] and L.C.) with a request to produce certified copies of the patients' medical records.

33. On or about February 17, 2021, Respondent faxed Investigator C.T. a rambling four page single-spaced letter in response to the request for records, and the accompanying medical releases, setting forth various reasons why he would not be producing the requested medical records. Among other things, Respondent claimed, "[u]nfortunately, upon my final review, all of the signatures that you provided to me are legally invalid. So, I can not (sic) legally mail you any of the records using the signatures that you submitted."

34. On or about February 18, 2021, Investigator C.T. contacted one of Respondent's patients, previously identified as part of Dr. J.N.'s review of CURES, who was sent a Notice of Consumer letter with a medical release that had not been returned. The "patient" generally informed Investigator C.T., among other things, that he currently lived with Respondent, he was in a bad accident, and Respondent offered him a place to stay to avoid being homeless. The

[2] Respondent produced certified medical records for G.B. which were received by Investigator C.T. on March 19, 2021.

patient stated Respondent prescribed him tramadol and codeine for approximately two years that he had not used. Instead, the patient stated he provided Respondent with his prescriptions and continued to do so because he did not want to lose his access to healthcare and a place to live. The patient described Respondent as a "drug addict" who was dependent on prescription drugs. Lastly, Respondent told the patient he should sign any medical release request "sloppy," so Respondent could contest the legibility and/or validity of his signature.

35. On or about February 24, 2021, Investigator C.T. had a telephone call with Respondent in which he refused, among other things, to provide certified medical records for patients T.A., R.B., and L.C. Respondent also sent a three page letter to the "Supervisor of [Investigator C.T.]" indicating that he would not be producing the patient records because in his opinion the "signatures [on the patient releases] were invalid" and there were other "legal faults with the forms that your Department is currently using."

36. On or about February 25, 2021, Investigator C.T. received updated CURES reports for Respondent as a prescriber and as a patient; and also received a CURES report for the "patient" who stated he was living with Respondent. The CURES report for the prescriptions received by Respondent indicated, among other things, that Respondent was routinely being prescribed tramadol HCL 50 mg (8 per day). The CURES report for the patient indicated the same address as Respondent and listed the various controlled substances being prescribed including, but not limited to, testosterone cypionate; alprazolam (Xanax) 2 mg (4 per day); Tylenol (acetaminophen with codeine phosphate) 300/60 mg (8 per day); diphenoxylate HCL-atropine sulfate (Lomotil) (typically indicated for the management of diarrhea); butalbital-acetaminophen-caffeine (Fioricet) 325/50/40 mg (7 per day); tramadol HCL 50 mg (4 per day); and phendimetrazine tartrate 35 mg (7 per day).

37. On or about February 26, 2021, Respondent faxed a three page letter to the "Supervisor of [Investigator C.T.]" indicating that he would not be producing the patient records because in his opinion the "signatures [on the patient releases] were invalid" and there were other "legal faults with the forms that your Department is currently using."

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38. On or about April 2, 2021, Investigator C.T. sent Respondent a final notice letter pertaining to his request for the certified medical records for patients T.A., R.B., and L.C., who had provided him with signed medical releases which authorized the release of their medical records.

39. On or about April 15, 2021, Investigator C.T. visited Respondent at his residence along with another investigator. Respondent was asked, among other things, if he would submit to a voluntary urine test, which he refused. Respondent stated he was taking tramadol for fibromyalgia and refused to answer any further questions pertaining to his medications. Respondent also refused, once again, to produce medical records pursuant to the patient releases provided to him and stated the patient signatures for patients T.A., R.B., and L.C., were "fraudulent" and needed to be notarized in order for him to consider them valid.

40. On or about April 16, 2021, Investigator C.T. received three faxed letters from Respondent. Two of the letters were duplicates. In general, Respondent reiterated, among other things, that he would not produce the requested medical records for patients T.A., R.B., and L.C

41. On or about June 3, 2021, the Medical Board issued an Order compelling Respondent to submit to mental and physical examinations pursuant to Business and Professions Code section 820 to determine whether he had a physical or mental condition which precluded him from practicing medicine safely, which was personally served on Respondent on June 17, 2021.

42. On or about June 28, 2021, Dr. M.N., a board certified psychiatrist, was retained to conduct a mental evaluation of Respondent pursuant to Business and Profession Code section 820 for the purpose of determining whether Respondent was safe to practice medicine.

43. On or about July 7, 2021, Dr. M.N. conducted a mental evaluation of Respondent which included, but was not limited to, a review of the investigative materials provided to him, an interview with Respondent, and psychological testing. As part of the evaluation, Respondent refused to provide Dr. M.N. with a full and complete set of his medical records. After completing the mental evaluation, Dr. M.N. prepared a mental evaluation report which set forth the relevant information and data, his findings, and his summary and clinical impressions as to whether Respondent has a mental condition which renders him unsafe to practice medicine.

44. Following the mental evaluation, Dr. M.N. concluded that Respondent was not a reliable historian; that Respondent has a mental condition, i.e., opioid use disorder and mood disorder, not otherwise specified, which renders him unsafe to practice medicine; that Respondent's continued practice of medicine poses a danger to the public health, safety and welfare; and that Respondent requires treatment and subsequent oversight in order for him to practice medicine safely. Dr. M.N.'s concerns regarding Respondent, which render him unable to practice medicine safely include, but are not limited to, his lack of impulse control, insight, and judgment; and the indications of his misuse and diversion of medications and/or controlled substances.

45. Respondent has sent communications to Investigators S.P., C.T., and others, that are, among other things, rambling, histrionic, and vitriolic, which raise concerns over Respondent's mental state and/or abuse of controlled substances.

SECOND CAUSE FOR DISCIPLINE

(Conviction of an Offense Substantially Related to the Qualifications, Functions, or Duties of a Physician or Surgeon)

46. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2236 of the Code, in that he has been convicted of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon, as more particularly alleged in paragraphs 22 through 45, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Obtaining a Controlled Substance by Subterfuge)

47. Respondent is further subject to disciplinary action under sections 2227, and 2234, of the Code, as defined by section Health and Safety Code sections 11157 and 11173, subdivision (a), in that he obtained or attempted to obtain controlled substances by fraud, deceit, misrepresentation and/or subterfuge, as more particularly alleged in paragraphs 22 through 45, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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FOURTH CAUSE FOR DISCIPLINE

(Violation of Drug Statutes or Regulations)

48. Respondent is further subject to disciplinary action under sections 2227, and 2234, as defined by section 2238 of the Code, in that he violated various statutes regulating dangerous drugs and controlled substances, including, but not limited to, sections 2239 and 2280 of the Code; and Health and Safety Code sections 11157 [false prescriptions]; and 11173, subdivision (a) [obtaining a controlled substance by subterfuge]; as more particularly alleged in paragraphs 22 through 45, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty or Corruption)

49. Respondent is further subject to disciplinary action under sections 2227, and 2234, as defined by section 2234, subdivision (e), of the Code, in that he has committed an act or acts of dishonesty or corruption, as more particularly alleged in paragraphs 22 through 45, above, which are hereby incorporated by reference, and realleged as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

50. Respondent is further subject to disciplinary action under sections 2227 and 2234, of the Code, in that he engaged in conduct which breached a rule or ethical code of the medical profession or engaged in conduct which was unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 22 through 49, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

SECTION 822 CAUSE FOR ACTION

(Mental Illness and/or Physical Illness Affecting Competency)

51. Respondent is subject to action under section 822 of the Code in that his ability to practice medicine safely is impaired due to a mental illness and/or physical illness affecting

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competency, as more particularly alleged in paragraphs 22 through 45, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

CIVIL PENALTY

(Failure to Provide Medical Records)

52. Respondent is subject to civil penalties, under section 2225.5, subdivision (a), of the Code, in that he failed to provide medical records for three patients when provided with valid medical releases, as more particularly alleged in paragraphs 30 through 33, 35, and 37 through 40, above, which are hereby incorporated by reference, and realleged as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 45575, issued to Respondent Thomas L. Blair, M.D.;

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

3. Ordering Respondent Thomas L. Blair, M.D., if placed on probation, to pay the Board the costs of probation monitoring;

4. Ordering Respondent Thomas L. Blair, M.D., to pay civil penalties in the amount of thirty thousand dollars ($30,000.00);

5. Ordering Respondent Thomas L. Blair, M.D., to pay the Medical Board of California the reasonable costs of the investigation and/or enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: APR 05 2022

Reji Varghese
Deputy Director

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

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