

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

In the Matter of the First Amended
Accusation Against:

Michael Joseph Thoene, M.D.

Physician's and Surgeons
Certificate No. G 25265

Respondent.

Case No. 800-2016-023503

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 August 7, 2020.

IT IS SO ORDERED: July 10, 2020.

MEDICAL BOARD OF CALIFORNIA



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

1 XAVIER BECERRA
Attorney General of California
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10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 In the Matter of the First Amended Accusation
14 Against:

15 **MICHAEL JOSEPH THOENE, M.D.**
16 **514 South Magnolia**
El Cajon, CA 92020

17 **Physician's and Surgeon's Certificate**
No. G 25265,

18 Respondent.

Case No. 800-2016-023503

OAH No. 2019080287

19
20 **STIPULATED SETTLEMENT AND**
DISCIPLINARY ORDER

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

22 **PARTIES**

23 1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical
24 Board of California (Board). This action was brought by then Complainant Kimberly
25 Kirchmeyer solely in her official capacity.¹ Complainant is represented in this matter by Xavier
26 Becerra, Attorney General of the State of California, by Rosemary F. Luzon, Deputy Attorney
27 General.

28 ¹ Ms. Kirchmeyer became the Director of the Department of Consumer Affairs on October 28, 2019.

1 **ADVISEMENT AND WAIVERS**

2 6. Respondent has carefully read, fully discussed with counsel, and understands the
3 charges and allegations in First Amended Accusation No. 800-2016-023503. Respondent has
4 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated
5 Settlement and Disciplinary Order.

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

13 8. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently
14 waives and gives up each and every right set forth above.

15 **CULPABILITY**

16 9. Respondent does not contest that, at an administrative hearing, Complainant could
17 establish a *prima facie* case with respect to the charges and allegations contained in First
18 Amended Accusation No. 800-2016-023503, a copy of which is attached hereto as Exhibit B, and
19 that he has thereby subjected his Physician's and Surgeon's Certificate No. G 25265 to
20 disciplinary action.

21 10. Respondent agrees that if he ever petitions for early termination or modification of
22 this Stipulated Settlement and Disciplinary Order, or if an accusation and/or petition to revoke
23 probation is filed against him before the Medical Board of California, all of the charges and
24 allegations contained in First Amended Accusation No. 800-2016-023503 shall be deemed true,
25 correct and fully admitted by Respondent for purposes of that proceeding or any other licensing
26 proceeding involving Respondent in the State of California.

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1 11. Respondent agrees the Disciplinary Order below, requiring the disclosure of
2 probation pursuant to Business and Professions Code section 2228.1, serves to protect the public
3 interest.

4 12. Respondent agrees that his Physician's and Surgeon's Certificate No. G 25265 is
5 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth
6 in the Disciplinary Order below.

7 **CONTINGENCY**

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

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

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

3 **ADDITIONAL PROVISIONS**

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

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

10 17. In consideration of the foregoing admissions and stipulations, the parties agree that
11 the Board may, without further notice to or opportunity to be heard by Respondent, issue and
12 enter the following Disciplinary Order:

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 25265 issued
15 to Respondent Michael Joseph Thoene, M.D., is revoked. However, the revocation is stayed and
16 Respondent is placed on probation for five (5) years from the effective date of the Decision on the
17 following terms and conditions.

18 1. **CONTROLLED SUBSTANCES - PARTIAL RESTRICTION.** Respondent shall not
19 order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by
20 the California Uniform Controlled Substances Act, except for those drugs listed in Schedule V of
21 the Act.

22 Respondent shall not issue an oral or written recommendation or approval to a patient or a
23 patient's primary caregiver for the possession or cultivation of marijuana for the personal medical
24 purposes of the patient within the meaning of Health and Safety Code section 11362.5. If
25 Respondent forms the medical opinion, after an appropriate prior examination and medical
26 indication, that a patient's medical condition may benefit from the use of marijuana, Respondent
27 shall so inform the patient and shall refer the patient to another physician who, following an
28 appropriate prior examination and medical indication, may independently issue a medically

1 appropriate recommendation or approval for the possession or cultivation of marijuana for the
2 personal medical purposes of the patient within the meaning of Health and Safety Code section
3 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that
4 Respondent is prohibited from issuing a recommendation or approval for the possession or
5 cultivation of marijuana for the personal medical purposes of the patient and that the patient or
6 the patient's primary caregiver may not rely on Respondent's statements to legally possess or
7 cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully
8 document in the patient's chart that the patient or the patient's primary caregiver was so
9 informed. Nothing in this condition prohibits Respondent from providing the patient or the
10 patient's primary caregiver information about the possible medical benefits resulting from the use
11 of marijuana.

12 2. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO
13 RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled
14 substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any
15 recommendation or approval which enables a patient or patient's primary caregiver to possess or
16 cultivate marijuana for the personal medical purposes of the patient within the meaning of Health
17 and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and
18 address of the patient; 2) the date; 3) the character and quantity of controlled substances involved;
19 and 4) the indications and diagnosis for which the controlled substances were furnished.

20 Respondent shall keep these records in a separate file or ledger, in chronological order. All
21 records and any inventories of controlled substances shall be available for immediate inspection
22 and copying on the premises by the Board or its designee at all times during business hours and
23 shall be retained for the entire term of probation.

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

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

11 4. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the
12 use of products or beverages containing alcohol.

13 5. EDUCATION COURSE. Within 60 calendar days of the effective date of this
14 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee
15 for its prior approval educational program(s) or course(s) which shall not be less than 40 hours
16 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at
17 correcting any areas of deficient practice or knowledge and shall be Category I certified. The
18 educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to
19 the Continuing Medical Education (CME) requirements for renewal of licensure. Following the
20 completion of each course, the Board or its designee may administer an examination to test
21 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65
22 hours of CME of which 40 hours were in satisfaction of this condition.

23 6. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective
24 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in
25 advance by the Board or its designee. Respondent shall provide the approved course provider
26 with any information and documents that the approved course provider may deem pertinent.
27 Respondent shall participate in and successfully complete the classroom component of the course
28 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully

1 complete any other component of the course within one (1) year of enrollment. The prescribing
2 practices course shall be at Respondent's expense and shall be in addition to the Continuing
3 Medical Education (CME) requirements for renewal of licensure.

4 A prescribing practices course taken after the acts that gave rise to the charges in the First
5 Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of
6 the Board or its designee, be accepted towards the fulfillment of this condition if the course would
7 have been approved by the Board or its designee had the course been taken after the effective date
8 of this Decision.

9 Respondent shall submit a certification of successful completion to the Board or its
10 designee not later than 15 calendar days after successfully completing the course, or not later than
11 15 calendar days after the effective date of the Decision, whichever is later.

12 7. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective
13 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in
14 advance by the Board or its designee. Respondent shall provide the approved course provider
15 with any information and documents that the approved course provider may deem pertinent.
16 Respondent shall participate in and successfully complete the classroom component of the course
17 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
18 complete any other component of the course within one (1) year of enrollment. The medical
19 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing
20 Medical Education (CME) requirements for renewal of licensure.

21 A medical record keeping course taken after the acts that gave rise to the charges in the
22 First Amended Accusation, but prior to the effective date of the Decision may, in the sole
23 discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the
24 course would have been approved by the Board or its designee had the course been taken after the
25 effective date of this Decision.

26 Respondent shall submit a certification of successful completion to the Board or its
27 designee not later than 15 calendar days after successfully completing the course, or not later than
28 15 calendar days after the effective date of the Decision, whichever is later.

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

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

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

19 9. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days
20 of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment
21 program approved in advance by the Board or its designee. Respondent shall successfully
22 complete the program not later than six (6) months after Respondent's initial enrollment unless
23 the Board or its designee agrees in writing to an extension of that time.

24 The program shall consist of a comprehensive assessment of Respondent's physical and
25 mental health and the six general domains of clinical competence as defined by the Accreditation
26 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to
27 Respondent's current or intended area of practice. The program shall take into account data
28 obtained from the pre-assessment, self-report forms and interview, and the Decision, First

1 Amended Accusation, and any other information that the Board or its designee deems relevant.
2 The program shall require Respondent's on-site participation for a minimum of three (3) and no
3 more than five (5) days as determined by the program for the assessment and clinical education
4 evaluation. Respondent shall pay all expenses associated with the clinical competence
5 assessment program.

6 At the end of the evaluation, the program will submit a report to the Board or its designee
7 which unequivocally states whether the Respondent has demonstrated the ability to practice
8 safely and independently. Based on Respondent's performance on the clinical competence
9 assessment, the program will advise the Board or its designee of its recommendation(s) for the
10 scope and length of any additional educational or clinical training, evaluation or treatment for any
11 medical condition or psychological condition, or anything else affecting Respondent's practice of
12 medicine. Respondent shall comply with the program's recommendations.

13 Determination as to whether Respondent successfully completed the clinical competence
14 assessment program is solely within the program's jurisdiction.

15 If Respondent fails to enroll, participate in, or successfully complete the clinical
16 competence assessment program within the designated time period, Respondent shall receive a
17 notification from the Board or its designee to cease the practice of medicine within three (3)
18 calendar days after being so notified. The Respondent shall not resume the practice of medicine
19 until enrollment or participation in the outstanding portions of the clinical competence assessment
20 program have been completed. If the Respondent did not successfully complete the clinical
21 competence assessment program, the Respondent shall not resume the practice of medicine until a
22 final decision has been rendered on the accusation and/or a petition to revoke probation. The
23 cessation of practice shall not apply to the reduction of the probationary time period.

24 10. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of
25 this Decision, and on whatever periodic basis thereafter may be required by the Board or its
26 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological
27 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall
28 consider any information provided by the Board or designee and any other information the

1 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its
2 designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not
3 be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all
4 psychiatric evaluations and psychological testing.

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

7 If the psychiatric evaluation determines that Respondent is not mentally fit to practice
8 medicine safely, Respondent shall immediately cease the practice of medicine after being so
9 notified by the Board or its designee. Respondent shall not engage in the practice of medicine
10 until notified by the Board or its designee that Respondent is mentally fit to practice medicine
11 safely. The period of time that Respondent is not practicing medicine shall not be counted toward
12 completion of the term of probation.

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

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

25 Respondent shall have the treating psychotherapist submit quarterly status reports to the
26 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric
27 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of
28 probation, Respondent is found to be mentally unfit to resume the practice of medicine without

1 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
2 period of probation shall be extended until the Board determines that Respondent is mentally fit
3 to resume the practice of medicine without restrictions.

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

5 12. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the
6 effective date of this Decision, and on a periodic basis thereafter as may be required by the Board
7 or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician
8 who shall consider any information provided by the Board or designee and any other information
9 the evaluating physician deems relevant and shall furnish a medical report to the Board or its
10 designee. Respondent shall provide the evaluating physician with any information and
11 documentation that the evaluating physician may deem pertinent.

12 Following the evaluation, Respondent shall comply with all restrictions or conditions
13 recommended by the evaluating physician within 15 calendar days after being notified by the
14 Board or its designee. If Respondent is required by the Board or its designee to undergo medical
15 treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the
16 Board or its designee for prior approval the name and qualifications of a California licensed
17 treating physician of Respondent's choice. Upon approval of the treating physician, Respondent
18 shall within 15 calendar days undertake medical treatment and shall continue such treatment until
19 further notice from the Board or its designee.

20 The treating physician shall consider any information provided by the Board or its designee
21 or any other information the treating physician may deem pertinent prior to commencement of
22 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or
23 its designee indicating whether or not the Respondent is capable of practicing medicine safely.
24 Respondent shall provide the Board or its designee with any and all medical records pertaining to
25 treatment that the Board or its designee deems necessary.

26 If, prior to the completion of probation, Respondent is found to be physically incapable of
27 resuming the practice of medicine without restrictions, the Board shall retain continuing
28 jurisdiction over Respondent's license and the period of probation shall be extended until the

1 Board determines that Respondent is physically capable of resuming the practice of medicine
2 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

3 If the medical evaluation determines that Respondent is not physically fit to practice
4 medicine safely, Respondent shall immediately cease the practice of medicine after being so
5 notified by the Board or its designee. Respondent shall not engage in the practice of medicine
6 until notified by the Board or its designee that Respondent is physically fit to practice medicine
7 safely. The period of time that Respondent is not practicing medicine shall not be counted toward
8 completion of the term of probation.

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

18 The Board or its designee shall provide the approved monitor with copies of the Decision
19 and First Amended Accusation, and a proposed monitoring plan. Within 15 calendar days of
20 receipt of the Decision, First Amended Accusation, and proposed monitoring plan, the monitor
21 shall submit a signed statement that the monitor has read the Decision and First Amended
22 Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed
23 monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall
24 submit a revised monitoring plan with the signed statement for approval by the Board or its
25 designee.

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

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

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

16 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
17 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
18 name and qualifications of a replacement monitor who will be assuming that responsibility within
19 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
20 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
21 notification from the Board or its designee to cease the practice of medicine within three (3)
22 calendar days after being so notified. Respondent shall cease the practice of medicine until a
23 replacement monitor is approved and assumes monitoring responsibility.

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

1 14. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
2 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice
3 where: 1) Respondent merely shares office space with another physician but is not affiliated for
4 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
5 location.

6 If Respondent fails to establish a practice with another physician or secure employment in
7 an appropriate practice setting within 60 calendar days of the effective date of this Decision,
8 Respondent shall receive a notification from the Board or its designee to cease the practice of
9 medicine within three (3) calendar days after being so notified. The Respondent shall not resume
10 practice until an appropriate practice setting is established.

11 If, during the course of the probation, the Respondent's practice setting changes and the
12 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent
13 shall notify the Board or its designee within five (5) calendar days of the practice setting change.
14 If Respondent fails to establish a practice with another physician or secure employment in an
15 appropriate practice setting within 60 calendar days of the practice setting change, Respondent
16 shall receive a notification from the Board or its designee to cease the practice of medicine within
17 three (3) calendar days after being so notified. The Respondent shall not resume practice until an
18 appropriate practice setting is established.

19 15. PROHIBITED PRACTICE. During probation, Respondent is prohibited from
20 providing medical care and treatment to family members. After the effective date of this
21 Decision, all patients being treated by the Respondent shall be notified that the Respondent is
22 prohibited from providing medical care and treatment to family members. Any new patients must
23 be provided this notification at the time of their initial appointment.

24 Respondent shall maintain a log of all patients to whom the required oral notification was
25 made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's
26 medical record number, if available; 3) the full name of the person making the notification; 4) the
27 date the notification was made; and 5) a description of the notification given. Respondent shall
28 keep this log in a separate file or ledger, in chronological order, shall make the log available for

1 immediate inspection and copying on the premises at all times during business hours by the Board
2 or its designee, and shall retain the log for the entire term of probation.

3 16. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)
4 days of the effective date of this Decision, Respondent shall provide to the Board the names,
5 physical addresses, mailing addresses, and telephone numbers of any and all employers and
6 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's
7 worksite monitor, and Respondent's employers and supervisors to communicate regarding
8 Respondent's work status, performance, and monitoring.

9 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or
10 Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff
11 privileges.

12 17. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
13 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
14 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
15 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall
16 make daily contact with the Board or its designee to determine whether biological fluid testing is
17 required. Respondent shall be tested on the date of the notification as directed by the Board or its
18 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at
19 any time, including weekends and holidays. Except when testing on a specific date as ordered by
20 the Board or its designee, the scheduling of biological fluid testing shall be done on a random
21 basis. The cost of biological fluid testing shall be borne by the Respondent.

22 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.
23 During the second year of probation and for the duration of the probationary term, up to five (5)
24 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no
25 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing
26 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number
27 of random tests to the first-year level of frequency for any reason.

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

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

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

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

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

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

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

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

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

25 (i) It maintains testing sites located throughout California.

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

28 ///

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

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

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

10 Prior to changing testing locations for any reason, including during vacation or other travel,
11 alternative testing locations must be approved by the Board and meet the requirements above.

12 The contract shall require that the laboratory directly notify the Board or its designee of
13 non-negative results within one (1) business day and negative test results within seven (7)
14 business days of the results becoming available. Respondent shall maintain this laboratory or
15 service contract during the period of probation.

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

18 If a biological fluid test result indicates Respondent has used, consumed, ingested, or
19 administered to himself a prohibited substance, the Board shall order Respondent to cease
20 practice and instruct Respondent to leave any place of work where Respondent is practicing
21 medicine or providing medical services. The Board shall immediately notify all of Respondent's
22 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or
23 provide medical services while the cease-practice order is in effect.

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

27 After the issuance of a cease-practice order, the Board shall determine whether the positive
28 biological fluid test is in fact evidence of prohibited substance use by consulting with the

1 specimen collector and the laboratory, communicating with the licensee, his treating physician(s),
2 other health care provider, or group facilitator, as applicable.

3 For purposes of this condition, the terms “biological fluid testing” and “testing” mean the
4 acquisition and chemical analysis of a Respondent’s urine, blood, breath, or hair.

5 For purposes of this condition, the term “prohibited substance” means an illegal drug, a
6 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by
7 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been
8 instructed by the Board not to use, consume, ingest, or administer to himself.

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

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

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

27 The facilitator shall provide a signed document to the Board or its designee showing
28 Respondent’s name, the group name, the date and location of the meeting, Respondent’s

1 attendance, and Respondent's level of participation and progress. The facilitator shall report any
2 unexcused absence by Respondent from any substance abuse support group meeting to the Board,
3 or its designee, within twenty-four (24) hours of the unexcused absence.

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

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

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

20 Respondent shall pay all worksite monitoring costs.

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

25 The worksite monitor shall verbally report any suspected substance abuse to the Board and
26 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected
27 substance abuse does not occur during the Board's normal business hours, the verbal report shall
28 be made to the Board or its designee within one (1) hour of the next business day. A written

1 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
2 any other information deemed important by the worksite monitor shall be submitted to the Board
3 or its designee within 48 hours of the occurrence.

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

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

23 20. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING
24 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of
25 probation.

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

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

10 (2) Increase the frequency of biological fluid testing.

11 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or
12 other action as determined by the Board or its designee.

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

16 (1) Issue a cease-practice order;

17 (2) Order practice limitations;

18 (3) Order or increase supervision of Respondent;

19 (4) Order increased documentation;

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

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

24 (7) Take any other action as determined by the Board or its designee.

25 C. Nothing in this Decision shall be considered a limitation on the Board's authority to
26 revoke Respondent's probation if he has violated any term or condition of probation. If
27 Respondent violates probation in any respect, the Board, after giving Respondent notice and the
28 opportunity to be heard, may revoke probation and carry out the disciplinary order that was

1 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed
2 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
3 is final, and the period of probation shall be extended until the matter is final.

4 21. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
5 Respondent shall provide a true copy of this Decision and First Amended Accusation to the Chief
6 of Staff or the Chief Executive Officer at every hospital where privileges or membership are
7 extended to Respondent, at any other facility where Respondent engages in the practice of
8 medicine, including all physician and locum tenens registries or other similar agencies, and to the
9 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage
10 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within
11 15 calendar days.

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

13 22. PATIENT DISCLOSURE.

14 Before a patient's first visit following the effective date of this order and while the
15 Respondent is on probation, the Respondent must provide all patients, or patient's guardian or
16 health care surrogate, with a separate disclosure that includes the Respondent's probation status,
17 the length of the probation, the probation end date, all practice restrictions placed on the
18 Respondent by the Board, the Board's telephone number, and an explanation of how the patient
19 can find further information on the Respondent's probation on the Respondent's profile page on
20 the Board's website. Respondent shall obtain from the patient, or the patient's guardian or health
21 care surrogate, a separate, signed copy of that disclosure. Respondent shall not be required to
22 provide a disclosure if any of the following applies: (1) The patient is unconscious or otherwise
23 unable to comprehend the disclosure and sign the copy of the disclosure and a guardian or health
24 care surrogate is unavailable to comprehend the disclosure and sign the copy; (2) The visit occurs
25 in an emergency room or an urgent care facility or the visit is unscheduled, including
26 consultations in inpatient facilities; (3) Respondent is not known to the patient until immediately
27 prior to the start of the visit; (4) Respondent does not have a direct treatment relationship with the
28 patient.

1 23. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
2 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
3 advanced practice nurses.

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

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

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

12 26. GENERAL PROBATION REQUIREMENTS.

13 Compliance with Probation Unit

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

15 Address Changes

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

21 Place of Practice

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

25 License Renewal

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

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1 Travel or Residence Outside California

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

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

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

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

25 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
26 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
27 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
28 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model

1 Disciplinary Orders and Disciplinary Guidelines” prior to resuming the practice of medicine.

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

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

4 Periods of non-practice for a Respondent residing outside of California will relieve
5 Respondent of the responsibility to comply with the probationary terms and conditions with the
6 exception of this condition and the following terms and conditions of probation: Obey All Laws;
7 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
8 Controlled Substances; and Biological Fluid Testing.

9 29. COMPLETION OF PROBATION. Respondent shall comply with all financial
10 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
11 completion of probation. Upon successful completion of probation, Respondent’s certificate shall
12 be fully restored.

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

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

1 application shall be treated as a petition for reinstatement of a revoked certificate.


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

7 ACCEPTANCE

8 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
9 discussed it with my attorney, David M. Balfour, Esq. I understand the stipulation and the effect
10 it will have on my Physician's and Surgeon's Certificate No. G 25265. I enter into this Stipulated
11 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
12 bound by the Decision and Order of the Medical Board of California.

13
14 DATED: 4-24-20 
15 MICHAEL JOSEPH THOENE, M.D.
16 Respondent

17 I have read and fully discussed with Respondent Michael Joseph Thoene, M.D., the terms
18 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
19 Order. I approve its form and content.

20
21 DATED: 4/24/2020 
22 DAVID M. BALFOUR, ESQ.
23 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: 4/27/20

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



ROSEMARY F. LUZON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Interim Order Imposing License Restrictions No. 800-2016-023503

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 ROSEMARY F. LUZON
Deputy Attorney General
4 State Bar No. 221544
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9074
7 Facsimile: (619) 645-2061

8 *Attorneys for Petitioner*

9
10 **BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

12 **KIMBERLY KIRCHMEYER,**
Executive Director,
13 Medical Board of California,
Department of Consumer Affairs,
14 State of California,

15
16 *Petitioner,*

17 *v.*

18 **MICHAEL JOSEPH THOENE, M.D.**
514 South Magnolia
19 El Cajon, CA 92020
Physician's and Surgeon's Certificate
20 No. G 25265,

21 *Respondent.*

Case No. 800-2016-023503

OAH No. 2018040598

**STIPULATION OF THE PARTIES RE
INTERIM ORDER IMPOSING LICENSE
RESTRICTIONS AND ORDER**

22
23 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
24 entitled proceedings that the following matters are true:

25 **PARTIES**

26 1. Kimberly Kirchmeyer (Petitioner) is the Executive Director of the Medical Board of
27 California and is represented in the above-entitled matter by Xavier Becerra, Attorney General of
28 the State of California, by Deputy Attorney General Rosemary F. Luzon.

1 6. Respondent agrees to the issuance of an Interim Order Imposing License Restrictions
2 under Government Code section 11529 immediately restricting his Physician's and Surgeon's
3 Certificate No. G 25265 as detailed in paragraph 8, below.

4 7. In exchange for Respondent's admissions, above, Petitioner agrees to file this
5 stipulation in lieu of proceeding with the hearing on the Petition for Interim Order of Suspension
6 with the Office of Administrative Hearings in San Diego, California.

7 8. Based on the foregoing stipulations and agreements, the parties hereby stipulate
8 and agree that an interim order imposing the following license restrictions on Respondent's
9 Physician's and Surgeon's Certificate No. G 25265 should be issued forthwith by the Office of
10 Administrative Hearings, in order to protect the public health, safety and welfare. The parties
11 further stipulate and agree that, once this interim order imposing license restrictions is issued by
12 the Office of Administrative Hearings, Respondent shall be required to fully comply with the
13 following license restrictions until issuance of a final decision by the Medical Board of California
14 on an Accusation to be filed against him, or until further order from the Office of Administrative
15 Hearings:

16 A. ALCOHOL - ABSTAIN FROM USE.

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

19 If Respondent has a confirmed positive biological fluid test for alcohol,
20 Respondent shall receive a notification from the Board or its designee to immediately
21 cease the practice of medicine. The Respondent shall not resume the practice of
22 medicine until the final decision on an accusation is effective.

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1 B. CONTROLLED SUBSTANCES - ABSTAIN FROM USE.

2 Respondent shall abstain completely from the personal use or possession of
3 controlled substances as defined in the California Uniform Controlled Substances
4 Act, dangerous drugs as defined by Business and Professions Code section 4022, and
5 any drugs requiring a prescription. This prohibition does not apply to medications
6 lawfully prescribed to Respondent by another practitioner for a bona fide illness or
7 condition.

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

12 If Respondent has a confirmed positive biological fluid test for any substance
13 (whether or not legally prescribed) and has not reported the use to the Board or its
14 designee, Respondent shall receive a notification from the Board or its designee to
15 immediately cease the practice of medicine. The Respondent shall not resume the
16 practice of medicine until the final decision on an accusation is effective.

17 C. CONTROLLED SUBSTANCES - TOTAL RESTRICTION.

18 Respondent shall not order, prescribe, dispense, administer, furnish, or possess
19 any controlled substances as defined in the California Uniform Controlled Substances
20 Act.

21 Respondent shall not issue an oral or written recommendation or approval to a
22 patient or a patient's primary caregiver for the possession or cultivation of marijuana
23 for the personal medical purposes of the patient within the meaning of Health and
24 Safety Code section 11362.5.

25 If Respondent forms the medical opinion, after an appropriate prior
26 examination and a medical indication, that a patient's medical condition may benefit
27 from the use of marijuana, Respondent shall so inform the patient and shall refer the
28 patient to another physician who, following an appropriate prior examination and a

1 medical indication, may independently issue a medically appropriate recommendation
2 or approval for the possession or cultivation of marijuana for the personal medical
3 purposes of the patient within the meaning of Health and Safety Code section
4 11362.5. In addition, Respondent shall inform the patient or the patient's primary
5 caregiver that Respondent is prohibited from issuing a recommendation or approval
6 for the possession or cultivation of marijuana for the personal medical purposes of the
7 patient and that the patient or the patient's primary caregiver may not rely on
8 Respondent's statements to legally possess or cultivate marijuana for the personal
9 medical purposes of the patient. Respondent shall fully document in the patient's
10 chart that the patient or the patient's primary caregiver was so informed. Nothing in
11 this condition prohibits Respondent from providing the patient or the patient's
12 primary caregiver information about the possible medical benefits resulting from the
13 use of marijuana.

14 **D. BIOLOGICAL FLUID TESTING.**

15 Respondent shall immediately submit to random biological fluid testing, at
16 Respondent's expense, upon request of the Board or its designee. "Biological fluid
17 testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle
18 testing, or similar drug screening approved by the Board or its designee. Respondent
19 shall make daily contact with the Board or its designee to determine whether
20 biological fluid testing is required. Respondent shall be tested on the date of the
21 notification as directed by the Board or its designee. The Board may order a
22 Respondent to undergo a biological fluid test on any day, at any time, including
23 weekends and holidays. Except when testing on a specific date as ordered by the
24 Board or its designee, the scheduling of biological fluid testing shall be done on a
25 random basis. The cost of biological fluid testing shall be borne by the Respondent.

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

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

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

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

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

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

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

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

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

27 (i) It maintains testing sites located throughout California.

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

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

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

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

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

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

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1 If a biological fluid test result indicates Respondent has used, consumed,
2 ingested, or administered to himself a prohibited substance, the Board shall order
3 Respondent to cease practice and instruct Respondent to leave any place of work
4 where Respondent is practicing medicine or providing medical services. The Board
5 shall immediately notify all of Respondent's employers, supervisors and work
6 monitors, if any, that Respondent may not practice medicine or provide medical
7 services while the cease-practice order is in effect.

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

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

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

20 For purposes of this condition, the term "prohibited substance" means an illegal
21 drug, a lawful drug not prescribed or ordered by an appropriately licensed health care
22 provider for use by Respondent and approved by the Board, alcohol, or any other
23 substance the Respondent has been instructed by the Board not to use, consume,
24 ingest, or administer to himself.

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

7 E. NOTIFICATION.

8 Within seven (7) days of the date of issuance by the Office of Administrative
9 Hearings of this Interim Order Imposing License Restrictions, the Respondent shall
10 provide a true copy of the Interim Order Imposing License Restrictions to the Chief
11 of Staff or the Chief Executive Officer at every hospital where privileges or
12 membership are extended to Respondent, at any other facility where Respondent
13 engages in the practice of medicine, including all physician and locum tenens
14 registries or other similar agencies, and to the Chief Executive Officer at every
15 insurance carrier which extends malpractice insurance coverage to Respondent.
16 Respondent shall submit proof of compliance to the Board or its designee within 15
17 calendar days.

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

20 F. VIOLATION(S) OF INTERIM ORDER IMPOSING LICENSE
21 RESTRICTIONS.

22 Any violation of this Interim Order Imposing License Restrictions by
23 Respondent shall constitute unprofessional conduct and grounds for disciplinary
24 action.

25 9. Any motion to vacate the Interim Order Imposing License Restrictions issued in
26 this case shall be filed in accordance with the provisions of Title 1, California Code of
27 Regulations, sections 1006 and 1022. However, no such motion may be heard on an *ex parte*
28 basis and any motion to vacate the Interim Order Imposing License Restrictions issued in this

1 case shall be served on Petitioner's counsel and filed with the Office of Administrative Hearings
2 no less than thirty (30) business days prior to any hearing on the motion. Once served and filed,
3 no such motion shall be decided without first affording the parties the opportunity to
4 present oral argument.

5 WAIVERS

6 10. Respondent is fully aware of all of his rights under California Government Code
7 section 11529, subdivision (d), to a noticed hearing on the issue of whether an interim order of
8 license restrictions should be issued in the above-entitled matter, and all other rights accorded him
9 under California Government Code section 11529, subdivision (d), at which he is entitled, at a
10 minimum, to all the following rights:

11 (a) To be represented by counsel.

12 (b) To have a record made of the proceedings, copies of which may be obtained by
13 the licensee upon payment of any reasonable charges associated with the record.

14 (c) To present written evidence in the form of relevant declarations, affidavits, and
15 documents. The discretion of the administrative law judge to permit testimony at the
16 hearing conducted pursuant to this section shall be identical to the discretion of a superior
17 court judge to permit testimony at a hearing conducted pursuant to Section 527 of the
18 Code of Civil Procedure.

19 (d) To present oral argument.

20 11. Having the benefit of counsel, Respondent hereby knowingly, intelligently, freely
21 and voluntarily waives and gives up each and every one of the rights set forth and/or referenced in
22 paragraph 10, above.

23 12. Respondent is fully aware of all of his rights under Government Code section
24 11529, subdivisions (f) and (g), which state as follows:

25 "(f) In all cases in which an interim order is issued, and an accusation is not
26 filed and served pursuant to Sections 11503 and 11505 within 30 days of the date
27 on which the parties to the hearing on the interim order have submitted the matter,
28 the order shall be dissolved. Upon service of the accusation the licensee shall

1 have, in addition to the rights granted by this section, all of the rights and
2 privileges available as specified in this chapter. If the licensee requests a hearing
3 on the accusation, the board shall provide the licensee with a hearing within 30
4 days of the request, unless the licensee stipulates to a later hearing, and a decision
5 within 15 days of the date the decision is received from the administrative law
6 judge, or the board shall nullify the interim order previously issued, unless good
7 cause can be shown by the Division of Medical Quality for a delay.

8 "(g) If an interim order is issued, a written decision shall be prepared within 15
9 days of the hearing, by the administrative law judge, including findings of fact and
10 a conclusion articulating the connection between the evidence produced at the hearing and
11 the decision reached."

12 13. Having the benefit of counsel, Respondent hereby knowingly, intelligently,
13 freely and voluntarily waives and gives up each and every one of the rights set forth and/or
14 referenced in paragraph 12, above.

15 **ADDITIONAL PROVISIONS**

16 14. The parties hereby stipulate that all proceedings in the above-entitled Interim Order
17 Imposing License Restrictions matter shall be conducted at the Office of Administrative
18 Hearings located in San Diego, California.

19 15. The parties further stipulate that copies of this "Stipulation of the Parties Re Interim
20 Order Imposing License Restrictions," including copies of signatures appearing thereon, may be
21 used in lieu of original documents and signatures and, further, that such copies and signatures
22 shall have the same force and effect as originals.

23
24 DATED:

May 1, 2018


MICHAEL JOSEPH THORNE, M.D.
Respondent


25
26
27 DATED:

May 1, 2018


ELIZABETH M. BRADY, ESQ.
Attorney for Respondent

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DATED: 5/1/18


XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
ROSEMARY F. LUZON
Deputy Attorney General
Attorneys for Petitioner

SD2018800384/71442275

Exhibit B

First Amended Accusation No. 800-2016-023503

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Sept 20 2019
BY ANDREA GERRON ANALYST

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8 *Attorneys for Complainant*

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

13 In the Matter of the First Amended Accusation
14 Against:

Case No. 800-2016-023503

FIRST AMENDED ACCUSATION

15 **Michael Joseph Thoene, M.D.**
16 **514 South Magnolia**
El Cajon, CA 92020

17 **Physician's and Surgeon's Certificate**
18 **No. G 25265,**

19 Respondent.

20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about July 31, 1973, the Board issued Physician's and Surgeon's Certificate
26 No. G 25265 to Michael Joseph Thoene, M.D. (Respondent). The Physician's and Surgeon's
27 Certificate was in full force and effect at all times relevant to the charges brought herein and will
28 expire on October 31, 2020, unless renewed.

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

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

6 “...”

7 7. Section 2234 of the Code states:

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

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

13 “(b) Gross negligence.

14 “...”

15 8. Section 2238 of the Code states:

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

19 9. Section 2239 of the Code states:

20 “(a) The use or prescribing for or administering to himself or herself, of any
21 controlled substance; or the use of any of the dangerous drugs specified in Section
22 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous
23 or injurious to the licensee, or to any other person or to the public, or to the extent that
24 such use impairs the ability of the licensee to practice medicine safely or more than
25 one misdemeanor or any felony involving the use, consumption, or
26 self-administration of any of the substances referred to in this section, or any
27 combination thereof, constitutes unprofessional conduct. The record of the
28 conviction is conclusive evidence of such unprofessional conduct.

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“...”¹

10. Section 725 of the Code states:

“(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon . . .

“...”

11. Section 2241.5 of the Code states:

“... ”

“(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient’s treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

“... ”

12. Section 2266 of the Code states:

“The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.”

13. Unprofessional conduct under section 2234 of the Code 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.)

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¹ There is a nexus between a physician’s use of alcoholic beverages and his or her fitness to practice medicine, established by the Legislature in section 2239, “in all cases where a licensed physician used alcoholic beverages to the extent or in such a manner as to pose a danger to himself or others.” (*Watson v. Superior Court (Medical Board)* (2009) 176 Cal.App.4th 1407, 1411.)

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14. Health and Safety Code section 11152 states:

“No person shall write, issue, fill, compound, or dispense a prescription that does not conform to this division.”

15. Health and Safety Code section 11153 states:

“(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

“...”

16. Health and Safety Code section 11170 states:

“No person shall prescribe, administer, or furnish a controlled substance for himself.”

17. Health and Safety Code section 11180 states:

“No person shall obtain or possess a controlled substance obtained by a prescription that does not comply with this division.”

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1 18. Section 820 of the Code states:

2 "Whenever it appears that any person holding a license, certificate or permit
3 under this division or under any initiative act referred to in this division may be
4 unable to practice his or her profession safely because the licentiate's ability to
5 practice is impaired due to mental illness, or physical illness affecting competency,
6 the licensing agency may order the licentiate to be examined by one or more
7 physicians and surgeons or psychologists designated by the agency. The report of the
8 examiners shall be made available to the licentiate and may be received as direct
9 evidence in proceedings conducted pursuant to Section 822."

10 19. Section 822 of the Code states:

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

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

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

17 "(c) Placing the licentiate on probation.

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

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

25 20. Section 2228.1 of the Code states:

26 "(a) On and after July 1, 2019, except as otherwise provided in subdivision (c),
27 the board shall require a licensee to provide a separate disclosure that includes the
28 licensee's probation status, the length of the probation, the probation end date, all

1 practice restrictions placed on the licensee by the board, the board's telephone
2 number, and an explanation of how the patient can find further information on the
3 licensee's probation on the licensee's profile page on the board's online license
4 information Internet Web site, to a patient or the patient's guardian or health care
5 surrogate before the patient's first visit following the probationary order while the
6 licensee is on probation pursuant to a probationary order made on and after July 1,
7 2019, in any of the following circumstances:

8 "(1) A final adjudication by the board following an administrative hearing or
9 admitted findings or prima facie showing in a stipulated settlement establishing any
10 of the following:

11 "(A) The commission of any act of sexual abuse, misconduct, or relations with
12 a patient or client as defined in Section 726 or 729.

13 "(B) Drug or alcohol abuse directly resulting in harm to patients or the extent
14 that such use impairs the ability of the licensee to practice safely.

15 "(C) Criminal conviction directly involving harm to patient health.

16 "(D) Inappropriate prescribing resulting in harm to patients and a probationary
17 period of five years or more.

18 "(2) An accusation or statement of issues alleged that the licensee committed
19 any of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and
20 a stipulated settlement based upon a nolo contendere or other similar compromise that
21 does not include any prima facie showing or admission of guilt or fact but does
22 include an express acknowledgment that the disclosure requirements of this section
23 would serve to protect the public interest.

24 "(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall
25 obtain from the patient, or the patient's guardian or health care surrogate, a separate,
26 signed copy of that disclosure.

27 "...

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1 “(d) On and after July 1, 2019, the board shall provide the following
2 information, with respect to licensees on probation and licensees practicing under
3 probationary licenses, in plain view on the licensee’s profile page on the board’s
4 online license information Internet Web site.

5 “(1) For probation imposed pursuant to a stipulated settlement, the causes
6 alleged in the operative accusation along with a designation identifying those causes
7 by which the licensee has expressly admitted guilt and a statement that acceptance of
8 the settlement is not an admission of guilt.

9 “(2) For probation imposed by an adjudicated decision of the board, the causes
10 for probation stated in the final probationary order.

11 “(3) For a licensee granted a probationary license, the causes by which the
12 probationary license was imposed.

13 “(4) The length of the probation and end date.

14 “(5) All practice restrictions placed on the license by the board.

15 “..”

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Use of Alcohol and/or Drugs to the Extent, or in a Manner, as to be Dangerous to**
18 **Respondent, Another Person, or the Public)**

19 21. Respondent has subjected his Physician’s and Surgeon’s Certificate No. G 25265 to
20 disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a), of
21 the Code, in that he has used alcohol and/or controlled substances and dangerous drugs to an
22 extent, or in such a manner, as to be dangerous or injurious to himself, another person, or the
23 public, or to an extent that such use impaired his ability to practice medicine safely, as more
24 particularly alleged hereinafter:

25 **December 28, 2014, DUI Arrest**

26 22. Respondent is a dermatologist who works at the East County Dermatology Medical
27 Group in El Cajon, California.

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1 23. On or about December 28, 2014, at approximately 3:15 p.m., Officer F. of the San
2 Diego Police Department (SDPD) observed Respondent make an illegal u-turn and drive while
3 talking on his cell phone. While driving behind Respondent's vehicle, Officer F. observed
4 Respondent continuously straddle the lane divider, cross over to the adjacent lane, and then come
5 back to his lane at least three times. As Officer F. attempted to pull alongside Respondent to get
6 his attention, Respondent crossed over the lane divider again and into Officer F.'s lane. Believing
7 that Respondent may be impaired, Officer F. initiated a traffic stop by activating his overhead
8 lights. Respondent did not yield and continued driving. Officer F. sounded his air horn
9 approximately three to four times in order to get Respondent's attention, at which point
10 Respondent slowed and stopped in the middle of the road. Officer F. approached Respondent's
11 vehicle and, while standing approximately two to three feet away from Respondent, Officer F.
12 smelled the odor of an alcoholic beverage coming from his person. Officer F. observed that
13 Respondent's face was very lax and his speech was extremely slow and somewhat slurred.

14 24. At approximately 3:27 p.m., Officer R.B. arrived at the scene to assist with a DUI
15 evaluation. Officer R.B. observed Respondent's vehicle was stopped in front of Officer F.'s
16 patrol vehicle, with the rear of Respondent's vehicle sticking out approximately four feet into the
17 road. Upon speaking with Respondent, Officer R.B. smelled an odor of alcohol emitting from
18 Respondent's breath and body. Officer R.B. also observed that Respondent had watery, glassy
19 eyes and slurred speech. Respondent agreed to perform a series of field sobriety tests (FSTs).
20 Respondent had difficulty exiting his vehicle and had to use the door to maintain his balance as
21 Officer F. assisted him out of the vehicle. Officer L. and Officer B. also arrived at the scene to
22 provide assistance. Officer R.B. administered the FSTs, which Respondent failed. Based on
23 Respondent's driving infractions, the odor of alcohol emitting from his breath and person, and his
24 failure on the FSTs, Officer R.B. placed Respondent under arrest for driving under the influence.

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1 25. Respondent's wife had arrived at the scene during the FSTs and Respondent
2 requested that all of his personal property be handed to her. Officer L. transferred Respondent's
3 personal property to the wife. During this exchange, Respondent took out a blue pill located in
4 his front pocket. Respondent stated that the pill was hydrocodone,² which he took for his bad
5 back. Without being asked, Respondent stated that he "took it a few hours before[.]" Respondent
6 requested that the pill be transferred to his wife as well.

7 26. Respondent was transported to the SDPD headquarters, where he was administered a
8 breath test. The result of the first test showed a blood alcohol concentration (BAC) level of
9 0.092%. The result of the second test showed a BAC level of 0.088%. Respondent also
10 consented to a blood test and provided a blood sample. Respondent was then transported and
11 booked into the Central Jail. During a final search of Respondent's person, Officer R.B. located a
12 white pill in Respondent's right front pocket. The pill was marked "M367." Respondent stated it
13 was Vicodin from an old prescription. While Respondent was waiting for booking to be
14 completed, Respondent spontaneously stated, "Damn Chargers, after they lost, I did those shots of
15 Vodka. They got me into this mess."

16 27. According to the test results of the blood sample provided by Respondent during the
17 December 28, 2014, arrest, Respondent's blood was positive for opiates (hydrocodone) and
18 benzodiazepines (desalkylflurazepam).³

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25 ² Hydrocodone (Norco) is a Schedule II controlled substance pursuant to Health and
26 Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and
Professions Code section 4022.

27 ³ Desalkylflurazepam is an active metabolite of several benzodiazepine drugs, such as
28 flurazepam, midazolam, and quazepam. These benzodiazepines are Schedule IV controlled
substances pursuant to Health and Safety Code section 11057, subdivision (d), and dangerous
drugs pursuant to Business and Professions Code section 4022.

1 **June 22, 2015, Hospitalization**

2 28. Between on or about June 22, 2015, and July 22, 2015, Respondent was admitted to
3 the hospital for multiple complications, including, *inter alia*, alcoholism and alcohol withdrawal
4 seizure with severe delirium tremens. During this hospitalization, Respondent told an attending
5 physician that he was narcotic addicted and needed Norco for chronic low back pain. Respondent
6 also stated that although he had been sober for more than eight and a half years, he began
7 drinking alcohol again four weeks earlier and that he drank three to four shots of vodka on a daily
8 basis.

9 **April 6, 2017, Hospitalization**

10 29. Between on or about April 6, 2017, and April 18, 2017, Respondent was admitted to
11 the hospital for abdominal pain, nausea, vomiting, and severe dehydration. Respondent was
12 diagnosed with, *inter alia*, severe acute alcoholic pancreatitis, alcoholism with alcohol
13 withdrawal issues, and severe delirium tremens. During this hospitalization, Respondent told an
14 attending physician that he was a "closet alcoholic" and that, despite his history of alcoholism, he
15 drank four to five alcoholic drinks per setting and drank sporadically, sometimes in "binge style."
16 Respondent also reported to a consulting physician that he last drank vodka the day before his
17 hospitalization and felt symptoms of alcohol withdrawal. Upon admission to the emergency
18 department, Respondent denied that he drank alcohol and stated that he had stopped drinking in
19 2015. However, laboratory test results showed that his ethanol level was "26" upon admission.

20 **Self-Prescribing a Controlled Substance**

21 30. On or about April 8, 2014, Respondent filled a prescription for Depo-testosterone,⁴
22 which he prescribed to himself.

23 31. On or about July 1, 2014, Respondent filled a prescription for Depo-testosterone,
24 which he prescribed to himself.

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26 _____
27 ⁴ Depo-testosterone is a Schedule III controlled substance pursuant to Health and Safety
28 Code section 11056, subdivision (f), and a dangerous drug pursuant to Business and Professions
Code section 4022.

1 32. On or about March 3, 2015, Respondent filled a prescription for Depo-testosterone,
2 which he prescribed to himself.

3 33. On or about May 4, 2015, Respondent filled a prescription for Depo-testosterone,
4 which he prescribed to himself.

5 34. On or about September 14, 2015, Respondent filled a prescription for Depo-
6 testosterone, which he prescribed to himself.

7 35. On or about January 31, 2018, Respondent underwent a physical evaluation
8 conducted pursuant to Business and Professions Code section 820. Respondent admitted to the
9 physician evaluator that he prescribed and administered Depo-testosterone to himself.

10 **Improper Prescribing of Controlled Substances to Family Members and Others**

11 *Patient A*⁵

12 36. During the period of on or about April 9, 2013, to December 28, 2013, Respondent
13 had eleven (11) visits with Patient A, Respondent's relative.

14 37. These visits took place on or about April 9, 2013, May 21, 2013, May 30, 2013,
15 September 9, 2013, September 16, 2013, September 23, 2013, October 2, 2013, October 23, 2013,
16 October 30, 2013, November 13, 2013, and December 28, 2013.

17 38. According to Respondent's medical records, Patient A's medical problems during this
18 timeframe generally included, but were not limited to, acute insomnia, herpes zoster, telogen
19 effluvium hair loss, and superficial basal cell carcinoma.

20 39. According to Respondent's medical records, on or about April 9, 2013, Patient A
21 complained of difficulty sleeping. Respondent prescribed Lunesta to Patient A as a "one-time"
22 prescription for acute insomnia. On or about September 9, 2013, Patient A complained of severe
23 pain in the right lower neck to right shoulder/upper arm area. Respondent's diagnosis was herpes
24 zoster and he prescribed Norco to Patient A. On or about September 16, 2013, September 23,
25 2013, October 2, 2013, October 30, 2013, November 13, 2013, and December 28, 2013, Patient A
26 continued to complain of pain. Respondent prescribed Norco to Patient A. On or about October

27 ⁵ References to "Patient A," "Patient B," "Patient C," "Patient D," and "Patient E" herein
28 are used to protect patient privacy.

1 2, 2013, and October 30, 2013, Patient A also complained of difficulty sleeping. On or about
2 October 30, 2013, Respondent prescribed Ambien⁶ to Patient A for insomnia.

3 40. According to the Controlled Substance Utilization Review and Evaluation System
4 (CURES) report for Patient A, between in or about May 2013, and December 2013, Patient A
5 filled approximately twenty (20) prescriptions of Norco and three (3) prescriptions of Ambien,
6 which Respondent prescribed.

7 41. During the period of on or about January 22, 2014, to December 16, 2014,
8 Respondent had ten (10) visits with Patient A.

9 42. These visits took place on or about January 22, 2014, February 5, 2014, March 5,
10 2014, May 7, 2014, July 16, 2014, August 27, 2014, September 23, 2014, October 15, 2014,
11 November 19, 2014, and December 16, 2014.

12 43. According to Respondent's medical records, Patient A's medical problems during this
13 timeframe generally included, but were not limited to, postherpetic neuralgia and eczematous
14 dermatitis.

15 44. According to Respondent's medical records, on or about January 22, 2014, Patient A
16 saw Respondent and complained of shooting pains. Respondent's diagnosis was persistent
17 postherpetic neuralgia diagnosis and he prescribed Norco to Patient A. On or about March 5,
18 2014, Patient A complained of severe pain due to postherpetic neuralgia and difficulty sleeping
19 "even with Norco." Respondent prescribed Ambien to Patient A. On or about May 7, 2014,
20 Respondent prescribed Norco to Patient A for postherpetic neuralgia. On or about July 16, 2014,
21 Patient A saw Respondent, who noted that her "only problem" was postherpetic neuralgia "which
22 seems to be controlled with Norco." Respondent further noted that he felt Norco was "safe in the
23 doses prescribed as long as it is under [the] doctor's control." On or about August 27, 2014,
24 September 23, 2014, November 19, 2014, and December 16, 2014, Respondent continued to
25 prescribe Norco to Patient A for postherpetic neuralgia. On or about October 15, 2014,

26 ⁶ Ambien (zolpidem tartrate) is a Schedule IV controlled substance pursuant to Health and
27 Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and
28 Professions Code section 4022.

1 Respondent prescribed Norco to Patient A, but no diagnosis or other information justifying the
2 use of the medication was documented.

3 45. According to the CURES report for Patient A, between in or about January 2014, and
4 December 2014, Patient A filled approximately twenty-seven (27) prescriptions of Norco and
5 twenty-six (26) prescriptions of Ambien, which Respondent prescribed.

6 46. During the period of on or about January 16, 2015, to December 12, 2015,
7 Respondent had thirteen (13) visits with Patient A.

8 47. These visits took place on or about January 16, 2015, February 20, 2015, March 16,
9 2015, April 28, 2015, May 20, 2015, June 10, 2015, July 16, 2015, August 14, 2015, September
10 13, 2015, October 14, 2015, November 16, 2015, November 30, 2015, and December 12, 2015.

11 48. According to Respondent's medical records, Patient A's medical problems during this
12 timeframe generally included, but were not limited to, eczema flare and postherpetic neuralgia.

13 49. According to Respondent's medical records, on or about February 20, 2015, March
14 16, 2015, April 28, 2015, May 20, 2015, November 16, 2015, and November 30, 2015,
15 Respondent prescribed Norco to Patient A for postherpetic neuralgia. On or about January 16,
16 2015, June 10, 2015, July 16, 2015, August 14, 2015, October 14, 2015, and December 12, 2015,
17 Respondent prescribed Norco to Patient A, but no diagnosis or other information justifying the
18 use of the medication was documented. On or about August 6, 2015, September 8, 2015, and
19 October 20, 2015, Respondent authorized Patient A's prescription refills for Ambien.

20 50. According to the CURES report for Patient A, between in or about January 2015, and
21 November 2015, Patient A filled approximately sixteen (16) prescriptions of Norco and eleven
22 (11) prescriptions of Ambien, which Respondent prescribed.

23 51. During the period of on or about January 27, 2016, to December 20, 2016,
24 Respondent had thirteen (13) visits with Patient A.

25 52. These visits took place on or about January 27, 2016, February 29, 2016, March 30,
26 2016, April 20, 2016, May 5, 2016, May 26, 2016, June 14, 2016, July 11, 2016, August 9, 2016,
27 September 6, 2016, October 5, 2016, November 1, 2016, and December 20, 2016.

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1 53. According to Respondent's medical records, Patient A's medical problems during this
2 timeframe generally included, but were not limited to, right abdomen lesion, severe flare up of
3 postherpetic neuralgia, and recurrent eczema.

4 54. According to Respondent's medical records, on or about February 29, 2016, March
5 30, 2016, April 20, 2016, and June 14, 2016, Respondent prescribed Norco to Patient A for
6 continuing postherpetic neuralgia. On or about January 27, 2016, May 26, 2016, July 11, 2016,
7 August 9, 2016, September 6, 2016, October 5, 2016, November 1, 2016, and December 20,
8 2016, Respondent prescribed Norco to Patient A, but no diagnosis or other information justifying
9 the use of the medication was documented. On or about May 5, 2016, Respondent prescribed
10 Ambien to Patient A for insomnia. On or about May 23, 2016, June 13, 2016, September 6,
11 2016, and December 1, 2016, Respondent authorized Patient A's prescription refills for Ambien.

12 55. According to the CURES report for Patient A, between in or about January 2016, and
13 December 2016, Patient A filled approximately eighteen (18) prescriptions of Norco and twelve
14 (12) prescriptions of Ambien, which Respondent prescribed.

15 56. During the period of on or about January 4, 2016, to December 26, 2017, Respondent
16 had fourteen (14) visits with Patient A.

17 57. These visits took place on or about January 4, 2017, January 31, 2017, February 27,
18 2017, March 22, 2017, April 25, 2017, May 16, 2017, June 12, 2017, July 10, 2017, August 4,
19 2017, September 18, 2017, October 12, 2017, November 6, 2017, November 30, 2017, and
20 December 26, 2017.

21 58. According to Respondent's medical records, Patient A's medical problems during this
22 timeframe generally included, but were not limited to, chronic pain of the right shoulder and neck
23 area, difficulty sleeping, postherpetic neuralgia, and eczema reflare.

24 59. According to Respondent's medical records, on or about January 4, 2017, Patient A
25 complained of persistent chronic pain of the right shoulder and neck area, as well as difficulty
26 sleeping. Respondent prescribed Norco to Patient A and authorized her prescription refill for
27 Ambien. On or about January 31, 2017, February 27, 2017, June 12, 2017, August 4, 2017,
28 October 12, 2017, and December 26, 2017, Respondent prescribed Norco to Patient A for

1 continuing postherpetic neuralgia. On or about March 22, 2017, April 25, 2017, May 16, 2017,
2 July 10, 2017, September 18, 2017, November 6, 2017, and November 30, 2017, Respondent
3 prescribed Norco to Patient A, but no diagnosis or other information justifying the use of the
4 medication was documented. On or about January 9, 2017, March 20, 2017, September 26, 2017,
5 and November 8, 2017, Respondent authorized Patient A's prescription refill for Ambien. On or
6 about June 21, 2017, Respondent authorized a new prescription for Sonata for Patient A.⁷

7 60. According to the CURES report for Patient A, between in or about January 2017, and
8 December 2017, Patient A filled approximately seventeen (17) prescriptions of Norco, twenty-
9 one (21) prescriptions of Ambien, and three (3) prescriptions of Sonata, which Respondent
10 prescribed.

11 61. During the period of on or about January 11, 2018, to July 23, 2018, Respondent had
12 eight (8) visits with Patient A.

13 62. These visits took place on or about January 11, 2018, January 30, 2018, February 27,
14 2018, March 14, 2018, March 27, 2018, May 1, 2018, June 28, 2018, and July 23, 2018.

15 63. According to Respondent's medical records, Patient A's medical problems during this
16 timeframe generally included, but were not limited to, continuing postherpetic neuralgia,
17 recurrence of telogen effluvium hair loss, and eczema reflare.

18 64. According to Respondent's medical records, on or about January 9, 2018, Respondent
19 authorized Patient A's prescription refill for Ambien. On or about January 11, 2018, Respondent
20 noted that Patient A was in "excellent health." On or about January 11, 2018, and January 30,
21 2018, Respondent prescribed Norco to Patient A, but no diagnosis or other information justifying
22 the use of the medication was documented. On or about February 27, 2018, Respondent noted
23 that Patient A still had "considerable" postherpetic neuralgia, which seemed to be "controlled
24 adequately with Norco[,] and he prescribed Norco to Patient A. On or about March 27, 2018,
25 Respondent noted that Patient A was "[d]oing well with Norco" and he continued Patient A on
26 Norco for postherpetic neuralgia. On or about May 1, 2018, Respondent noted that Patient A still

27 ⁷ Sonata (zaleplon) is a Schedule IV controlled substances pursuant to Health and Safety
28 Code section 11057, subdivision (d), and dangerous drugs pursuant to Business and Professions
Code section 4022.

1 had postherpetic neuralgia and took Norco, but “will refer her to pain management for further
2 treatment.”

3 65. According to the CURES report for Patient A, between in or about January 2018, and
4 April 2018, Patient A filled approximately four (4) prescriptions of Norco and four (4)
5 prescriptions of Ambien, which Respondent prescribed.

6 ***Patient B***

7 66. During the period of on or about January 14, 2014, to December 17, 2014,
8 Respondent had eight (8) visits with Patient B, Respondent’s relative.

9 67. These visits took place on or about January 14, 2014, January 28, 2014, February 25,
10 2014, May 1, 2014, September 8, 2014, October 15, 2014, November 13, 2014, and December
11 17, 2014.

12 68. According to Respondent’s medical records, Patient B’s medical problems during this
13 timeframe generally included, but were not limited to, herpes zoster, postherpetic neuralgia, and
14 difficulty sleeping.

15 69. According to Respondent’s medical records, on or about January 14, 2014, Patient B
16 saw Respondent and complained of pain in the left lateral lumbosacral area. Respondent’s
17 diagnosis was herpes zoster and he prescribed Norco to Patient B. On or about January 28, 2014,
18 and February 25, 2014, Patient B complained of continuing pain and difficulty sleeping.
19 Respondent prescribed Norco to Patient B for postherpetic neuralgia. On or about May 1, 2014,
20 September 8, 2014, November 13, 2014, and December 17, 2014, Respondent also prescribed
21 Norco to Patient B for postherpetic neuralgia. On or about October 15, 2014, Respondent
22 prescribed Norco to Patient B, but no diagnosis or other information justifying the use of the
23 medication was documented.

24 70. According to the CURES report for Patient B, between in or about June 2014, and
25 December 2014, Patient B filled approximately eight (8) prescriptions of Norco and four (4)
26 prescriptions of Ambien, which Respondent prescribed.

27 71. During the period of on or about January 7, 2015, to December 15, 2015, Respondent
28 had twelve (12) visits with Patient B.

1 72. These visits took place on or about January 7, 2015, February 3, 2015, March 2,
2 2015, April 16, 2015, May 4, 2015, June 2, 2015, July 15, 2015, August 5, 2015, September 14,
3 2015, October 6, 2015, November 5, 2015, and December 15, 2015.

4 73. According to Respondent's medical records, Patient B's medical problems during this
5 timeframe generally included, but were not limited to, postherpetic neuralgia.

6 74. According to Respondent's medical records, on or about January 7, 2015, February 3,
7 2015, March 2, 2015, May 4, 2015, June 2, 2015, July 15, 2015, September 14, 2015, and
8 December 15, 2015, Respondent prescribed Norco to Patient B for postherpetic neuralgia and
9 related pain. On or about April 16, 2015, August 5, 2015, October 6, 2015, and November 5,
10 2015, Respondent prescribed Norco to Patient B, but no diagnosis or other information justifying
11 the use of the medication was documented. On or about May 4, 2015, Respondent noted that
12 Patient B's postherpetic neuralgia was "still painful, but controlled with Norco" and that "this is
13 okay as long as the amount is controlled." On or about August 5, 2015, Respondent noted that
14 Patient B sometimes took more than four (4) Norco pills a day and cautioned him to keep the
15 dose at a minimum. On or about December 15, 2015, Respondent noted that Norco was superior
16 to alternative medications because of the low incidence of side effects with hydrocodone. He
17 further noted that, "Addiction can be an issue, but not if the dose is controlled."

18 75. According to the CURES report for Patient B, between in or about January 2015, and
19 October 2015, Patient B filled approximately ten (10) prescriptions of Norco, which Respondent
20 prescribed.

21 76. During the period of on or about January 20, 2016, to December 28, 2016,
22 Respondent had thirteen (13) visits with Patient B.

23 77. These visits took place on or about January 20, 2016, February 9, 2016, March 10,
24 2016, April 5, 2016, May 3, 2016, June 16, 2016, July 15, 2016, August 25, 2016, September 9,
25 2016, September 26, 2016, October 14, 2016, December 5, 2016, and December 28, 2016.

26 78. According to Respondent's medical records, Patient B's medical problems during this
27 timeframe generally included, but were not limited to, postherpetic neuralgia.

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1 79. According to Respondent's medical records, on or about January 20, 2016, March 10,
2 2016, April 5, 2016, June 16, 2016, July 15, 2016, August 25, 2016, September 9, 2016,
3 September 26, 2016, December 5, 2016, and December 28, 2016, Respondent prescribed Norco
4 to Patient B for postherpetic neuralgia. On or about February 9, 2016, May 3, 2016, and October
5 14, 2016, Respondent prescribed Norco to Patient B, but no diagnosis or other information
6 justifying the use of the medication was documented. On or about April 5, 2016, Respondent
7 noted that he discussed alternative medications with Patient B, but Patient B preferred to continue
8 with Norco. On or about December 28, 2016, Respondent noted that Patient B continued to have
9 left lumbosacral pain and that his postherpetic neuralgia was persisting and becoming spasmodic.
10 Respondent continued Patient B on Norco.

11 80. According to the CURES report for Patient B, between in or about January 2016, and
12 December 2016, Patient B filled approximately fourteen (14) prescriptions of Norco, which
13 Respondent prescribed.

14 81. During the period of on or about January 23, 2017, to December 11, 2017,
15 Respondent had sixteen (16) visits with Patient B.

16 82. These visits took place on or about January 23, 2017, February 17, 2017, March 8,
17 2017, March 31, 2017, April 14, 2017, May 1, 2017, May 23, 2017, June 6, 2017, July 2, 2017,
18 July 18, 2017, August 16, 2017, September 9, 2017, October 5, 2017, October 20, 2017,
19 November 15, 2017, and December 11, 2017.

20 83. According to Respondent's medical records, Patient B's medical problems during this
21 timeframe generally included, but were not limited to, postherpetic neuralgia.

22 84. According to Respondent's medical records, on or about January 23, 2017, February
23 17, 2017, March 8, 2017, March 31, 2017, April 14, 2017, May 1, 2017, June 6, 2017, July 18,
24 2017, August 16, 2017, September 9, 2017, October 5, 2017, and November 15, 2017,
25 Respondent prescribed Norco to Patient B for postherpetic neuralgia. On or about May 23, 2017,
26 July 2, 2017, and October 20, 2017, Respondent prescribed Norco to Patient B, but no diagnosis
27 or other information justifying the use of the medication was documented. On or about February
28 17, 2017, Respondent noted that Patient B's postherpetic neuralgia continued to interrupt Patient

1 B's sleep and that this "can be a problem." On or about April 14, 2017, Respondent noted he
2 discussed dosages with Patient B and that Patient B had "increased this considerably." He
3 cautioned Patient B to decrease the dosage of Norco. On or about July 18, 2017, Respondent
4 noted he discussed risks, complications, side effects, and alternatives to Norco with Patient B.
5 On or about November 15, 2017, Respondent noted that Patient B's postherpetic neuralgia was
6 persisting and that he discussed stopping Norco with Patient B, which Patient B was agreeable to
7 trying. Respondent continued Patient B on Norco and noted that he would recheck Patient B's
8 status in one month. On or about December 11, 2017, Respondent noted that Patient B was
9 "doing better" and he prescribed Norco to Patient B.

10 85. According to the CURES report for Patient B, between in or about January 2017, and
11 December 2017, Patient B filled approximately sixteen (16) prescriptions of Norco, which
12 Respondent prescribed.

13 86. In or about 2018, Respondent had one (1) visit with Patient B.

14 87. This visit took place on or about January 4, 2018.

15 88. During this visit, Respondent noted that, "We have decided to taper Norco and stop it,
16 if possible, to see if the pain of postherpetic neuralgia is tolerable. Will give his Norco
17 prescription 10/325 #120 with the intent to taper this over several months and stop."

18 89. According to the CURES report for Patient B, between in or about January 2018, and
19 July 2018, Patient B filled approximately one (1) prescription for Norco, which Respondent
20 prescribed.

21 ***Patient C***

22 90. In or about 2013, Respondent had three (3) visits with Patient C, Respondent's
23 relative.

24 91. These visits took place on or about December 5, 2013, December 7, 2013, and
25 December 8, 2013.

26 92. According to Respondent's medical records, Patient C's medical problems during this
27 timeframe generally included, but were not limited to, left hip pain and difficulty sleeping.

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1 93. According to Respondent's medical records, on or about December 5, 2013 and
2 December 8, 2013, Patient C complained of left hip pain with difficulty walking. Respondent
3 prescribed Norco to Patient C. On or about December 7, 2013, Patient C complained of trouble
4 sleeping at night. Respondent prescribed Ambien to Patient C.

5 94. According to the CURES report for Patient C, in or about December 2013, Patient C
6 filled approximately two (2) prescriptions for Norco and one (1) prescription for Ambien, which
7 Respondent prescribed.

8 95. During the period of on or about February 10, 2014, to November 24, 2014,
9 Respondent had eight (8) visits with Patient C.

10 96. These visits took place on or about February 10, 2014, February 13, 2014, May 15,
11 2014, May 24, 2014, June 8, 2014, August 7, 2014, November 3, 2014, and November 24, 2014.

12 97. According to Respondent's medical records, Patient C's medical problems during this
13 timeframe generally included, but were not limited to, left hip pain, difficulty sleeping, superficial
14 basal cell carcinomas, weight problems, and post-operative hip replacement.

15 98. According to Respondent's medical records, on or about February 10, 2014, May 15,
16 2014, May 24, 2014, Patient C complained of difficulty sleeping. Respondent prescribed Ambien
17 to Patient C for insomnia. On or about June 8, 2014, Respondent authorized Patient A's
18 prescription refill for Ambien, but no diagnosis or other information justifying the use of the
19 medication was documented. On or about February 13, 2014, Patient C complained of continuing
20 left hip pain. Respondent prescribed Norco to Patient C. On or about November 3, 2014, Patient
21 C complained of problems with her weight. Respondent prescribed Qsymia (phentermine and
22 topiramate)⁸ to Patient C. On or about November 24, 2014, Respondent noted that Patient C was
23 "postop left hip replacement" and he prescribed Norco to Patient C.

24 99. According to the CURES report for Patient C, between in or about February 2014,
25 and November 2014, Patient C filled approximately two (2) prescriptions for Norco, eleven (11)
26 prescriptions for Ambien, and one (1) prescription for Qsymia, which Respondent prescribed.

27 ⁸ Phentermine is a Schedule IV controlled substance pursuant to Health and Safety Code
28 section 11057, subdivision (f), and a dangerous drug pursuant to Business and Professions Code
section 4022.

1 100. During the period of on or about March 3, 2015, and June 23, 2015, Respondent had
2 four (4) visits with Patient C.

3 101. These visits took place on or about March 3, 2015, April 7, 2015, May 26, 2015, and
4 June 23, 2015.

5 102. According to Respondent's medical records, Patient C's medical problems during this
6 timeframe generally included, but were not limited to, residual hip pain.

7 103. According to Respondent's medical records, on or about March 3, 2015, April 7,
8 2015, and May 26, 2015, Respondent prescribed Norco to Patient C for continuing hip pain. On
9 or about June 23, 2015, Respondent prescribed Ambien to Patient C, but no diagnosis or other
10 information justifying the use of the medication was documented.

11 104. According to the CURES report for Patient C, between in or about February 2015,
12 and December 2015, Patient C filled approximately three (3) prescriptions for Norco and seven
13 (7) prescriptions for Ambien, which Respondent prescribed.

14 105. In or about 2016, Respondent had one (1) visit with Patient C.

15 106. This visit took place on or about April 11, 2016.

16 107. During this visit, Patient C complained of trouble controlling her weight. Respondent
17 prescribed phentermine to Patient C.

18 108. According to the CURES report for Patient C, between in or about January 2016, and
19 December 2016, Patient C filled approximately seven (7) prescriptions for Ambien and five (5)
20 prescriptions for phentermine, which Respondent prescribed.

21 109. In or about 2016, Respondent had no visits with Patient C.

22 110. According to the CURES report for Patient C, between in or about January 2017, and
23 November 2017, Patient C filled approximately seven (7) prescriptions for Ambien and four (4)
24 prescriptions for phentermine, which Respondent prescribed.

25 111. In or about 2018, Respondent had two (2) visits with Patient C.

26 112. These visits took place on January 24, 2018, and February 7, 2018.

27 113. According to Respondent's medical records, the purpose for both visits was botox
28 placement in the glabellar area.

1 114. According to the CURES report for Patient C, between in or about January 2018, and
2 April 2018, Patient C filled approximately three (3) prescriptions for phentermine, which
3 Respondent prescribed.

4 ***Patient D***

5 115. During the period of on or about May 20, 2013, to November 6, 2013, Respondent
6 had five (5) visits with Patient D.

7 116. These visits took place on or about May 20, 2013, July 25, 2013, August 9, 2013,
8 October 7, 2013, and November 6, 2013.

9 117. According to Respondent's medical records, Patient D's medical problems during this
10 timeframe generally included, but were not limited to, herpes zoster, severe left lumbrosacral
11 pain, and postherpetic neuralgia.

12 118. According to Respondent's medical records, on or about May 20, 2013, Patient D
13 complained of a recent episode of herpes zoster of the left lumbosacral area with severe pain.
14 Respondent prescribed Norco and Soma⁹ to Patient D. On or about July 25, 2013, and October 7,
15 2013, Patient D continued to complain of pain due to postherpetic neuralgia. Respondent
16 prescribed Norco and Soma to Patient D. On or about August 9, 2013, Respondent authorized
17 Patient D's prescription refill for Norco, but no diagnosis or other information justifying the use
18 of the medication was documented. On or about November 6, 2013, Respondent prescribed
19 Norco to Patient D for postherpetic neuralgia.

20 119. According to the CURES report for Patient D, between in or about February 2013,
21 and December 2013, Patient D filled approximately six (6) prescriptions for Norco and ten (10)
22 prescriptions for Soma, which Respondent prescribed.

23 120. During the period of on or about February 13, 2014, to December 1, 2014,
24 Respondent had four (4) visits with Patient D.

25 121. These visits took place on or about February 13, 2014, August 23, 2014, September
26 22, 2014, and December 1, 2014.

27 ⁹ Soma (carisoprodol) is a Schedule IV controlled substance pursuant to Health and Safety
28 Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions
Code section 4022.

1 122. According to Respondent's medical records, Patient D's medical problems during this
2 timeframe generally included, but were not limited to, postherpetic neuralgia.

3 123. According to Respondent's medical records, on or about February 13, 2014,
4 Respondent noted that Patient D's postherpetic neuralgia was improving with Norco. Respondent
5 authorized Patient D's prescription refill for Norco. On or about August 23, 2014, Respondent
6 noted that Patient D's postherpetic neuralgia continued to improve and that he would attempt to
7 taper Norco. Respondent prescribed Norco to Patient D. On or about September 22, 2014,
8 Respondent noted that he must taper Norco at this point since Patient D's postherpetic neuralgia
9 continued to improve. On or about December 1, 2014, Respondent again noted that Patient D's
10 postherpetic neuralgia had much improved and Respondent authorized Patient D's prescription
11 refill for Norco "with the stipulation that this is the last refill for this medication."

12 124. According to the CURES report for Patient D, between in or about January 2014, and
13 December 2014, Patient D filled approximately eleven (11) prescriptions for Norco and two (2)
14 prescriptions for Soma, which Respondent prescribed.

15 125. Between in or about 2015, and 2016, Respondent had two (2) visits with Patient D.

16 126. These visits took place on or about December 21, 2015, and June 23, 2016.

17 127. According to Respondent's medical records, Patient D's medical problems during this
18 timeframe generally included, but were not limited to, left lumbrosacral back pain.

19 128. According to Respondent's medical records, on or about December 21, 2015,
20 Respondent noted that Patient D still had left lumbosacral back pain, but Respondent was
21 doubtful that the back pain was due to postherpetic neuralgia. Respondent prescribed Norco to
22 Patient D. On or about June 23, 2016, Patient D complained of lingering back pain. Respondent
23 again noted that he did not believe the pain was due to postherpetic neuralgia at that point.
24 Patient D requested a refill of his prescription for Norco, which Respondent provided.

25 129. According to the CURES report for Patient D, in or about December 2015, and
26 February 2016, Patient D filled approximately two (2) prescriptions for Norco, which Respondent
27 prescribed.

28 130. In or about 2018, Respondent had two (2) visits with Patient D.

1 131. These visits took place on or about March 1, 2018, and April 5, 2018.

2 132. According to Respondent's medical records, Patient D's medical problems during this
3 timeframe generally included, but were not limited to, single seborrheic keratosis of the right
4 abdomen, upper respiratory infection, and back pain.

5 133. According to Respondent's medical records, on or about April 5, 2018, Patient D saw
6 Respondent and complained of a lingering respiratory infection. Respondent noted that the
7 physician who was treating Patient D was "on vacation" and that Patient D had run out of
8 Tylenol-Codeine that was prescribed for back pain. Respondent authorized Patient D's
9 prescription refill for Tylenol-Codeine.

10 134. According to the CURES report for Patient D, in or about April 2018, Patient D filled
11 approximately one (1) prescription for Tylenol-Codeine, which Respondent prescribed.

12 ***Patient E***

13 135. In or about 2013, Respondent had three (3) visits with Patient E.

14 136. These visits took place on or about February 20, 2013, July 22, 2013, and August 8,
15 2013.

16 137. According to Respondent's medical records, Patient E's medical problems during this
17 timeframe generally included, but were not limited to, lower lip sensitivity, recurrent herpes
18 simplex, cyst in the right upper thigh posterior area, and insomnia.

19 138. According to Respondent's medical records, on or about September 4, 2013,
20 Respondent authorized Patient E's prescription refill for Ambien for insomnia. Other than noting
21 "insomnia," no diagnosis or other information justifying the use of the medication was
22 documented in the medical records.

23 139. According to the CURES report for Patient E, between in or about January 2013, and
24 December 2013, Patient E filled approximately thirteen (13) prescriptions for Ambien, which
25 Respondent prescribed.

26 140. In or about 2014, Respondent had two (2) visits with Patient E.

27 141. These visits took place on or about January 30, 2014, and December 4, 2014.

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1 142. According to Respondent's medical records, Patient E's medical problems during this
2 timeframe generally included, but were not limited to, severe eyelid dermatitis (eczematous type),
3 insomnia, and seborrheic blepharitis of the upper and lower eyelids.

4 143. According to Respondent's medical records, on or about March 17, 2014, May 13,
5 2014, and October 1, 2014, Respondent authorized Patient E's prescription refills for Ambien for
6 insomnia. Other than noting "insomnia," no diagnosis or other information justifying the use of
7 the medication was documented in the medical records.

8 144. According to the CURES report for Patient E, between in or about January 2014, and
9 December 2014, Patient E filled approximately thirteen (13) prescriptions for Ambien, which
10 Respondent prescribed.

11 145. In or about 2015, Respondent had three (3) visits with Patient E.

12 146. These visits took place on or about March 24, 2015, June 17, 2015, and December 3,
13 2015.

14 147. According to Respondent's medical records, Patient E's medical problems during this
15 timeframe generally included, but were not limited to, recurrent seborrheic blepharitis and
16 recurrent burning and tingling of the left lower lip, possibly related to herpes simplex labialis.

17 148. According to Respondent's medical records, on or about June 17, 2015, and
18 November 5, 2015, Respondent authorized Patient E's prescription refills for Ambien. No
19 diagnosis or other information justifying the use of the medication was documented in the
20 medical records.

21 149. According to the CURES report for Patient E, between in or about January 2015, and
22 December 2015, Patient E filled approximately eleven (11) prescriptions for Ambien, which
23 Respondent prescribed.

24 150. In or about 2016, Respondent had two (2) visits with Patient E.

25 151. These visits took place on or about August 25, 2016, and December 29, 2016.

26 152. According to Respondent's medical records, Patient E's medical problems during this
27 timeframe generally included, but were not limited to, recurrent lower lip blistering and swelling.

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1 153. According to Respondent's medical records, on or about March 31, 2016, and August
2 25, 2016, Respondent authorized Patient E's prescription refills for Ambien for insomnia. Other
3 than noting "insomnia," no diagnosis or other information justifying the use of the medication
4 was documented in the medical records.

5 154. According to the CURES report for Patient E, between in or about January 2016, and
6 December 2016, Patient E filled approximately thirteen (13) prescriptions for Ambien, which
7 Respondent prescribed.

8 155. In or about 2017, Respondent had one (1) visit with Patient E.

9 156. This visit took place on or about July 25, 2017.

10 157. During the visit, Patient E complained of lichenification of his right lower eyelid.

11 158. According to Respondent's medical records, on or about January 23, 2017, June 29,
12 2017, and October 23, 2017, Respondent authorized Patient E's prescription refills for Ambien
13 for insomnia. Other than noting "insomnia," no diagnosis or other information justifying the use
14 of the medication was documented in the medical records.

15 159. According to the CURES report for Patient E, between in or about January 2017, and
16 December 2017, Patient E filled approximately twelve (12) prescriptions for Ambien, which
17 Respondent prescribed.

18 160. In or about 2018, Respondent had three (3) visits with Patient E.

19 161. These visits took place on or about January 11, 2018, January 29, 2018, and March 8,
20 2018.

21 162. According to Respondent's medical records, Patient E's medical problems during this
22 timeframe generally included, but were not limited to, superficial basal cell carcinoma of the left
23 neck and eczematous patch of the right lower leg.

24 163. According to Respondent's medical records, on or about March 29, 2018, Respondent
25 authorized Patient E's prescription refill for Ambien for insomnia. No diagnosis or other
26 information justifying the use of the medication was documented in the medical records.

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1 164. According to the CURES report for Patient E, between in or about January 2018, and
2 December 2018, Patient E filled approximately three (3) prescriptions for Ambien, which
3 Respondent prescribed.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Using or Prescribing for or Administering Controlled Substances to Himself)**

6 165. Respondent has subjected his Physician's and Surgeon's Certificate No. G 25265 to
7 disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a), of
8 the Code, in that he used, prescribed for, or administered a controlled substance to himself, as
9 more particularly alleged in paragraphs 30 through 35, above, which are hereby incorporated by
10 reference and re-alleged as if fully set forth herein.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Violation of State Laws Regulating Dangerous Drugs and/or Controlled Substances)**

13 166. Respondent has subjected his Physician's and Surgeon's Certificate No. G 25265 to
14 disciplinary action under sections 2227 and 2234, as defined by section 2238, of the Code, in that
15 he has violated a state law or laws regulating dangerous drugs and/or controlled substances, as
16 more particularly alleged hereinafter:

17 A. Paragraphs 30 through 164, above, are hereby incorporated by reference
18 and re-alleged as if fully set forth herein.

19 B. Respondent used, prescribed for, or administered a controlled substance
20 to himself, in violation of Health and Safety Code sections 11152, 11170, and 11180.

21 C. Respondent issued prescriptions to Patients A, B, C, D, and E for
22 controlled substances outside the usual course of his professional practice, in
23 violation of Health and Safety Code sections 11152 and 11153.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 167. Respondent has subjected his Physician's and Surgeon's Certificate No. G 25265 to
4 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), and
5 section 2241.5, subdivision (d), of the Code, in that he committed gross negligence in his care and
6 treatment of Patients A, B, C, D, and E, as more particularly alleged in paragraphs 36 through
7 164, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

8 168. Respondent committed gross negligence in his care and treatment of Patients A, B, C,
9 D, and E, which included, but was not limited to, the following:

10 **Patient A**

11 A. Respondent chronically treated Patient A, a family member, for
12 postherpetic neuralgia and did not timely refer Patient A to a pain management
13 specialist.

14 B. Respondent treated and prescribed medications to Patient A for medical
15 conditions outside the scope of dermatology practice, *i.e.*, chronic postherpetic
16 neuralgia and insomnia.

17 C. Respondent chronically prescribed Norco and sleep medications
18 (Ambien and Sonata) to Patient A.

19 **Patient B**

20 D. Respondent chronically treated Patient B, a family member, for
21 postherpetic neuralgia and did not refer Patient B to a pain management specialist.

22 E. Respondent treated and prescribed medications to Patient B for medical
23 conditions outside the scope of dermatology practice, *i.e.*, chronic postherpetic
24 neuralgia and insomnia.

25 F. Respondent chronically prescribed Norco and Ambien to Patient B.

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