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

In the Matter of the Accusation Against: Darcene Melaac Munir, M.D. Physician's & Surgeon's Certificate No. G 80885 Respondent.	Case No. 800-2019-054890

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the petition for reconsideration, filed by October 22, 2020, and the time for action having expired at 5:00 p.m. on November 2, 2020, the petition is deemed denied by operation of law.

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

In the Matter of the Accusation Against: Darcene Melaac Munir, M.D. Physician's & Surgeon's Certificate No. G 80885 Respondent.	Case No. 800-2019-054890 **AMENDED ORDER GRANTING STAY** (Government Code Section 11521)

Robert W. Hodges, Attorney at Law, on behalf of respondent, Darcene Melaac Munir, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of October 23, 2020, at 5:00 p.m.

Execution is stayed until November 2, 2020, at 5:00 p.m.

This amended stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: October 26, 2020

William Prasifka
Executive Director
Medical Board of California

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

In the Matter of the Accusation Against: Darcene Melaac Munir, M.D. Physician's & Surgeon's Certificate No. G 80885 Respondent.	Case No. 800-2019-054890 **ORDER GRANTING STAY** (Government Code Section 11521)

Robert W. Hodges, Attorney at Law, on behalf of respondent, Darcene Melaac Munir, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of October 23, 2020, at 5:00 p.m.

Execution is stayed until November 20, 2020, at 5:00 p.m.

This stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: October 23, 2020

William Prasifka
Executive Director
Medical Board of California

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

In the Matter of the Accusation Against: Darcene Melaac Munir, M.D. Physician's and Surgeon's Certificate No. G 80885 Respondent.	Case No. 800-2019-054890

DECISION

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

This Decision shall become effective at 5:00 p.m. on October 23, 2020.

IT IS SO ORDERED: September 25, 2020.

MEDICAL BOARD OF CALIFORNIA

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

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

In the Matter of the Accusation Against:

DARCENE MELAAC MUNIR, Respondent.

Physician's and Surgeon's Certificate No. G 80885

Agency Case No. 800-2019-054890

OAH No. 2020040135

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on July 13-16, 2020. This hearing was conducted telephonically. The participants appeared from various locations near Oakland, California.

Jane Zack Simon, Supervising Deputy Attorney General, represented complainant Christine J. Lally, Interim Executive Director of the Medical Board of California, Department of Consumer Affairs.

Robert W. Hodges, Attorney at Law, Ney, Beatty, Slattery, Borges & Ambacher LLP, represented respondent Darcene Melaac Munir, M.D., who was present.

The record remained open until July 17, 2020, to afford complainant an opportunity to submit proposed probation conditions. Complainant timely submitted proposed probation conditions, which were marked for identification as Exhibit 18.

The record closed and the matter was submitted for decision on July 17, 2020.

FACTUAL FINDINGS

Procedural History

1. Complainant Christine J. Lally, brought the Accusation in her official capacity as Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On March 29, 1995, the Board issued Physician's and Surgeon's Certificate No. G 80885 (Certificate) to Darcene Melaac Munir, M.D. (respondent). The Certificate will expire on March 31, 2021, unless renewed.

3. On February 19, 2020, respondent's Certificate was suspended pursuant to an Interim Suspension Order that was issued after hearing, pursuant to Government Code section 11529, subdivision (g).

Summary of Case

4. Respondent is an anesthesiologist. Complainant alleges that respondent's Certificate is subject to disciplinary action on two grounds. First, complainant alleges that respondent's ability to safely practice medicine is impaired by

reason of mental illness and substance abuse. Under Business and Professions Code[1] sections 820 and 822, where it appears that a licensee is impaired due to mental illness or substance abuse, the Board may require that the licensee submit to an examination by a mental health professional, and if the Board determines that impairment is present, the Certificate may be disciplined. Respondent was required to, and did, submit to an examination by Laura Davies, M.D., who determined that respondent was unable to safely practice medicine without restrictions due to her polysubstance abuse and depression. Second, complainant asserts that respondent's Certificate is subject to discipline for unprofessional conduct pursuant to sections 2239 and 2234, in that she used alcohol in a dangerous manner.

Respondent asserts that although she has consumed alcohol to excess on occasion, she no longer does so and is therefore able to safely practice medicine.

5. As set forth below, the evidence established that respondent suffers from polysubstance abuse and depression. The facts and circumstances surrounding these conditions support revoking respondent's Certificate and placing her on probation for a period of five years, with stringent conditions designed to protect the public and assist respondent's rehabilitation.

6. The evidence presented at hearing was voluminous. The pertinent facts are summarized below.

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[1] All further references are to the Business and Professions Code unless otherwise indicated.

Complainant's Evidence

April 16, 2019 Visit to Emergency Room at Stanford Health Care – ValleyCare Medical Center in Pleasanton (ValleyCare)

7. On April 22, 2019, the Board received an anonymous complaint from a physician who had treated respondent in the emergency room at Stanford Health Care – ValleyCare Medical Center (ValleyCare) in Pleasanton on April 16, 2019. The physician, Howard Yoshioka, M.D., testified at hearing regarding the reasons for his complaint.

8. Respondent was on duty at ValleyCare, on April 16, 2019. She was brought from the operating room to the emergency room after complaining of nausea, vomiting and weakness; she had also been shaking and unable to intubate a patient. Dr. Yoshioka examined respondent. He has worked as an emergency room physician at ValleyCare for over 30 years and is familiar with the signs and symptoms of alcohol abuse and alcohol withdrawal.

9. Dr. Yoshioka observed that respondent was anxious and jittery and that her speech was pressured; his initial impression was that respondent was experiencing alcohol withdrawal. Dr. Yoshioka took a history as part of his examination of respondent. He asked respondent if she used alcohol. Dr. Yoshioka distinctly remembers that respondent told him, unequivocally, that she did not use alcohol. Dr. Yoshioka took respondent at her word, and for this reason, he did not include alcohol withdrawal in his diagnosis, assessment or treatment plan. He indicated that the most likely diagnosis was acute viral syndrome. Dr. Yoshioka ordered a series of laboratory tests and treated respondent with intravenous fluids, antipyretics and mediations for pain. Respondent was discharged home on April 16.

10. After Dr. Yoshioka finished seeing patients on April 16, he reviewed respondent's October 2018 hospital records from San Ramon Regional Medical Center. These records revealed that respondent had been treated for alcohol withdrawal in February[2] and October 2018.[3] These additional facts confirmed Dr. Yoshioka's initial impression that respondent was in alcohol withdrawal when he examined her in the emergency room.

11. Dr. Yoshioka became concerned for two reasons: first, respondent was working as an anesthesiologist when this occurred; second, respondent was untruthful when she told Dr. Yoshioka that she did not drink alcohol. Dr. Yoshioka hoped that by filing a complaint with the Board, respondent might obtain treatment for her alcohol problem. Dr. Yoshioka thought it would be up to the Board to decide how to intervene. He did not know that his complaint would result in disciplinary action against respondent.

12. Dr. Yoshioka's experience, observations, and his willingness to make a complaint to the Board out of concern for respondent and the public made his testimony extremely persuasive.

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[2] Dr. Yoshioka was only able to access the admission summary from the February 2018 visit because the full set of medical records from this hospitalization had been expunged.

[3] Details regarding respondent's October 2018 treatment for alcohol withdrawal are found at Factual Findings 19 and 20.

RETURN TO VALLEYCARE APRIL 19, 2019

13. On April 18, 2019, respondent was informed by a nurse at ValleyCare that one of her blood cultures was irregular[4] and that she needed to return to the hospital to repeat blood testing.

14. Respondent returned to the hospital on April 19, 2019, for a follow-up blood test, and was later admitted to investigate the reason for the repeated blood culture which contained bacteria.[5] Respondent was seen by infectious disease specialist Krujika Kuppalli, M.D., who investigated the cause of respondent's irregular blood culture. Dr. Kuppalli testified at hearing regarding her impressions of, and concerns about, respondent's alcohol use. During Dr. Kuppalli's initial encounter with respondent, she thought that respondent might be under the influence of alcohol. Blood testing at around 10:50 a.m. revealed a blood alcohol level of 0.086 percent.

15. Hospitalist Minh-Chi Tran, M.D., was also concerned that respondent was undergoing mild alcohol withdrawal during her stay at the hospital. According to hospital notes, respondent was "started on CIWA[6] protocol overnight" and was given

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[4] Respondent's blood tests revealed "gram-negative rods growing 1 out of 4 bottles."

[5] The bacteria in respondent's blood culture were due to diverticulitis. Respondent was diagnosed with gram-negative bacteremia, lactic acidosis, and colon diverticulitis.

[6] CIWA refers to the Clinical Institute Withdrawal of Alcohol Scale. It is the protocol for treating alcohol withdrawal.

Ativan. When Dr. Tran talked to respondent about her use of alcohol, respondent maintained that she had not consumed alcohol since her hospitalization in October 2018. In her discharge summary on April 20, 2019, Dr. Tran wrote: "Overall I am concerned the patient has significant life stressors, depression and a prior history of alcohol use but it is unclear to me if she continues to drink regularly or if this could affect her daily life."

16. Dr. Kuppalli also reviewed respondent's medical records and learned about her prior treatment for alcohol withdrawal in February and October 2018. Dr. Kuppalli saw respondent on April 19, 2019, and twice on April 20, 2019, prior to respondent's discharge from the hospital. Dr. Kuppalli talked to respondent on more than one occasion about her concerns that respondent had alcohol use disorder and the risks such disorder posed to respondent's patients. Respondent denied that she had consumed alcohol prior to her admission on April 19. Dr. Kuppalli made an anonymous complaint to hospital management due to her concerns for respondent's patients.

17. Respondent called Dr. Kuppalli after she was discharged to thank her for the care that she provided and to obtain a name of a primary care physician. During their conversation, respondent was hesitant to admit her problem and alluded to the challenges in her life. Dr. Kuppalli reiterated her view that respondent should obtain treatment to address her problems with alcohol.

18. On April 19, 2019, Dr. Tran and Dr. Kuppalli shared their concerns with Dr. Yoshioka that respondent was in alcohol withdrawal and suffered from alcohol use disorder.

2018 Treatment for Alcohol Withdrawal

19. On October 5, 2018, at 9:30 a.m., respondent presented to the emergency room at San Ramon Regional Medical Center (San Ramon) with severe abdominal pain, dark stools, chills and shakes. Respondent's diagnoses included acute diverticulitis, sepsis and acute alcohol withdrawal syndrome. Blood testing revealed a blood alcohol level of 0.08 percent. An admission note indicated that "liver enzymes are elevated consistent with alcoholic hepatitis," and that respondent also had a low platelet count "concerning for cirrhosis." A chart entry dated October 5, 2018, states that after presenting to the emergency room, respondent stated that she was "extremely depressed and started binge drinking." Another chart entry on the same date states that respondent said that she had been in pain for about a week and was "self-medicating by drinking wine." Respondent was admitted to the intensive care unit due to her multiple medical problems and alcohol withdrawal, and was placed on alcohol withdrawal protocol. Respondent was discharged from the hospital on October 9. Hospital notes state that respondent was counseled regarding her diagnoses.

20. A psychosocial assessment was performed by social worker Emma Haag during respondent's October 2018 hospitalization. Respondent shared that she began feeling increasingly depressed in July 2018 after she was unable to return to work due to her health issues. During this time, she began consuming alcohol heavily.

21. Respondent was hospitalized in intensive care at San Ramon between February 24 and March 15, 2018. She was in septic shock from acute diverticulitis. The admission summary stated that during this hospitalization respondent was also treated for alcohol withdrawal syndrome.

RESPONDENT'S INTERVIEW WITH THE BOARD

22. Following Dr. Yoshioka's complaint to the Board, respondent was interviewed by Board investigator Anastasia Swartz on October 9, 2019. During her interview, respondent denied that she had an ongoing problem with alcohol. She maintained that the medical records stating that she was treated for alcohol withdrawal were inaccurate.

23. Respondent maintained that she consumed wine a couple of times each week with dinner, and sometimes cocktails, if she goes out with friends. While respondent admitted to consuming alcohol to "escape a little bit" during "depressive episodes," respondent maintained that these instances did not occur often. She denied that she ever went through alcohol withdrawal and denied ever receiving treatment for alcohol-related problems. Respondent was adamant that her use of alcohol never interfered with her work. She emphasized that no doctor had talked to her about their concerns that she suffered from alcohol use disorder. Respondent attributed her blood alcohol level of 0.08 percent on April 19, 2019, to her having drank to excess the night before due to emotional stress stemming from the unexpected break-up of a romantic relationship.

24. During her interview with the Board, respondent explained that she suffers from multiple medical conditions, including diverticulitis, diverticulosis, rheumatoid arthritis in her hip, attention deficit hyperactivity disorder (ADHD), major depressive disorder and headaches. In May 2019, respondent had a hemicolectomy with an ileostomy; and in July 2019, she had an ileostomy takedown.

25. Respondent began treatment for depression with Sam Jinich, Ph.D., in the 1990's. During her Board interview she stated that she touches base with Dr. Jinich

regularly.[7] Respondent was also under treatment for her depression with psychiatrist Mark Herbst, M.D., since June 2014. Dr. Herbst is located in Los Angeles. During her Board interview respondent maintained that she spoke to Dr. Herbst every couple of months, and in a declaration dated February 18, 2020, she stated that she regularly consults with Dr. Herbst over the phone or in person.[8]

26. Respondent stated that she takes Fioricet[9] for migraine headaches and for general pain relief for her arthritic hip, because her hip pain had intensified. During her interview, she explained that Dr. Herbst provided her prescriptions for Fioricet and Vyvanse (to treat her ADHD) because she did not have a primary care physician.

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[7] Dr. Jinich's notes indicate that after July 2015, his contacts consisted of two telephone conversations in July and August 2018. His notes from August 2018 state that respondent was extremely depressed and even suicidal and that she is resistant to discussing a treatment plan.

[8] The medical records provided by Dr. Herbst to the Board in October 2019 do not document that he had any appointments with respondent since December 2018. In a letter to respondent's counsel dated May 21, 2020, however, Dr. Herbst states that he has spoken to respondent roughly every three months.

[9] Fioricet is a Schedule III controlled substance that is a combination of acetaminophen, butalbital and caffeine. It is a pain reliever that is a barbiturate and a stimulant.

MEDICAL BOARD EXPERT

27. Laura Davies, M.D., is a board-certified psychiatrist with extensive experience in evaluating individuals with mental illnesses and substance abuse disorders, as well as the extent to which such conditions may impair an individual's ability to safely perform his or her job. Dr. Davies graduated from Keck School of Medicine at the University of Southern California and completed her internship, residency and fellowship at the University of California, San Francisco (UCSF). She has practiced psychiatry for about 20 years and is currently in private practice. Dr. Davies reviewed pertinent medical records, documents, and the transcript from the Medical Board investigator's interview with respondent on October 9, 2019.

28. Dr. Davies was appointed by the Board to evaluate whether respondent suffers from a mental illness or condition that renders her unable to safely practice medicine. Dr. Davies interviewed respondent for about two hours on November 24, 2019. Dr. Davies issued a report dated November 25, 2019, and testified at hearing regarding her findings.

29. Dr. Davies learned that respondent had been treated for alcohol withdrawal syndrome[10] on three occasions between February 2018 and April 2019. Dr. Davies noted that the medical records from October 2018 and April 2019 contained

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[10] Dr. Davies explained that alcohol withdrawal is a serious condition that can lead to death. It is treated with the CIWA protocol. Fluids and a long-acting benzodiazepine are administered with the objective of keeping the patient alive and preventing seizures.

laboratory test results that are consistent with alcohol abuse and documented symptoms that are consistent with alcohol withdrawal.

30. Dr. Davies also noted that respondent was not candid with the physicians who treated her in April 2019 about her alcohol use and that respondent's presentation on April 19, 2019 was not consistent with a single night of heavy drinking. And, Dr. Davies was also concerned that during her interview with the Board, respondent continued to maintain that she only occasionally consumed alcohol.

31. Dr. Davies also learned that respondent had been prescribed Fioricet in 2018 and 2019, by Dr. Herbst. Respondent told Dr. Davies: "I don't feel anything when I take Fioricet. That's how I know I'm not addicted. It doesn't make me feel good. It just takes away the pain." While Fioricet is indicated for treatment of tension headaches, Dr. Davies was concerned that respondent used Fioricet for general pain relief. The frequency of the prescriptions and amounts of Fioricet prescribed[11] also concerned Dr. Davies for several reasons: Fioricet is highly addictive; it is not safe to consume alcohol while taking Fioricet; and, a physician taking Fioricet should not drive or work as an anesthesiologist because both activities require the ability to make acute observations and judgments.

32. Based on her review of records and her interview with respondent, Dr. Davies concluded that respondent has a "multi-year, multi-episode history of serious alcohol abuse that has led to ICU monitoring and treatment for withdrawal during hospitalizations," and that respondent exhibits "a stunning lack of insight into her

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[11] Respondent's Fioricet prescription was 60 pills monthly in 2018, and increased to 90 pills monthly in 2019.

issues." Dr. Davies diagnosed respondent with alcohol use disorder, severe; sedative, hypnotic or anxiolytic use disorder (sedative use disorder), moderate; major depression, recurrent, moderate; ADHD, by history; diverticulosis; rheumatoid arthritis, by history; and headaches.

33. Dr. Davies opined that, for several reasons, respondent's conditions, particularly her polysubstance abuse, render her unable to practice medicine safely: respondent presented to hospitals in 2018 and 2019 in the morning with an elevated blood alcohol and was treated for alcohol withdrawal three times during this period; and, respondent evidences drug-seeking behavior in her use of Fioricet to address general pain. In drawing her conclusions, Dr. Davies reasoned that the symptoms from respondent's polysubstance abuse and withdrawal "dramatically affect her ability to provide reasonable medical care"; respondent does not acknowledge her substance abuse; and is not a reliable reporter regarding her misuse of substances.

34. Finally, Dr. Davies expressed concern that respondent lacks a coordinated treatment plan to address her substance abuse and depression. Dr. Davies firmly believes that respondent cannot safely practice medicine until she undergoes treatment for these conditions; such treatment will help respondent gain insight into her substance abuse and develop healthy coping mechanisms. Dr. Davies, however, was encouraged that respondent presently has a primary care physician and that respondent has not any alcohol-related incidents since April 2019.

Respondent's Evidence

BACKGROUND, TRAINING AND EMPLOYMENT

35. Respondent is a board-certified anesthesiologist and has practiced anesthesiology for 23 years. She received an undergraduate degree in genetics at the

University at California, Davis, in 1989, and completed medical school at the Stritch School of Medicine at Loyola University, Chicago, in 1993. Respondent completed a residency in anesthesia at UCSF in 1997.

36. Respondent worked as an anesthesiologist at a number of hospitals between 1997 and 2020. Most recently, beginning in 2017, she worked for Medical Anesthesia Consultants on a per diem basis. Respondent has not practiced as an anesthesiologist since May 2019, except for working in a dental office for three days in December 2019.

37. This is respondent's first disciplinary matter before the Board.

RESPONDENT'S TESTIMONY REGARDING HER USE OF ALCOHOL, TREATMENT FOR DEPRESSION AND HOSPITALIZATIONS

38. At hearing, respondent admits that she abused alcohol during a brief period in her life, between July 2018 and February 2019, when she had stopped working due to her various medical conditions. This period of time was difficult for her, as she had previously been very physically active and she also suffered a number of personal losses due to death and divorce, and she was alone. Respondent testified that this was the first time that she turned to alcohol to cope with loss and depression. Following her hospitalization in October 2018, she decided to get more exercise and "drink less." She testified that she reduced her alcohol to a glass of wine a couple of nights a week with dinner and cocktails with friends on weekends. She maintained that her efforts were largely successful until April 18, 2019, when she drank to excess after learning that her boyfriend of three years was canceling his plans to move to California and was breaking up with her.

39. Respondent admits to having self-medicated with alcohol prior to her October 2018 hospital stay. Respondent also admits that she was under the influence of alcohol when she returned to ValleyCare on the morning of April 19 to take a blood test. When speaking to the treating physicians, she was not candid about this due to embarrassment and wanting to keep her personal life private. After Dr. Kuppalli shared her concerns about respondent's alcohol abuse, however, respondent acknowledged that she had an "issue" with alcohol.

40. Respondent denies that Dr. Yoshioka ever asked her specifically if she ever used alcohol, and she denies that she ever went through alcohol withdrawal. Respondent also denies ever having been treated for alcohol withdrawal during her hospitalizations, and she denies that any physician who treated her during these times told her that she was being treated for alcohol withdrawal. Respondent testified that she was "shocked" that she had been placed on alcohol withdrawal protocols and was "astounded" because there was no documentation of it in her discharge summary.

41. Respondent believes that lab results that were thought to be consistent with alcohol withdrawal are also consistent with other factors unrelated to alcohol. She also believes her symptoms that were viewed as consistent with alcohol withdrawal were actually consistent with symptoms of other medical issues. For example, she attributes her symptoms on April 16, 2019, of becoming febrile, weak, and nauseated while at work, to a viral infection.

42. Respondent denies that she has ever consumed alcohol on a day she has been working or thought she might be scheduled to work. She also maintains that she has never come to work with any alcohol in her system. She is steadfast in her commitment to never jeopardizing the safety of her patients.

43. Respondent maintains that she has not sought treatment for alcohol abuse because no one recommended that she do so. She believes that her efforts to decrease her use of alcohol in mid-2018 were largely successful until the incident in April 2019. Following the April 2019 incident, respondent realized that she was using alcohol inappropriately, and consumed alcohol only occasionally. Respondent testified that she has abstained from alcohol since Easter of 2020.

44. Respondent has struggled a lot with depression. She tried antidepressants but experienced significant side effects from them without significant benefits. While she continues to experience depression, she believes that it is under control.

45. Respondent takes Fioricet for migraine and tension headaches. She denies misusing it and does not believe that she is addicted to it. At hearing, she maintained that "no one has ever told her" that her use of Fioricet was a problem.

46. Key portions of respondent's testimony regarding her use of, and withdrawal from, alcohol, are not reliable insofar as her testimony is unsupported by the medical records and contradicted by the testimony of the physicians who treated her.

CURRENT MEDICAL ISSUES AND TREATMENT

47. Respondent has continued to be beset by medical problems: she had two surgeries in May and July of 2019; she also has a hernia that needs repair; she needs a left hip replacement; and she fractured her ankle during a fall earlier this year. Respondent has chronic pain issues, stemming in part from her "bone on bone" hip pain and rheumatoid arthritis in her knees and hands.

48. Respondent currently receives care from primary care physician Michael Temkin, D.O.; pain management specialist Susan Gutierrez, M.D.; rheumatologist Rashmi Dixit, M.D.; as well as other specialists. Respondent is not currently receiving psychotherapy to treat her depression. She testified that it is difficult to find a psychiatrist, due to cost and her medical insurance plan.

LETTERS FROM RESPONDENT'S DOCTORS

49. In a letter to the Board dated December 5, 2019, Dr. Jinich wrote that he has not seen any evidence that respondent abused alcohol. Dr. Jinich commented that he was surprised to learn about the allegations against respondent, whom he regards as responsible and vigilant. In a letter to respondent's counsel dated May 21, 2020, Dr. Herbst wrote that he did not see any evidence of alcohol or substance misuse, dependence or abuse during the six years that he had contact with respondent.

50. In a letter dated June 4, 2020, Dr. Gutierrez wrote that since she began treating respondent in November 2019, she has had no reason to suspect that respondent has been abusing alcohol. In an undated letter to respondent's attorney, Dr. Temkin wrote that he has never suspected that respondent has any issues with alcohol abuse.

RESPONDENT'S EXPERT

51. David Kan, M.D., graduated from Northwestern University School of Medicine and completed a psychiatric residency and a fellowship in psychiatry and law at UCSF. Dr. Kan has been practicing psychiatry for about 20 years. He has impressive credentials and extensive training and experience in addiction medicine and forensic psychiatry. He is board-certified in psychiatry; he holds a certificate of added qualifications in forensic psychiatry, and, he is board-certified in addiction medicine.

Dr. Kan has a private practice specializing in addiction and forensic psychiatry; the majority of his patients have addictive disorders. Respondent is also the Chief Medical Officer of Bright Heart Health, which provides telehealth Substance Use Disorder treatment; and he performs evaluations, assessments and reviews for San Francisco Community Behavioral Health.

52. Dr. Kan met with respondent on February 24, 2020. He also reviewed pertinent records. Dr. Kan issued a report dated April 9, 2020, and testified at hearing regarding his findings.

53. Respondent described her depression in 2018 to Dr. Kan as the "lowest point in her life as far as depression." Respondent also shared with Dr. Kan that she was currently depressed, and that it is the "worst that is has been."

54. Respondent described herself as a periodic drinker until the end of 2017, when her use of alcohol increased with her burgeoning health problems and depression. During this period of time, continuing until the beginning of 2019, respondent acknowledged that she "occasionally" drank more to cope with her physical pain, loneliness and fear. And, she did so in spite of knowing that alcohol aggravated her other health problems, such as diverticulitis. Respondent admitted to drinking excessively during the evening and early morning of April 18 and 19, 2019. Respondent reported that since May 2019, she drank "minimally." In the 30 days prior to respondent's interview in February 2020, respondent reported that she consumed one or two glasses of wine on two occasions. Dr. Kan noted that respondent had been treated for alcohol withdrawal in October 2018, and that alcohol withdrawal symptoms were noted in her February 2018 medical records. Dr. Kan concluded that during the timeframe described above, respondent had a mild alcohol use disorder. He noted,

however, that respondent did not meet the diagnostic criteria for an alcohol use disorder either before the end of 2017 or after May 2019.

55. Dr. Kan diagnosed respondent with alcohol use disorder, mild, in early remission and major depressive disorder, recurrent, moderate to severe. Dr. Kan did not offer an opinion in his report of April 2020 or at hearing as to whether respondent also suffers from sedative use disorder, based upon her use of Fioricet.

56. Dr. Kan explained that alcohol use disorder is mild when it is time-limited; in contrast, alcohol use disorder is moderate or severe when it looks like a chronic disorder that requires management. In respondent's case, he viewed her alcohol use disorder as time-limited, and therefore, mild. Dr. Kan agreed that individuals who have severe alcohol use disorder should abstain from consuming alcohol and obtain professional treatment. He disagreed with Dr. Davies, however, that respondent's alcohol use disorder is severe. For this reason, he also disagreed that respondent should abstain from the use of alcohol and obtain professional treatment for alcohol use disorder. Alcohol use disorder is considered to be in early remission when the signs and symptoms have stopped for three to 12 months. Dr. Kan reasoned that respondent's alcohol use disorder was in remission because there was no evidence of recent use or current evidence of alcohol abuse or withdrawal, and respondent denied experiencing signs of alcohol use disorder within the last year.

57. In formulating his opinion, Dr. Kan noted that respondent's excessive use of alcohol was related to her depression, health problems, and the break-up of her relationship. Dr. Kan questioned whether some of respondent's laboratory tests, such as her elevated liver function, could have been due to other medical conditions or side effects of prescribed medications, rather than alcohol use disorder. And, he found that biological testing specimens that were taken within the month before their meeting

were consistent with respondent's report that she had limited her consumption of alcohol. He also believed that respondent "has insight into her issues with alcohol." For these reasons, Dr. Kan concluded that respondent's use of alcohol, which he describes as "limited or eliminated," did not impair her ability to safely practice medicine.

58. Dr. Kan opined that respondent was in need of treatment for her depressive disorder. He noted that although respondent continues to have telephone contact with Dr. Herbst, she would benefit from treatment by a local psychiatrist who has a background in treating addiction. He also thought it would be helpful for respondent to participate in psychotherapy. Dr. Kan did not believe that respondent's depression placed her patients' safety at risk. He also determined that there was a low risk that respondent was a danger to herself.

REFERENCE LETTERS AND CONTINUING EDUCATION

59. Respondent submitted letters from four individuals who are familiar with, and think highly of, her work. These individuals were not provided with copies of the Accusation that was filed against her.

a. Frederick L. Johnson, M.D., is an anesthesiologist and co-owner of Lake County Anesthesia. In a letter dated April 13, 2020, Dr. Johnson writes that respondent worked as an anesthesiologist at Lake County Anesthesia between June 2015 and April 2017. Dr. Johnson received compliments from hospital staff regarding the compassion respondent showed to her patients. Dr. Johnson also writes that during the time that respondent was a member of the medical staff, no concerns were raised about her use of alcohol or any substance of habituation.

b. Helen V. Johnson, M.D., is an anesthesiologist. She co-owns Lake County Anesthesia with her husband. In a letter dated April 13, 2020, Dr. Johnson states that

during respondent's tenure at their practice, there were no issues regarding her use of alcohol or any other substance.

c. Susan Wallace-Andre, R.N., B.S.N., is a retired registered nurse who frequently worked with respondent between 2014 and 2017 at Sutter Lakeside Hospital. Wallace-Andre also rented a home to respondent during a portion of this time period. In a letter dated March 28, 2020, Wallace-Andre describes respondent as a "competent, safe and compassionate anesthesiologist." Additionally, Wallace-Andre writes that respondent was frequently a dinner guest at Wallace-Andre's home; during these times, respondent was not observed to have "overindulged" in wine.

d. George M. Woods, M.D., is a semi-retired anesthesiologist who has had occasion to interact professionally with respondent in 1998, and then in 2017 to 2018. In a letter dated February 20, 2020, Dr. Woods writes that he never saw respondent under the influence of any intoxicant during working hours, and he cannot remember her consuming more than one glass of wine during social occasions. He also stated that he knew of no negative outcome attributed to her work as an anesthesiologist.

60. Respondent has completed a variety of courses in continuing medical education.

Ultimate Findings Regarding Expert Testimony

61. At the outset, it is noted that Dr. Davies's opinion regarding respondent's abuse of Fioricet is unrebutted, insofar as Dr. Kan did not opine on this issue in his report. As such, the focus of the following discussion pertains to respondent's use of alcohol.

62. While both experts provided considered opinions, Dr. Davies's opinion that respondent's ability to practice medicine safely is impaired by reason of her alcohol use disorder and depression is more persuasive than Dr. Kan's opinion that respondent's alcohol use disorder is mild and in remission, and that she is safe to practice medicine.

63. Among the factors considered in making this determination are the following: Dr. Kan's conclusion that respondent's alcohol use disorder is mild rather than moderate or severe is based, in part, on respondent's self-report that she occasionally drank to excess for a time-limited period. Dr. Kan's opinion does not meaningfully account for respondent's treatment for alcohol withdrawal syndrome on three separate occasions as well as the observations of the treating doctors who had an opportunity to observe respondent's symptoms. Additionally, in finding that respondent's alcohol use disorder is in remission, Dr. Kan relies on respondent's self-reports that her use of alcohol use since May 2019 has been minimal. Yet, the evidence below clearly establishes that respondent is not a reliable historian regarding her use of alcohol. Dr. Kan also does not account for respondent's lack of candor with the Board and with various treaters regarding her alcohol use, or her denial regarding the diagnoses of, and treatment for, alcohol withdrawal. Against this background, Dr. Kan's opinion, that respondent's insight into her alcohol use is a positive protective factor that militates against her returning to problematic drinking, is unconvincing. Dr. Kan also does not explain why respondent's depression, which he agrees requires treatment, does not present a risk factor in her returning to excessive drinking, particularly when, according to Dr. Jinich's notes from August 2018, she has been resistant to treatment.

64. In contrast, Dr. Davies's opinion is consistent with documentary and testimonial evidence at hearing, which, taken together, establish that respondent suffers from alcohol use disorder, severe; sedative use disorder, moderate; and major depression, recurrent and moderate, which impair respondent's ability to safely practice medicine.

LEGAL CONCLUSIONS

1. The standard of proof in an administrative hearing to discipline a physician's license is clear and convincing proof to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Complainant has the burden of proof as to each fact the existence or nonexistence of which is essential to establishing cause for discipline. (Evid. Code, § 500.)

First Cause for Discipline (Impaired Ability to Safely Practice)

2. Section 822 provides as follows:

> If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill affecting competency, the licensing agency may take action by any one of the following methods:
>
> (a) Revoking the licentiate's certificate or license.
>
> (b) Suspending the licentiate's right to practice.
>
> (c) Placing the licentiate on probation.

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

3. Respondent's ability to practice medicine safely is impaired because she suffers from mental illness and substance abuse. (Factual Findings 61-62, 64.) Accordingly, cause exists to take action against respondent's Certificate pursuant to section 822.

Second Cause for Discipline (Unprofessional Conduct))

4. Pursuant to section 2234, the Board may take disciplinary action against a licensee's Certificate for unprofessional conduct. Pursuant to section 2239, subdivision (a), a licensee's use of alcohol or controlled substances in a manner that is dangerous to the licensee or the public, or the extent that it impairs the licensee's ability to safely practice medicine, constitutes unprofessional conduct. Respondent has used alcohol and controlled substances in a manner that is dangerous to herself and the public, and impairs her ability to safely practice medicine. (Factual Findings 61-62, 64.) Accordingly, cause exists to take action against respondent's Certificate pursuant to sections 2234 and 2239.

Disciplinary Determination

5. As cause for discipline has been established, the appropriate level of discipline must be determined. The Board's Manual of Disciplinary Orders and

Disciplinary Guidelines (Disciplinary Guidelines) (12th ed., 2016),[12] recommends, at a minimum, stayed revocation and five years' probation, subject to appropriate terms and conditions, for respondent's misconduct under section 2234. The maximum discipline for respondent's misconduct under section 2234 is revocation of her Certificate. Section 822 also provides for actions that include placing the respondent on probation to revoking her Certificate.

In exercising its disciplinary functions, protection of the public is the Board's paramount concern. (§ 2229, subd. (a).) At the same time, the Board is charged with taking disciplinary action that is calculated to aid the rehabilitation of the licensee whenever possible, as long as the Board's action is not inconsistent with public safety. (§ 2229, subds. (b), (c).) In the instant case, the evidence established that respondent suffers from alcohol use disorder, severe; sedative use disorder, moderate; and major depression, recurrent and moderate, which impair her ability to safely practice medicine.

At the outset of this analysis, it is noted that respondent worked many years as an anesthesiologist without any complaints regarding unprofessional conduct. She has faced many medical challenges and personal disappointments in her life, and she has done her best to cope. Respondent clearly values being a competent and compassionate physician, she enjoys her work, and is respected by colleagues for these qualities. The concern expressed by respondent to the effect that Dr. Davies and the Deputy Attorney General "are trying to portray her as a terrible person," is unsupported by the record: There is no allegation or indication from the evidence that

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[12] The Board's Disciplinary Guidelines are incorporated in California Code of Regulations, title 16, section 1361.

respondent is a "terrible" person or that there have been complaints about the care that she has provided to any of her patients. The point of this hearing is not to cast any blame or punishment on respondent, but rather to protect the public and fashion disciplinary orders to aid in the rehabilitation of respondent, to the extent it does not imperil the protection of the public.

The Board is extremely concerned by the facts leading to these proceedings: respondent was treated for alcohol withdrawal three times between February 2018 and April 2019, and on two of these occasions, in October 2018 and April 2019, her blood alcohol was 0.08 percent during the morning hours. And these concerns are exacerbated because respondent lacks insight into her problems and has been resistant to obtaining treatment for these conditions.

Respondent requests a public reprimand or a brief period of probation. She asserts that she has addressed her past excessive use of alcohol and therefore does not require any treatment. The evidence, however, does not support such an outcome. Dr. Davies's expert testimony established that by reason of respondent's alcohol use disorder, and her sedative use disorder, in combination with her major depression, respondent cannot safely practice medicine at this time. Respondent's lack of candor to multiple physicians who treated her, to the Board, and at hearing, regarding her problematic use of alcohol and Fioricet, and her denial that she was informed about, or treated for, alcohol withdrawal, suggest that respondent has not yet come to terms with her alcohol and sedative use disorders.

Additionally, even after respondent's Certificate was suspended following a hearing in which it was determined that she was unable to safely practice medicine, respondent did not obtain treatment for her alcohol and sedative use disorders or her depression. The fact that respondent appears to have curtailed or eliminated her use

of alcohol and has had no recent episodes involving her alcohol use are positive developments, but do not allay the Board's concerns regarding respondent's safety to practice. As complainant points out, the Board does not need to wait until a patient is actually harmed before taking disciplinary action against a licensee. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757,773.) And, as complainant also observes, while each of respondent's conditions pose concerns, taken together, they are a "recipe for disaster."

Against this background, in order to protect the public, more rigorous measures than suggested by respondent are necessary. Complainant asserts, and it is found, that a five-year term of probation, with conditions, is necessary to support respondent's rehabilitation while at the same time, ensuring the safety of the public. It is hoped that respondent's desire to continue practicing anesthesiology will lead her to obtain treatment for her conditions, and that with a period of monitoring subject to the conditions outlined below, she will be able to return to the practice of medicine without restriction.

The Board's Disciplinary Guidelines and its "Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees" (Substance Abuse Guidelines)[13] provide guidance regarding the appropriate terms and conditions of probation. Where, as here, a licensee is disciplined for unprofessional conduct involving the abuse of drugs and/or alcohol, the licensee is presumed to be a "substance-abusing licensee" and subject to the mandatory terms and conditions of

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[13] The Board's Substance Abuse Guidelines are contained in California Code of Regulations, title 16, section 1361.5.

probation outlined in the Substance Abuse Guidelines. (Cal. Code Regs., tit. 16, § 1361, subd. (b), § 1361.5, subds. (a) & (c).)

The probation conditions set forth below are consistent with the Disciplinary Guidelines, the Substance Abuse Guidelines, and the disclosure provisions required by Business and Professions Code section 2228.1, subdivision (a)(1)(B). It is noted that conditions 1-3 are additional terms that were proposed by complainant, based upon the facts specific to this case, to protect the public and assist in respondent's rehabilitation.[14]

ORDER[15]

Certificate No. G 80885 issued to respondent Darcene Melaac Munir, M.D., is revoked. However, the revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

1. Clinical Diagnostic Evaluation and Report

Respondent underwent a Clinical Diagnostic Evaluation during the investigation of this matter. However, as a condition precedent to respondent's resumption of the practice of medicine, respondent must undergo an additional evaluation by a Board-appointed board certified physician and surgeon, for the purpose of assessing

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[14] California Code of Regulations, title 16, section 1361.5 authorizes the imposition of additional terms of probation that are necessary for public protection or to assist in the rehabilitation of the licensee.

[15] This Order supersedes the Order of suspension issued in OAH 2020020055.

respondent's progress since the initial Clinical Diagnostic Evaluation and her current status. The evaluator shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee, stating whether respondent can safely resume the practice of medicine. Respondent shall cooperate fully with the evaluation, and provide prompt access to any information or records the evaluator deems necessary.

2. Medical Treatment

Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed physician who shall serve as respondent's primary care physician. Within seven calendar days of receipt of the Board's approval, respondent shall provide the primary care physician with a true copy of this Decision and the Accusation. The primary care physician shall oversee and coordinate respondent's medical care, including prescription medications, and respondent shall follow treatment recommendations. Respondent shall authorize and direct the treating physician to submit quarterly reports to the Board or its designee indicating whether or not respondent is medically capable of practicing medicine safely. Respondent shall pay the cost of any medical treatment.

3. Psychotherapy

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist with experience in addiction medicine. Upon approval, respondent shall undergo and continue regular treatment with her

psychiatrist, including any modifications to the frequency of treatment, until the Board or its designee deems that no further psychotherapy is necessary. Respondent's treating psychiatrist shall prescribe any and all psychotropic medication required by respondent over the course of probation, and shall coordinate care with other medical providers, including respondent's primary care physician and other mental health providers who provide treatment to respondent.

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

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

4. Notice of Employer or Supervisor Information

If respondent has an employer or supervisor, respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent for the Board, the

worksite monitor, and her employers and supervisors to communicate regarding respondent's work status, performance, and monitoring. For purposes of this section, "supervisors" shall include the Chief of Staff and the Health or Well Being Committee Chair, or equivalent, if applicable, when respondent has medical staff privileges.

5. Biological Fluid Testing

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

During the first year of probation, respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five years, respondent shall be subject to 36 to 104 random tests per year. Only if there have been no positive biological fluid tests in the previous five consecutive years of probation, may testing be reduced to one time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

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

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

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

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

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

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

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

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

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

(i) It maintains testing sites located throughout California.

(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 business day and negative test results within seven 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.

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

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

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

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

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by respondent and approved by the Board, alcohol, or any other

substance the respondent has been instructed by the Board not to use, consume, ingest, or administer to himself or herself.

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

6. Substance Abuse Support Group Meetings

Within 30 days of the effective date of this Decision, respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which she shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee.

Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with respondent within the last five years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing respondent's name, the group name, the date and location of the meeting, respondent's attendance, and respondent's level of participation and progress. The facilitator shall report any unexcused absence by respondent from any substance abuse support group meeting to the Board, or its designee, within 24 hours of the unexcused absence.

7. Worksite Monitor for Substance-Abusing Licensee

Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring respondent at work.

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

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

Respondent shall pay all worksite monitoring costs.

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

The worksite monitor shall verbally report any suspected substance abuse to the Board and respondent's employer or supervisor within one business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

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

Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

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

8. Violation of Probation Condition for Substance Abusing Licensee

Failure to fully comply with any term or condition of probation is a violation of probation.

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

(1) Issue an immediate cease-practice order and order respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at respondent's expense. The cease-practice order issued by the Board or its designee shall state that respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of

determining the length of time a respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as 30 calendar days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that she may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of respondent;

(4) Order increased documentation;

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

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

(7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke respondent's probation if she has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation, or petition to revoke probation, or an interim suspension order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

9. Controlled Substances - Abstain From Use

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

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

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke

probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

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

10. Alcohol - Abstain From Use

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

If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine

until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

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

11. Solo Practice Prohibition

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

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

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

12. Patient Disclosure

Before a patient's first visit following the effective date of this order and while respondent is on probation, respondent must provide all patients, or patient's guardian or health care surrogate, with a separate disclosure that includes respondent's probation status, the length of the probation, the probation end date, all practice restrictions placed on respondent by the Board, the Board's telephone number, and an explanation of how the patient can find further information on respondent's probation on respondent's profile page on the Board's website. Respondent shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure. Respondent shall not be required

to provide a disclosure if any of the following applies: (1) the patient is unconscious or otherwise unable to comprehend the disclosure and sign a copy of the disclosure and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy; (2) the visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities; (3) respondent is not known to the patient until immediately prior to the start of the visit; or (4) respondent does not have a direct treatment relationship with the patient.

13. Notification

Within seven days of the effective date of this Decision, respondent shall provide a true copy of this Decision and Order to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall apply to any change in hospitals, other facilities, or insurance carrier.

14. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

15. Obey All Laws

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

16. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

17. General Probation Requirements

Compliance with Probation Unit. Respondent shall comply with the Board's probation unit.

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

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

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

Travel or Residence Outside California. Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days. In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

18. Interview with the Board or Its Designee

Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Board or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

19. Non-Practice While on Probation

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

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

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

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

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

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

20. Violation of Probation

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

21. License Surrender

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

22. Probation Monitoring Costs

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

23. Completion of Probation

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

DATE: August 24, 2020

DocuSigned by:
Diane Schneider
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DIANE SCHNEIDER
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Office of Administrative Hearings

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

In the Matter of the Accusation Against: **Darcene Melaac Munir, M.D.** 11040 Bollinger Canyon Road, E-209 San Ramon, CA 94582-4969 Physician's and Surgeon's Certificate No. G 80885, Respondent.	Case No. 800-2019-054890 **A C C U S A T I O N**

PARTIES

1. Christine J. Lally (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On March 29, 1995, the Medical Board issued Physician's and Surgeon's Certificate Number G 80885 to Darcene Melaac Munir, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2021, unless renewed. The certificate is SUSPENDED pursuant to an Interim Suspension Order issued on February 19, 2020.

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JURISDICTION

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

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

5. Section 2234 of the Code provides that the Board shall take action against any licensee who is charged with unprofessional conduct.

6. Section 2239 of the Code provides that it is unprofessional conduct for a licensee to use alcohol, dangerous drugs or controlled substances to the extent or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely.

7. Section 822 of the Code provides that the Board may take action if a licentiate's ability to practice his or her profession safely is impaired because or mental or physical illness.

FACTUAL ALLEGATIONS

8. In April 2019, the Medical Board received a complaint from an emergency room physician alleging that on April 16, 2019, Respondent, an anesthesiologist, reported to the emergency room during a work shift complaining of nausea, vomiting and shaking. The treating emergency room physician suspected alcohol withdrawal, but based on Respondent's denial of alcohol use or abuse, did not pursue his suspicion. Respondent was evaluated, given Ativan to calm her and discharged home. Respondent returned to the emergency room on April 19, 2019 to follow up on an irregular blood culture; a blood test drawn on admission shortly after 10:00 a.m. revealed a blood alcohol level of .086%. By this time, the emergency room physician learned that records from prior hospitalizations showed that Respondent had previously received treatment for alcohol withdrawal and alcohol related pancreatitis. The complaint asserted, "This physician is

clearly in denial of her serious health problem that places patients at risk while working in one of the most dangerous areas of the hospital."

9. Medical records establish that Respondent was hospitalized and treated for alcohol withdrawal on at least three occasions in 2018-2019, and had a number of physical symptoms consistent with alcohol abuse.

10. During an October 2019 interview with the Board's investigator, Respondent denied any past treatment for alcohol related problems, and denied any history of, or treatment for, alcohol withdrawal. She dismissed documented instances of treatment for alcohol withdrawal as "totally inaccurate," maintained that the incident on April 16, 2019 was due to an illness, and was not alcohol related. She professed surprise that her blood alcohol level on the morning of April 19, 2019 was .086%.

11. Respondent stated during her interview that she took a variety of medications, including Fioricet[1], oxycodone[2], lorazepam[3], Vyvanse[4], and that she has not had a primary care physician in several years. She said that she receives prescriptions for Fioricet and Vyvanse from a Los Angeles psychiatrist. Respondent further stated that she had been in treatment with a psychologist for approximately 20 years, and "touched base" with him regularly.

12. Medical records reveal a total of 12 contacts with the Los Angeles psychiatrist between 2015-2019, each entry consisting of a few words. The psychologist advised the Board's investigator that Respondent was in formal treatment with him from September 2014-July 2015, and that he had two telephone conversations with her in 2018.

13. Respondent underwent an evaluation by a Board-appointed psychiatrist. The evaluator concluded that Respondent has a severe alcohol use disorder, a moderate sedative, hypnotic or anxiolytic use disorder, and suffers from moderate, recurrent major depression. The evaluator noted that Respondent has multi-year, multi-episode history of serious alcohol abuse

[1] Fioricet is a combination of acetaminophen, butalbital and caffeine. It is a pain reliever and both a barbiturate and a stimulant. Fioricet is a Schedule III controlled substance.

[2] Oxycodone is a narcotic analgesic and a Schedule II controlled substance.

[3] Lorazepam is a benzodiazepine/sedative used to treat anxiety. It is a Schedule IV controlled substance.

[4] Vyvanse is a stimulant used to treat attention deficit disorders. It is a Schedule II controlled substance.

which has led to ICU monitoring and treatment for withdrawal during hospitalizations, and that Respondent lacks insight into her issues. The evaluator further observed that Respondent's use of medication to treat her depression and pain was inappropriate and prescribed without necessary or bona fide medical oversight. The evaluator concluded that Respondent has mental illnesses or conditions that impair her ability to safely practice medicine, and significantly impact her judgment and cognition.

FIRST CAUSE FOR BOARD ACTION

(Impaired Ability to Safely Practice)

14. Respondent's certificate is subject to action by the Board pursuant to sections 2227 and 822 of the Code in that Respondent is impaired in her ability to safely practice medicine as a result of mental illness and/or substance abuse.

SECOND CAUSE FOR BOARD ACTION

(Unprofessional Conduct: Dangerous Use of Alcohol)

15. Respondent's certificate is subject to Board action pursuant to sections 2234 and/or 2239 of the Code in that her conduct in misrepresenting her use of alcohol and her past treatment for alcohol withdrawal, use of controlled substances without appropriate medical oversight, and her repeated hospitalizations for treatment of alcohol withdrawal constitute unprofessional conduct and the use of alcohol and controlled substances in a manner dangerous to herself and the public.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 80885, issued to Darcene Melaac Munir, M.D.;

2. Revoking, suspending or denying approval of Darcene Melaac Munir, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Darcene Melaac Munir, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: MAR 12 2020

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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