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

In the Matter of the Accusation Against:	)	
Robert Alva Rose, M.D.	)	Case No. 800-2016-022276
Physician's and Surgeon's Certificate No. C 33380	)	
Respondent	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on April 19, 2018.

IT IS SO ORDERED: March 20, 2018.

MEDICAL BOARD OF CALIFORNIA

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

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
MICHAEL J. YUN
Deputy Attorney General
State Bar No. 292587
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9453
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: **ROBERT ALVA ROSE, M.D.** 3672 Claremont Street, Irvine, CA 92614 **Physician's and Surgeon's Certificate No. C 33380,** Respondent.	Case No. 800-2016-022276 OAH No. 2017090586 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

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

2. Respondent Robert Alva Rose, M.D. (respondent) is represented in this proceeding by attorney Gary Wittenberg, Esq., whose address is: 1901 Avenue of the Stars, Suite 1750, Los Angeles, CA 90067.

3. On or about June 2, 1971, the Board issued Physician's and Surgeon's Certificate No. C 33380 to Robert Alva Rose, M.D. (respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-022276, and will expire on April 30, 2019, unless renewed.

JURISDICTION

4. Accusation No. 800-2016-022276 was filed before the Board, and is currently pending against respondent. A true and correct copy of Accusation No. 800-2016-022276 and all other statutorily required documents were properly served on respondent on August 15, 2017. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2016-022276 is attached as Exhibit 1 and incorporated herein by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-022276. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws, having been fully advised of same by his attorney of record, Gary Wittenberg, Esq.

7. Respondent, having the benefit of counsel, hereby voluntarily, knowingly, and intelligently waives and gives up each and every right set forth and/or referenced above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 8002016022276, agrees that his Physician's and Surgeon's Certificate No. C 33380 is subject

to discipline, and agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

9. Respondent agrees that if an accusation and/or petition to revoke probation is filed against him before the Medical Board of California, or if he ever petitions for early termination or modification of probation, in any proceeding before the Medical Board of California, all of the charges and allegations contained in Accusation No. 800-2016-022276 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving respondent in the State of California.

CONTINGENCY

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

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

prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

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

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

14. In consideration of the foregoing admissions and stipulations, the parties agree the Board may, without further notice to or opportunity to be heard by respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 33380 issued to respondent Robert Alva Rose, M.D. (respondent) is revoked. However, the revocation is stayed and respondent is placed on probation for eight (8) years from the effective date of this Decision, on the following terms and conditions:

1. **ETHICS COURSE** Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

///

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

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

2. **PROFESSIONAL BOUNDARIES PROGRAM** Within 60 calendar days from the effective date of this Decision, respondent shall enroll in a professional boundaries program approved in advance by the Board or its designee. Respondent, at the program's discretion, shall undergo and complete the program's assessment of respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The program shall evaluate respondent at the end of the training and the program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire program not later than six (6) months after respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on respondent's performance in and evaluations from the assessment, education, and training, the program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that respondent can practice medicine safely. Respondent shall comply with program recommendations. At the completion of the program, respondent shall submit to a final evaluation. The program shall provide the results of the evaluation to the Board or its designee. The professional boundaries program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

The program has the authority to determine whether or not respondent successfully completed the program.

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

3. **PSYCHOTHERAPY** Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist with any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is mentally fit to resume the practice of medicine without restrictions.

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

///

4. **MONITORING – PRACTICE** Within 30 calendar days of the effective date of this Decision or 30 calendar days prior to respondent's commencement/resuming/engaging in providing direct patient care, whichever may occur later, respondent shall submit to the Board or its designee for prior approval as a practice monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

A practice monitor will be required only if respondent commences/resumes/engages in providing direct patient care.

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

Within 60 calendar days of the effective date of this Decision or starting on the day of respondent's commencement/resuming/engaging in providing direct patient care, whichever may occur later, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision or 15 calendar days prior to respondent's

commencement/resuming/engaging in providing direct patient care, whichever may occur later, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

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

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

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

5. **PROHIBITED PRACTICE – CHILD/MINOR PATIENTS** During probation, respondent is prohibited from treating, examining, evaluating,[1] or seeing minor patients under the age of eighteen (18). After the effective date of this Decision, all patients being treated by

[1] This term includes, but is not limited to, evaluating minor claimants in worker's compensation cases.

respondent shall be notified that respondent is prohibited from treating, examining, evaluating, or seeing minor patients under the age of eighteen (18). Any new patients must be provided this notification at the time of their initial appointment.

Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

6. **PROHIBITED PRACTICE – FEMALE PATIENTS** During probation, respondent is prohibited from treating, examining, evaluating,[2] or seeing female patients. After the effective date of this Decision, all patients being treated by respondent shall be notified that respondent is prohibited from treating, examining, evaluating, or seeing female patients. Any new patients must be provided this notification at the time of their initial appointment.

Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

7. **NOTIFICATION** Within seven (7) days of the effective date of this Decision, respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including

[2] This term includes, but is not limited to, evaluating female claimants in worker's compensation cases.

all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

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

9. **OBEY ALL LAWS** Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

10. **QUARTERLY DECLARATIONS** Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

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

11. **GENERAL PROBATION REQUIREMENTS**

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

///

///

///

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

12. **INTERVIEW WITH THE BOARD OR ITS DESIGNEE** Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

13. **NON-PRACTICE WHILE ON PROBATION** Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If respondent resides in California and is considered to be in non-practice, respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the

medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete the Federation of State Medical Boards' Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

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

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

15. **VIOLATION OF PROBATION** Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

16. **LICENSE SURRENDER** Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his or her license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in

determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Gary Wittenberg, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. C 33380. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 1-25-2018 Robert A. Rose M.D

ROBERT ALVA ROSE, M.D.
Respondent

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

DATED: 1/25/18

GARY WITTENBERG, ESQ.
Attorney for Respondent

///

ENDORSEMENT

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

Dated: 1/26/2018

Respectfully submitted,

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

MICHAEL J. YUN
Deputy Attorney General
Attorneys for Complainant

SD2017705416
81927339.doc

Exhibit 1

Accusation No. 800-2016-022276

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Aug 15 2017
BY D. Richards ANALYST

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
MICHAEL J. YUN
Deputy Attorney General
State Bar No. 292587
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9453
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: **ROBERT ALVA ROSE, M.D.** 2700 N. Main Street, Suite 533 Santa Ana, CA 92705 **Physician's and Surgeon's Certificate No. C 33380,** Respondent.	Case No. 800-2016-022276 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California.

2. On or about June 2, 1971, the Medical Board (Board) issued Physician's and Surgeon's Certificate No. C 33380 to Robert Alva Rose, M.D. (respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2019, unless renewed.

///

PRIOR ACTION

3. In a prior action entitled *In the Matter of the Accusation Against Robert Alva Rose, M.D.*, Case No. 02-96-61175, the Board approved a Pre-Hearing Stipulated Agreement in settlement of the Accusation, which became effective on or about November 18, 1999. Under the Stipulated Agreement, respondent agreed to a number of conditions including, undergoing treatment by a psychiatrist to monitor respondent's medical condition, Paraphilia, and having a female attendant present in the examination room during all his examinations of female patients.

JURISDICTION

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

5. Section 2004 of the Code states, in pertinent part:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"..."

6. 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."

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

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

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

"...

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

"..."

8. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and

which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

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

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

"...

"(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."

10. Section 802.1 of the Code state, in pertinent part:

"(a)(1) A physician and surgeon [...] shall report either of the following to the entity that issued his or her license:

"...

"(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

"(2) The report required by this subdivision shall be made in writing within 30 days of the date of the brining of the indictment or information or of the conviction.

"(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars ($5,000)."

11. California Code of Regulations, title 16, section 1360, states:

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person

holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

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."

SECTION 822 CAUSE FOR ACTION

(Respondent's Ability to Practice Medicine is Impaired Because He is Mentally Ill Affecting Competency)

13. Respondent's Physician's and Surgeon's Certificate No. C 33380 is subject to action under section 822, of the Code, in that his ability to practice medicine is impaired because he

///

///

suffers from a mental and/or physical illness affecting competency, as more particularly alleged herein:

September 15, 2015 Lewd Conduct in Public Conviction & PC 148 Conviction

14. On or about November 15, 2013, at about 12:41 P.M., Sergeant P.D. (Sgt. P.D.) of Cal State Fullerton Police Department (CSFPD), responded to the Cal State University Fullerton (CSUF) library regarding a man who entered the women's restroom. The man matched the description of a subject whom Detective A.H. and Lieutenant W. (Lt. W.) were looking for in connection with a reported public masturbation by someone who was watching female students. The subject was described as an older white male with light hair, blue jeans and a blue checkered shirt.

15. During their search of the library, dispatch informed Detective A.H. and Lt. W. that the subject had reportedly just exited the building. Once they were outside the building, Lt. W. saw the subject, later determined to be respondent, walking initially and then running away. When Detective A.H. saw respondent running away from them towards the parking lot, she ran towards him and yelled, "Stop, police!" Respondent ignored her commands and continued to run. She again yelled, "Stop, police!" He kept running and went around the corner of another building.

16. At that time, Sgt. P.D. was driving his police car and saw Detective A.H. chasing respondent. When respondent saw Sgt. P.D.'s police car, he stopped running and raised his hands in the air. After a quick pat down search for weapons, Sgt. P.D. asked respondent to have a seat.

17. Contemporaneously, Officer K.M. and Officer T.P. arrived at the CSUF library. They spoke with two witnesses who stated they saw respondent touching the groin area of his pants while looking at them. W-1 provided the two police officers with the following information, in summary:

> "I was in the library sitting at a desk with my girlfriend when I saw an older man (respondent) wearing a blue and white plaid shirt and blue jeans touching himself in a sexual manner. I was shocked to see him do that. He was looking at the students and touching himself in a sexually

provocative manner. He was moving his hand near his genitalia. I turned to my girlfriend and told her what was going on. I also turned to W-2 who was a few seats down. Respondent was touching himself for three to five (3-5) minutes and it was "creepy." He was in the book aisle, among the book shelves, but at the very end and within five (5) feet of the nearest study desk. Respondent was in view of at least five (5) students. I was "definitely scarred," did not know what to do, and at the time asked myself, "am I really seeing this?" While masturbating, respondent saw me, made eye contact, and kept going."

18. Corporal L. met with W-2, a female witness who provided the following information, in summary:

"At around 11:30 A.M., I was sitting at a table near three (3) other college students in the CSUF library. I noticed a male white, 50-60 years old, wearing a blue shirt and blue jeans walking up and down an aisle close to where I was sitting. As the man was walking up and down the aisle, he was staring at the students and had one hand under his jeans in the area of where his penis would be. He was making a movement with his hand as if he was masturbating. He did this for five (5) minutes. I glanced down momentarily at my book and looked back up, and he was gone. I then walked over to library security to report what I had seen."

19. At the time, Corporal L. and W-2 were about 25 yards away from where Sgt. P.D., Detective A.H., and Officer T.P. had detained respondent. W-2 saw respondent and identified him as the suspect. W-2 stated she was "creeped out and disgusted" by respondent's actions.

20. After Sgt. P.D. explained to respondent that he was being lawfully detained for questioning in an investigation of a reported crime, Sgt. P.D. asked for respondent's name. Respondent repeatedly refused to identify himself and said he wanted to speak with a lawyer. Respondent was arrested for a violation of Penal Code section 148, subdivision (a)(l) [Delaying or Obstructing an Officer]. Respondent was eventually identified by his California Driver's License.

21. At the police station, Sgt. P.D. told respondent that two (2) witnesses saw him with his hand down his pants masturbating while watching female students in the library. Respondent acted remorseful. Respondent stated he thought he was being careful and discreet. He said that it was hard for him because of "all the pretty girls around." Respondent stated he had been seeing a psychiatrist for many years because of this issue and that he recently stopped seeing the psychiatrist because respondent thought he had it under control. Respondent stated that he would have to start going back to the psychiatrist three (3) times a week in order to stop this behavior.

22. Respondent was served with a Penal Code section 626.6 advisement [Direction to Leave University Campus for Committing an Act Likely to Interfere with Peaceful Activities] and he signed it.

23. On or about March 5, 2014, in the Superior Court of California, County of Orange, in the case entitled *The People of the State of California v. Robert Alva Rose*, Superior Court Case No. 14NM02811, the Orange County District Attorney's Office charged respondent in Count 1, with a violation of Penal Code section 647, subdivision (a) [Lewd Conduct in Public], and in Count 2, with a violation of Penal Code section 148, subdivision (a)(1) [Delaying or Obstructing an Officer].

24. On or about September 15, 2015, in the Superior Court of California, County of Orange, in the case entitled *The People of the State of California v. Robert Alva Rose*, Superior Court Case No. 14NM02811, respondent pled Guilty and was convicted of, in Count 1, a violation of Penal Code section 647, subdivision (a) [Lewd Conduct in Public], and in Count 2, a violation of Penal Code section 148, subdivision (a)(1) [Delaying or Obstructing an Officer]. Respondent hand wrote in the Misdemeanor Guilty Plea Form the following: "On or about 11/15/13 in Orange County, I committed a lewd act in public. I also willfully delayed a police officer." Respondent dated and signed below his handwritten admission.

25. On or about September 15, 2015, in the same criminal matter, Superior Court Case No. 14NM02811, respondent was sentenced to three (3) years formal probation, sex offender terms and conditions, search and seizure term, and fees and fines in the total amount of $370. Respondent was ordered "not [to] own, use, or possess any form of sexually explicit movies,

videos, material, or devices unless recommended by the therapist and approved by the probation officer." He was also ordered "not [to] own, use or possess any type of photographic equipment, without written permission of the Probation Officer."

Post-Conviction History

26. On or about November 25, 2015, in the Superior Court of California, County of Orange, respondent was arraigned on a probation violation.

27. Initially set for January 12, 2016, the probation violation formal hearing was continued by defense to January 28, 2016 and then to March 16, 2016. The second day of the hearing was scheduled for April 18, 2016, and then continued by the District Attorney's Office to April 20, 2016.

28. On or about April 27, 2016, the Orange County District Attorney's Office (OCDA) informed Health Quality Investigation Unit (HQIU) of California Department of Consumer Affairs that respondent was convicted on September 15, 2015, of the following offenses: (1) Penal Code section 647, subdivision (a) [Lewd Conduct in Public] and (2) Penal Code section 148, subdivision (a)(1) [Delaying or Obstructing an Officer]. The OCDA expressed concern that respondent may have failed to report his convictions to the Board within 30 days as required by law.

29. The rest of respondent's probation violation hearing was continued by defense to May 6, 2016 and then to May 26, 2016.

30. On May 26, 2016, the Executive Director of the Medical Board of California through California Attorney General's Office filed a Penal Code section 23 ("PC 23") motion against respondent. The PC 23 hearing was scheduled to take place on June 27, 2016. Due to unforeseen unavailability of the Superior Court Judge, the PC 23 hearing was inevitably continued to July 7, 2016.

31. On July 7, 2016, in lieu of a complete prohibition from practicing medicine as requested by the PC 23 motion, respondent, through his counsel Roger Diamond, Esq., stipulated to additional terms of probation, including conditions (1) that respondent "not be in the presence of children without the permission of Probation Officer," (2) that respondent's "medical practice

[be] restricted to evaluating claimants in worker's compensation cases, and not to treat any patients," and (3) that respondent "not evaluate female patients." As a result of the defense stipulation, the PC 23 motion requesting complete prohibition was denied.

32. On July 7, 2016, during the PC 23 motion hearing, respondent, through his counsel, provided a copy of a letter from his psychiatrist Mark Markowitz, M.D., dated June 20, 2016, to complainant's counsel and submitted an identical copy to the Superior Court to be entered into evidence. In the letter drafted and signed by respondent's own psychiatrist, Dr. Markowitz stated respondent has been his "patient for a period of thirteen years primarily for significant depression." In the same letter, Dr. Markowitz also stated the following: "[Dr. Rose's] depression is, of course, my major concern but over and above that is a problem with thoughts of exhibitionism."

820 Mental & Physical Evaluations

33. On or about March 20, 2017, respondent underwent a physical evaluation by Ronald Saltzman, M.D., who opined that there is no evidence of a physical ailment resulting in limitation in respondent's ability to practice medicine in the form of reviewing Worker's Compensation cases.

34. On or about March 24, 2017, respondent underwent a mental evaluation from Nathan Lavid, M.D. (Dr. Lavid), who opined the following, in summary:

> "Dr. Rose is safe to practice **IF** he continues to visit with Dr. Markowitz on a weekly basis for individual psychotherapy, continues to attend Dr. Fineman's sexual offenders group on a weekly basis, **and** continues to see only adult male patients in his practice. If at any point, Dr. Rose fails to continue satisfying any of the above conditions, Dr. Rose is **no longer able to safely practice medicine**."

35. Dr. Lavid also opined that for added safety to the public, "Dr. Rose should curtail all recreational use of alcohol [and] should have all of his psychotropic medication administered by his psychiatrist Dr. Markowitz for more efficient monitoring."

///

FIRST CAUSE FOR DISCIPLINE

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

36. Respondent has subjected his Physician's and Surgeon's Certificate No. C 33380 to disciplinary action under sections 2227 and 2234, as defined by section 2236, subdivision (a), of the Code, in that he has been convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon, as more particularly alleged in paragraphs 14 through 25, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Failure to Report His Conviction to the Board within 30 Days of Conviction)

37. Respondent has further subjected his Physician's and Surgeon's Certificate No. C 33380 to disciplinary action under sections 2227 and 2234, as defined by 802.1, subdivisions (a)(1) and (a)(2), and 2234, subdivision (a), of the Code, in that he has failed to report his two (2) misdemeanor convictions to the Board within 30 days of his conviction, as more particularly alleged in paragraphs 14 through 25 and paragraph 28, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

38. Respondent has further subjected his Physician's and Surgeon's Certificate No. C 33380 to disciplinary action under sections 2227 and 2234, as defined by section 2234, of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 14 through 25 and paragraph 28, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

///

///

FOURTH CAUSE FOR DISCIPLINE

(Violation of the Medical Practice Act)

39. Respondent has further subjected his Physician's and Surgeon's Certificate No. C 33380 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), of the Code, and the California Code of Regulations, title 16, section 1360, in that he has committed a violation or violations of a provision or provisions of the Medical Practice Act, as more particularly alleged in paragraphs 14 through 25 and paragraph 28, 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. Taking action as authorized by section 822 of the Code as the Medical Board of California, in its discretion, deems necessary and proper;

2. Revoking or suspending Physician's and Surgeon's Certificate No. C 33380, issued to respondent Robert Alva Rose, M.D.;

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

4. Ordering respondent Robert Alva Rose, M.D. to pay the Medical Board of California the costs of probation monitoring, if placed on probation; and

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

DATED: August 15, 2017

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

SD2017705416
81776276.doc