

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

**In the Matter of the Accusation** )  
**Against:** )  
 )  
 )  
**MICHAEL WARREN CLUCK, M.D.** )  
 )  
**Physician's and Surgeon's** )  
**Certificate No. A76201** )  
 )  
**Respondent** )  
\_\_\_\_\_ )

**Case No. 800-2016-020634**

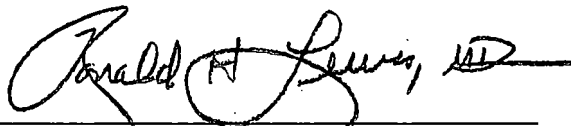
**DECISION**

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

**This Decision shall become effective at 5:00 p.m. on July 5, 2019.**

**IT IS SO ORDERED: June 5, 2019.**

**MEDICAL BOARD OF CALIFORNIA**



\_\_\_\_\_  
**Ronald H. Lewis, M.D., Chair  
Panel A**

1 XAVIER BECERRA  
Attorney General of California  
2 JANE ZACK SIMON  
Supervising Deputy Attorney General  
3 EMILY L. BRINKMAN  
Deputy Attorney General  
4 State Bar No. 219400  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 510-3374  
6 Facsimile: (415) 703-5843  
E-mail: Emily.Brinkman@doj.ca.gov  
7 *Attorneys for Complainant*

8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12  
13 In the Matter of the Accusation Against:

Case No. 800-2016-020634

14 **MICHAEL WARREN CLUCK, M.D.**  
2516 Samaritan Dr., Suite B  
15 San Jose, CA 95124-4108

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

16 **Physician's and Surgeon's Certificate**  
17 **No. A 76201**

Respondent.

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

22 PARTIES

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
24 of California (Board). She brought this action solely in her official capacity and is represented in  
25 this matter by Xavier Becerra, Attorney General of the State of California, by Emily L. Brinkman,  
26 Deputy Attorney General.

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1           2.     Respondent Michael Warren Cluck, M.D. (Respondent) is represented in this  
2 proceeding by attorney Tom Still, whose address is: Hinshaw, Marsh, Still & Hinshaw, LLP,  
3 12901 Saratoga Ave., Saratoga, CA 95070.

4           3.     On or about August 15, 2001, the Board issued Physician's and Surgeon's Certificate  
5 No. A 76201 to Michael Warren Cluck, M.D. (Respondent). The Physician's and Surgeon's  
6 Certificate was in full force and effect at all times relevant to the charges brought in Accusation  
7 No. 800-2016-020634, and will expire on April 30, 2019, unless renewed.

8   JURISDICTION

9           4.     Accusation No. 800-2016-020634 was filed before the Board, and is currently  
10 pending against Respondent. The Accusation and all other statutorily required documents were  
11 properly served on Respondent on December 12, 2018. Respondent timely filed his Notice of  
12 Defense contesting the Accusation.

13           5.     A copy of Accusation No. 800-2016-020634 is attached as exhibit A and incorporated  
14 herein by reference.

15   ADVISEMENT AND WAIVERS

16           6.     Respondent has carefully read, fully discussed with counsel, and understands the  
17 charges and allegations in Accusation No. 800-2016-020634. Respondent has also carefully read,  
18 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
19 Disciplinary Order.

20           7.     Respondent is fully aware of his legal rights in this matter, including the right to a  
21 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine  
22 the witnesses against him; the right to present evidence and to testify on his own behalf; the right  
23 to the issuance of subpoenas to compel the attendance of witnesses and the production of  
24 documents; the right to reconsideration and court review of an adverse decision; and all other  
25 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

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1 CULPABILITY

2 9. Respondent does not contest that, at an administrative hearing, complainant could  
3 establish a prima facie case with respect to the charges and allegations contained in Accusation  
4 No. 800-2016-020634 and that he has thereby subjected his Physician's and Surgeon's Certificate  
5 No. A 76201 to disciplinary action.

6 10. Respondent agrees that if he ever petitions for early termination or modification of  
7 probation, or if an accusation and/or petition to revoke probation is filed against him before the  
8 Board, all of the charges and allegations contained in Accusation No. 800-2016-020634 shall be  
9 deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or  
10 any other licensing proceeding involving Respondent in the State of California.

11 CONTINGENCY

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

22 12. The parties understand and agree that Portable Document Format (PDF) and facsimile  
23 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
24 signatures thereto, shall have the same force and effect as the originals.

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

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 76201 issued  
3 to Respondent MICHAEL WARREN CLUCK, M.D. is revoked. However, the revocation is  
4 stayed and Respondent is placed on probation for three (3) years on the following terms and  
5 conditions.

6 1. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain  
7 completely from the personal use or possession of controlled substances as defined in the  
8 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and  
9 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not  
10 apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide  
11 illness or condition.

12 Within 15 calendar days of receiving any lawfully prescribed medications, Respondent  
13 shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone  
14 number; medication name, strength, and quantity; and issuing pharmacy name, address, and  
15 telephone number.

16 If Respondent has a confirmed positive biological fluid test for any substance (whether or  
17 not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall  
18 receive a notification from the Board or its designee to immediately cease the practice of  
19 medicine. The Respondent shall not resume the practice of medicine until the final decision on an  
20 accusation and/or a petition to revoke probation is effective. An accusation and/or petition to  
21 revoke probation shall be filed by the Board within 30 days of the notification to cease practice.  
22 If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the  
23 Board shall provide the Respondent with a hearing within 30 days of the request, unless the  
24 Respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge  
25 alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of  
26 the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed  
27 decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the  
28 case is heard by the Board, the Board shall issue its decision within 15 days of submission of the

1 case, unless good cause can be shown for the delay. Good cause includes, but is not limited to,  
2 non-adoption of the proposed decision, requests for reconsideration, remands and other  
3 interlocutory orders issued by the Board. The cessation of practice shall not apply to the  
4 reduction of the probationary time period.

5 If the Board does not file an accusation or petition to revoke probation within 30 days of the  
6 issuance of the notification to cease practice or does not provide Respondent with a hearing  
7 within 30 days of such a request, the notification of cease practice shall be dissolved.

8 2. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the  
9 use of products or beverages containing alcohol.

10 If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall  
11 receive a notification from the Board or its designee to immediately cease the practice of  
12 medicine. The Respondent shall not resume the practice of medicine until the final decision on an  
13 accusation and/or a petition to revoke probation is effective. An accusation and/or petition to  
14 revoke probation shall be filed by the Board within 30 days of the notification to cease practice.  
15 If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the  
16 Board shall provide the Respondent with a hearing within 30 days of the request, unless the  
17 Respondent stipulates to a later hearing. The case is heard by an Administrative Law Judge  
18 alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of  
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23 non-adoption of the proposed decision, requests for reconsideration, remands and other  
24 interlocutory orders issued by the Board. The cessation of practice shall not apply to the  
25 reduction of the probationary time period.

26 If the Board does not file an accusation or petition to revoke probation within 30 days of the  
27 issuance of the notification to cease practice or does not provide Respondent with a hearing  
28 within 30 days of such a request, the notification of cease practice shall be dissolved.

1           3.    BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to  
2 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.  
3 “Biological fluid testing” may include, but is not limited to, urine, blood, breathalyzer, hair  
4 follicle testing, or similar drug screening approved by the Board or its designee. Prior to  
5 practicing medicine, Respondent shall contract with a laboratory or service approved in advance  
6 by the Board or its designee that will conduct random, unannounced, observed, biological fluid  
7 testing. The contract shall require results of the tests to be transmitted by the laboratory or  
8 service directly to the Board or its designee within four hours of the results becoming available.  
9 Respondent shall maintain this laboratory or service contract during the period of probation.

10           A certified copy of any laboratory test result may be received in evidence in any  
11 proceedings between the Board and Respondent.

12           If Respondent fails to cooperate in a random biological fluid testing program within the  
13 specified time frame, Respondent shall receive a notification from the Board or its designee to  
14 immediately cease the practice of medicine. The Respondent shall not resume the practice of  
15 medicine until the final decision on an accusation and/or a petition to revoke probation is  
16 effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30  
17 days of the notification to cease practice. If the Respondent requests a hearing on the accusation  
18 and/or petition to revoke probation, the Board shall provide the Respondent with a hearing within  
19 30 days of the request, unless the Respondent stipulates to a later hearing. If the case is heard by  
20 an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board  
21 within 15 days of submission of the matter. Within 15 days of receipt by the Board of the  
22 Administrative Law Judge’s proposed decision, the Board shall issue its Decision, unless good  
23 cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its  
24 decision within 15 days of submission of the case, unless good cause can be shown for the delay.  
25 Good cause includes, but is not limited to, non-adoption of the proposed decision, requests for  
26 reconsideration, remands and other interlocutory orders issued by the Board. The cessation of  
27 practice shall not apply to the reduction of the probationary time period.

28           If the Board does not file an accusation or petition to revoke probation within 15 days of the

1 issuance of the notification to cease practice or does not provide Respondent with a hearing  
2 within 30 days of such a request, the notification of cease practice shall be dissolved.

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

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

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

21 5. PSYCHIATRIC EVALUATION. On whatever periodic basis may be required by the  
22 Board or its designee, Respondent shall undergo and complete a psychiatric evaluation (and  
23 psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist,  
24 who shall consider any information provided by the Board or designee and any other information  
25 the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its  
26 designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not  
27 be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all  
28 psychiatric evaluations and psychological testing.



1 Respondent shall comply with all restrictions or conditions recommended by the evaluating  
2 psychiatrist within 15 calendar days after being notified by the Board or its designee.

3 6. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this  
4 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice  
5 monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose  
6 licenses are valid and in good standing, and who are preferably American Board of Medical  
7 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal  
8 relationship with Respondent, or other relationship that could reasonably be expected to  
9 compromise the ability of the monitor to render fair and unbiased reports to the Board, including  
10 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree  
11 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

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

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

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

28 The monitor(s) shall submit a quarterly written report to the Board or its designee which

1 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
2 are within the standards of practice of medicine, and whether Respondent is practicing medicine  
3 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure  
4 that the monitor submits the quarterly written reports to the Board or its designee within 10  
5 calendar days after the end of the preceding quarter.

6 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of  
7 such resignation or unavailability, submit to the Board or its designee, for prior approval, the  
8 name and qualifications of a replacement monitor who will be assuming that responsibility within  
9 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60  
10 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a  
11 notification from the Board or its designee to cease the practice of medicine within three (3)  
12 calendar days after being so notified. Respondent shall cease the practice of medicine until a  
13 replacement monitor is approved and assumes monitoring responsibility.

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

19 7. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the  
20 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the  
21 Chief Executive Officer at every hospital where privileges or membership are extended to  
22 Respondent, at any other facility where Respondent engages in the practice of medicine,  
23 including all physician and locum tenens registries or other similar agencies, and to the Chief  
24 Executive Officer at every insurance carrier which extends malpractice insurance coverage to  
25 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15  
26 calendar days.

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

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

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

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

9           10.   GENERAL PROBATION REQUIREMENTS.

10          Compliance with Probation Unit

11          Respondent shall comply with the Board's probation unit.

12          Address Changes

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

18          Place of Practice

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

22          License Renewal

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

25          Travel or Residence Outside California

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

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

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

7 12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
8 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
9 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
10 defined as any period of time Respondent is not practicing medicine as defined in Business and  
11 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct  
12 patient care, clinical activity or teaching, or other activity as approved by the Board. If  
13 Respondent resides in California and is considered to be in non-practice, Respondent shall  
14 comply with all terms and conditions of probation. All time spent in an intensive training  
15 program which has been approved by the Board or its designee shall not be considered non-  
16 practice and does not relieve Respondent from complying with all the terms and conditions of  
17 probation. Practicing medicine in another state of the United States or Federal jurisdiction while  
18 on probation with the medical licensing authority of that state or jurisdiction shall not be  
19 considered non-practice. A Board-ordered suspension of practice shall not be considered as a  
20 period of non-practice.

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

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

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

28 Periods of non-practice for a Respondent residing outside of California will relieve

1 Respondent of the responsibility to comply with the probationary terms and conditions with the  
2 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
3 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or  
4 Controlled Substances; and Biological Fluid Testing..

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

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

16 15. LICENSE SURRENDER. Following the effective date of this Decision, if  
17 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
18 the terms and conditions of probation, Respondent may request to surrender his or her license.  
19 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
20 determining whether or not to grant the request, or to take any other action deemed appropriate  
21 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
22 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its  
23 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
24 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
25 application shall be treated as a petition for reinstatement of a revoked certificate.

26 16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated  
27 with probation monitoring each and every year of probation, as designated by the Board, which  
28 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of

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

ACCEPTANCE

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

DATED: 5/9/2019   
MICHAEL WARREN CLUCK, M.D.  
*Respondent*

I have read and fully discussed with Respondent MICHAEL WARREN CLUCK, 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: 5-9-2019   
TOM STILL  
*Attorney for Respondent*

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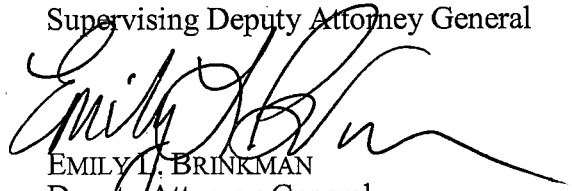
ENDORSEMENT

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

Dated: *May 10, 2019*

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
JANE ZACK SIMON  
Supervising Deputy Attorney General



EMILY L. BRINKMAN  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 800-2016-020634**



1 XAVIER BECERRA  
Attorney General of California  
2 JANE ZACK SIMON  
Supervising Deputy Attorney General  
3 EMILY L. BRINKMAN  
Deputy Attorney General  
4 State Bar No. 219400  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 510-3374  
6 Facsimile: (415) 703-5843  
E-mail: Emily.Brinkman@doj.ca.gov  
7 Attorneys for Complainant

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO Dec 12 2018  
BY [Signature] ANALYST

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**ACCUSATION**

16 **Physician's and Surgeon's Certificate**  
17 **No. A 76201,**

Respondent.

18  
19  
20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official  
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
24 Affairs (Board).

25 2. On or about August 15, 2001, the Medical Board issued Physician's and Surgeon's  
26 Certificate Number A 76201 to Michael Warren Cluck, M.D. (Respondent). The Physician's and  
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought  
28 herein and will expire on April 30, 2019, unless renewed.

JURISDICTION

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

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

8       5.    Section 2234 of the Code, states, in relevant part:

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

12       “.....

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

14       “.....”

15       6.    Section 2236 of the Code states:

16       “(a) The conviction of any offense substantially related to the qualifications, functions, or  
17 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this  
18 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive  
19 evidence only of the fact that the conviction occurred.

20       “(b) The district attorney, city attorney, or other prosecuting agency shall notify the  
21 Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor  
22 immediately upon obtaining information that the defendant is a licensee. The notice shall identify  
23 the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall  
24 also notify the clerk of the court in which the action is pending that the defendant is a licensee,  
25 and the clerk shall record prominently in the file that the defendant holds a license as a physician  
26 and surgeon.

27       “(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours  
28 after the conviction, transmit a certified copy of the record of conviction to the board. The

1 division may inquire into the circumstances surrounding the commission of a crime in order to fix  
2 the degree of discipline or to determine if the conviction is of an offense substantially related to  
3 the qualifications, functions, or duties of a physician and surgeon.

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

7 7. Section 2239 states:

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

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

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1 **CAUSE FOR DISCIPLINE**

2 **(Criminal Conviction)**

3 8. Respondent Michael Warren Cluck, M.D. is subject to disciplinary action under  
4 sections 2234, 2236, and 2239 in that he was convicted of driving under the influence with a  
5 blood alcohol concentration higher than 0.15%. The circumstances are as follows:

6 9. On or about February 20, 2016, at approximately 12:13 a.m., San Jose Police  
7 Department Officers were dispatched to a solo vehicle crash. Officers spoke with a witness at the  
8 scene who observed Respondent drive his vehicle, hit a fire hydrant without stopping, and  
9 subsequently hit a parked car and fence. Officers noted that Respondent smelled of alcohol, had  
10 red, bloodshot, and watery eyes. Respondent admitted he drank two martinis prior to driving.  
11 Respondent failed the field sobriety tests, including a preliminary alcohol screening test which  
12 resulted in a 0.16% breath alcohol concentration.

13 10. A chemical test showed a blood alcohol content of 0.210% and 0.209%.

14 11. On or about March 28, 2016, the Santa Clara District Attorney's Office charged  
15 Respondent with driving under the influence (Vehicle Code sections 23152(a) & 23152(b)),  
16 special allegations that Respondent had a blood alcohol concentration over 0.15% (Vehicle Code  
17 section 23578); and hit and run causing property damage (Vehicle Code section 20002(a)) in  
18 *People v. Michael Warren Cluck*, Santa Clara Superior Court Case No. 16006786 MWC SCIT.

19 12. On or about May 19, 2016, Respondent pled no contest to count two of the complaint,  
20 driving under the influence with a blood alcohol concentration higher than 0.08% and he admitted  
21 the special allegation of having a blood alcohol concentration higher than 0.15%. The Court  
22 placed Respondent on probation for three years with various terms and fines.

23 **PRAYER**

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

26 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 76201,  
27 issued to Michael Warren Cluck, M.D.;

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2. Revoking, suspending or denying approval of Michael Warren Cluck, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Michael Warren Cluck, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: December 12, 2018

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

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