

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

In the Matter of the Accusation Against:

Robert Edward Caton, M.D.

Physician's & Surgeon's
Certificate No. G 48633

Petitioner.

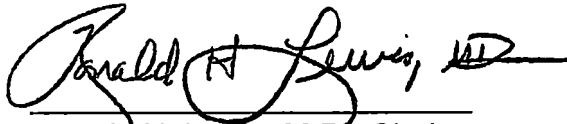
Case No. 800-2017-032139

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by Marvin H. Firestone, Esq., attorney for Robert Edward Caton, M.D., for the reconsideration of the decision in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on **May 24, 2021**.

IT IS SO ORDERED: May 25, 2021



Ronald H. Lewis, M.D., Chair
Panel A

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

In the Matter of the Accusation Against:

Robert Edward Caton, M.D.

Physician's & Surgeon's
Certificate No. G 48633

Respondent.

Case No. 800-2017-032139

ORDER GRANTING STAY

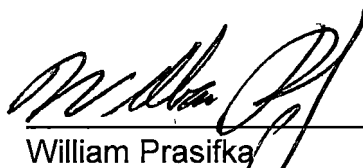
(Government Code Section 11521)

Marvin H. Firestone, Esq., on behalf of respondent, Robert Edward Caton, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of May 14, 2021, at 5:00 p.m.

Execution is stayed until May 24, 2021, 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: May 10, 2021



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:

Robert Edward Caton, M.D.

Physician's & Surgeon's
Certificate No. G 48633

Respondent.

Case No. 800-2017-032139

ORDER GRANTING STAY

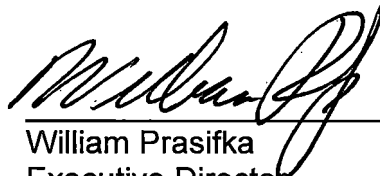
(Government Code Section 11521)

Marvin H. Firestone, Esq., on behalf of respondent, Robert Edward Caton, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of April 16, 2021, at 5:00 p.m.

Execution is stayed until May 14, 2021, at 5:00 p.m.

This stay is granted solely for the purpose of allowing the Respondent to file a Petition for Reconsideration.

DATED: April 6, 2021



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:

Robert Edward Caton, M.D.

Physician's and Surgeon's
License No. G48633

Respondent

Case No. 800-2017-032139

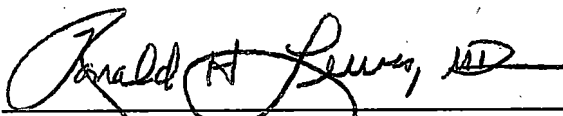
DECISION

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 April 16, 2021.

IT IS SO ORDERED: March 19, 2021.

MEDICAL BOARD OF CALIFORNIA



Ronald H. Lewis, M.D., Chair
Panel A

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

In the Matter of the Accusation against:

ROBERT EDWARD CATON, M.D., Respondent

Agency Case No. 800-2017-032139

OAH No. 2020030186

PROPOSED DECISION

Danette C. Brown, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by telephone and videoconference on February 1 to 2, 2021, from Sacramento, California.

John S. Gatschet, Deputy Attorney General, represented complainant William Prasifka, Executive Director, Medical Board of California (Board), Department of Consumer Affairs (DCA).

Marvin H. Firestone, M.D., Attorney at Law, represented Robert Edward Caton, M.D. (respondent), who was present at the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on February 2, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 16, 1982, the Board issued to respondent Physician and Surgeon's Certificate No. G 48633 (certificate). The certificate expires on October 31, 2021, unless renewed or revoked.

2. On January 13, 2020, Christine J. Lally, former Interim Executive Director for the Board, filed the Accusation in her official capacity against respondent. The Accusation alleges that grounds exist to discipline respondent's certificate based upon respondent's conviction of a crime that is substantially related to the qualifications, functions, and duties of a person licensed to practice medicine. Specifically, on September 27, 2018, respondent was convicted of violating Penal Code section 549, as discussed below.

September 27, 2018 Conviction

3. On September 27, 2018, in the Orange County Superior Court, Case No. 17CF0796, respondent was convicted, upon a plea of guilty, of violating Penal Code section 549 (false and fraudulent claim), a misdemeanor. The court suspended imposition of sentence, and placed respondent on three years' informal probation, including the following terms: pay court fees and fines; pay a donation of \$18,000 to the Victim Witness Emergency Fund; pay restitution of \$175,270 to the "Monarch Restitution Fund;" and do not accept non-emergency worker's compensation patients. Respondent immediately paid the donation and restitution amounts in full. On January 26, 2021, the case was dismissed pursuant to Penal Code section 1203.4.

4. Respondent's conviction was the result of a 21-count felony complaint filed against him alleging, in pertinent part, that he referred business to and from King Medical Management, Inc. (KMM) and One Source Labs, Inc., (One Source), with knowledge and reckless disregard for whether KMM and One Source intended to violate Penal Code section 550¹ and Insurance Code section 1871.4.² The charges related to an alleged fraudulent medical billing and kickback scheme involving the worker's compensation system, Tanya King, and her husband Chris King. The Kings received approximately \$23 million connected to kickbacks. Respondent's misdemeanor conviction was related to urine toxicology tests only.

5. The Kings perpetrated the scheme using the various companies that Ms. King owned and operated, or in which she actively participated. She owned and operated KMM and One Source, and was president of Monarch Medical Group, Inc. (MMG). The companies provided services such as supplying transdermal creams, performing urine drug screening, and dispensing medications. Ms. King was not a licensed physician or other licensed medical professional.

6. Samples of billing and supporting documentation from five worker's compensation companies billed by the companies run by the Kings, including MMG,

¹ It is unlawful to aid, abet, solicit, or conspire to knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit, including worker's compensation health benefits under the Labor Code. (Pen. Code, § 550, subd. (a).)

² It is unlawful to make a knowingly false or fraudulent material representation to obtain compensation. (Ins. Code, § 1871.4, subd. (a).)

KMM, and One Source, showed evidence of overbilling, billing for services never rendered, and billing for medically unnecessary urine drug tests and compound creams. In addition, physicians entered into contracts with MMG, KMM, and One Source, and received illegal fee splits and kickbacks in exchange for ordering, dispensing, or prescribing products and services provided by those companies.

7. From June 12, 2012, to August 12, 2015, respondent received payments of over \$175,000 from MMG and KMM in exchange for ordering urine toxicology tests, and prescribing oral medications and compound creams. Respondent did not incur out-of-pocket expenses for the urine specimen collection kits and other medications and testing kits, because all were purchased by MMG and provided to him. In addition, respondent also received consideration by receiving "Urine Toxicology Review" reports authored by One Source, which were billed to worker's compensation on behalf of respondent for additional reimbursement.

Respondent's Evidence

AUGUST 28, 2019 LETTER TO THE BOARD

8. In his August 28, 2019 letter to the Board, respondent explained the criminal scheme involved 47 physicians in California. Identifying herself as a "salesperson" with KMM and MMG, Ms. King approached respondent and offered to provide compounded creams and urinalysis testing to his worker's compensation patients.

To gain respondent's trust and business, Ms. King informed respondent that physicians at Stanislaus Orthopedics worked with her regarding the creams and urinalysis testing, and she thought that respondent might be interested in doing the same. Respondent inquired with some of physicians utilizing MMG and KMM's

services, and found that "they appeared satisfied as to the legality of the business." Respondent's office manager also asked Ms. King on several occasions about the legality of the process, and was told it was legal.

Respondent later discovered that "the company was not upfront" with him, in that the compounded creams were not actually compounded, and that the urine testing was sent to Ms. King's own laboratory, One Source. Respondent acknowledged he was criminally charged in Orange County "for unlawfully accepting business from KMM and One Source."

RESPONDENT'S TESTIMONY

9. Respondent testified consistently with his letter above. He is 69 years old, and has practiced as a general orthopedist for over 35 years, performing all types of general orthopedic surgery. After receiving his medical degree from the University of South Alabama, and completing his orthopedic surgery residency at the University of South Carolina, he became the Director of Orthopedics at Stanislaus Surgical Hospital (Stanislaus County), which serves the medically indigent population. He served as the Director of the Orthopedic Department from 1985 to 1987. During his career, respondent has treated over 80,000 patients, and has performed more than 7,000 surgeries on "county and state-responsible patients." Respondent also provided orthopedic services at Memorial Hospital in Modesto, in addition to running his own private practice. Respondent is board-certified in General Surgery.

10. Additionally, respondent served the local community as the head of the Victims of Violent Crime Program for 10 years. Until 2018, he treated patients at Stanislaus County and Merced County Jails; currently, he treats shooting and stabbing victims at the county clinic. He has also provided medical treatment to the Crippled

Children's Program at the county clinic for 35 years. Because many private medical offices do not accept county and state-responsible patients, or undocumented patients, respondent began treating indigent patients at his private office when the county clinic closed. Presently, he treats 200 county and state-responsible patients per month, and will "never bill anybody with no visible means of payment." Approximately two-thirds of respondent's medical practice consists of county and state-responsible patients. Twelve percent of his practice is worker's compensation related.

11. Respondent also provided a more detailed explanation of his involvement with Ms. King and her companies. In March 2014, Ms. King came to his office and offered management services for respondent's worker's compensation patients. She carried a "book full of contracts" with other physicians. Respondent had never sold medications or performed urine testing in his office, nor did he have a contract for those services. Ms. King represented that she could supply respondent's office with medications and creams, and perform urinalysis testing.

12. Ms. King explained the process for urinalysis testing services. Her employee would come to respondent's office, package the specimens and send them to the laboratory (lab). A lab report would be generated and sent to respondent for his review. Ms. King did not disclose that it was her own company, One Source, conducting the urinalysis. Respondent asked Ms. King about the legality of her proposals, and she assured him that her activities were legal. Ms. King "looked like a reasonable-type person from a management company," said that "all other doctors were happy with her work," and that she "billed what the state allowed." Respondent agreed to do business with Ms. King, and signed "management agreements" with KMM on June 1, 2013 for compounded creams, on June 30, 2014 for urinalysis testing, and with MMG on February 19, 2015 for medications. He did not notice on the

contract forms that KMM and One Source had the same address. After signing the agreements, respondent "never sat down with [Ms. King] after that to discuss anything," as he was seeing 60 to 70 patients a day, and had no time to meet with her. Ms. King began conducting her activities through respondent's office manager Nora McAllister, who performed the office billing.

13. In or around March 2017, respondent received a call from Greg Fields, the office manager for Valley Orthopaedics. Mr. Fields informed respondent that criminal charges were filed against some of Valley Orthopaedics' partners, and that the charges had to do with Ms. King. One month later, respondent was criminally charged, and he retained a criminal defense attorney in Orange County. Respondent subsequently pled to a misdemeanor violation of Penal Code section 549. In his signed guilty plea form, respondent allocated to the following:

[On] or about March 30, 2014 and August 12, 2015, in [Orange County], I unlawfully accepted business from King Medical Management, Inc. and One Source Labs, Inc. with reckless disregard for whether King Medical Management, Inc. and One Source Labs, Inc. intended to violate Insurance Code section 1871.4, in connection with worker compensation claims only. No [Medi-Cal] or Medicare patients or claims were involved.

14. Respondent believes that he and the worker's compensation program were victimized by "an unscrupulous lady." He asserted that Ms. King misrepresented to him that her contracts were legal, and he did not understand his conviction to mean that he committed insurance fraud. When he entered his plea, he "had no idea of the ramifications of what would happen" to his medical license. However, he did

understand that 21 felony charges were dismissed in exchange for his plea, and that he was prohibited from worker's compensation practice.

TESTIMONY OF JOHN J. CASEY, JR., M.D.

15. Dr. Casey is an orthopedic surgeon and partner at "Valley Orthopaedic Bone and Joint," (Valley Orthopaedic) and is Chairman of the Department of Orthopedic Surgery for Doctors Medical Center and San Joaquin General Hospital. He has practiced in Modesto for over 35 years, and has known respondent by working with him at the county clinic treating the uninsured. He stated, "[the] two of us are probably the oldest two surgeons still working there." If respondent can no longer work there as a result of the Board's disciplinary action, "a large number of patients will go without healthcare." Dr. Casey described respondent as dedicated, selfless, compassionate, generous, and a good man. He is irreplaceable, as many doctors are not willing "to put time into the clinic" because they can make more money in private practice.

Dr. Casey knew of Ms. King approximately 10 years "before this whole thing went down in Orange County." He described Ms. King as "a salesperson like any other salesperson who comes through the office." Dr. Casey entered into contracts with MMG and KMM for medication dispensing involving compounding creams, and some urine toxicology screening. MMG and KMM provided medications and performed billing services. His practice group did not purchase the medications. Dr. Casey personally received \$4,000 for the urine toxicology screening over a period of four to five years. Dr. Casey had no knowledge of reimbursements or Ms. King's commission of "outright fraud and abuse," as he services three million people, and would not know what amounts he received as reimbursements. He never monitored Ms. King's billing with worker's compensation, and was not aware that his practice assigned its rights to

MMG and KKM in this regard. He was criminally charged, and the charges were later dismissed after the practice paid \$230,000 in restitution, and donated \$25,000 to "some kind of witness program." He stated, "it was ludicrous what these people did to everybody," including respondent.

TESTIMONY OF BENJAMIN REMINGTON, M.D.

16. Dr. Remington is a neurosurgeon with Darroch Brain and Spine Institute in Modesto, California. He has known respondent for over 20 years, and has sought respondent's orthopedic services for his trauma patients. Dr. Remington met with Ms. King, who solicited "doing the pharmacy for the office." She explained that Dr. Remington's office would purchase medicines wholesale from MMG and KKM, then sell the medicines to patients at the retail price. Ms. King asserted this would have provided a "value add" to his patients, in that they avoided an extra trip and expense to the pharmacy. Ms. King provided a letter from an attorney which purportedly represented that her services were legal. Although she seemed credible, and after asking a few of his colleagues and attorney friends about Ms. King's offer, Dr. Remington "never ended up doing any deals with her." Dr. Remington later learned that respondent, Dr. Casey, and other practitioners, whom he described as "honorable and very good surgeons," became involved with Ms. King's fraudulent scheme, and believed they "must have been tricked or duped" into the contracts with Ms. King and her companies.

Dr. Remington described respondent as a very compassionate physician and competent surgeon, honest and forthright, and a person with a high degree of integrity. He is generous with his time and sees patients that have nowhere else to go.

TESTIMONY OF MOHAMMED IBRAHIM, M.D.

17. Dr. Ibrahim is the Director of the Hand Surgery Clinic, Stanislaus County, and a partner at Valley Orthopaedic. When he joined the practice, Ms. King and her companies already had contracts in place with other Valley Orthopaedic physicians for creams and medications. After meeting with Ms. King, and trusting that Dr. Casey and his other senior partners reviewed the contracts with lawyers, Dr. Ibrahim also signed contracts with MMG and KKM. He did not feel he was getting scammed or doing anything illegal. However, he began to feel that "something was not right" when he learned that Ms. King "was driving Lamborghinis and Bentleys." Like Dr. Casey (and respondent), Dr. Ibrahim was criminally charged and ordered to pay restitution. Dr. Ibrahim believes he and others were victims of a "tremendous scam that caught us off guard." He described respondent as a "great guy" that "would not willfully do something that is wrong or criminal."

TESTIMONY OF WILLIAM PISTEL, D.O.

18. Dr. Pistel is an orthopedic surgeon and a partner at Valley Orthopaedic. He has known respondent for over 20 years while working at the county clinic and Doctor's Medical Center. He described respondent as trustworthy, honest, a hard worker, reputable, and ethical. Respondent is a "stalwart member of the county clinic system," which Dr. Pistel believes is "an obligation we should do." Dr. Pistel also met with Ms. King and signed contracts with her, understanding that they had been "vetted appropriately" by the medical group. He also took Ms. King's "word" that her business was legitimate and appropriate. Dr. Pistel received \$30,000 over a five-year period, and was criminally charged along with Drs. Casey, Ibrahim, respondent, and others. The charges were later dismissed.

LETTERS OF SUPPORT

19. Drs. Casey, Remington, Ibrahim, and Pistel also wrote letters on respondent's behalf. The letters accurately reflect their testimonies at hearing. They collectively believe that in their rural county, the potential loss of respondent's services as an orthopedic surgeon at the county clinic will impact services to uninsured, low-income, and undocumented patients, causing a health care crisis.

20. Respondent submitted additional letters from Michael Rossini, Jr., M.D., Chairman, General Surgery Clinic, Stanislaus County and current Chief of Surgery, Stanislaus Surgical Hospital, and Joy Farley, M.D., Medical Director, Stanislaus County. Both doctors have known respondent for many years, and affirmed that he performs an invaluable service to the needy and uninsured. They also believe that respondent's absence would create a health care crisis in their county.

OTHER REHABILITATION EVIDENCE

21. On January 21 and 22, 2019, respondent participated in and completed a course entitled, "Practical Medical Ethics and Professionalism." He did not provide any testimony or other evidence regarding what he learned, or what insight he gained from taking the course.

22. On January 26, 2021, the Orange County Superior Court set aside respondent's guilty plea, entered a not guilty plea, and dismissed the case pursuant to Penal Code section 1203.4.

Analysis

SUBSTANTIALLY RELATED CONVICTION

23. California Code of Regulations, title 16, section 1360, subdivision (a), provides, in pertinent part, that for purposes of suspension or revocation of a license, a crime is substantially related to the qualifications, functions, or duties of a licensee:

[I]f to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. ...

Subdivision (b) sets forth the following criteria that the Board shall consider in making the substantial relationship determination: (1) the nature and gravity of the crime; (2) the number of years elapsed since the date of the crime; and, (3) the nature and duties of the profession.

24. The undisputed evidence established that, from June 12, 2012, to August 12, 2015, respondent received payments of over \$175,000 from MMG and KMM in exchange for ordering urine toxicology tests, and prescribing oral medications and compound creams. In doing so, he did not incur any out-of-pocket expenses. He also received consideration for ordering and receiving Urine Toxicology Reports from One Source. All products and services were billed by Ms. King to worker's compensation on behalf of respondent. Respondent did not know what amounts Ms. King actually billed to worker's compensation, as he believed that she "billed what the state allowed," when in fact, she overbilled for the medications, creams, and urinalysis tests.

25. The nature and gravity of respondent's crime were serious, in that respondent, by his admission on his guilty plea form, unlawfully accepted business from KKM and One Source with reckless disregard for whether KKM and One Source intended to violate the Insurance Code in connection with worker's compensation claims. Respondent's unlawful conduct caused harm to the worker's compensation system, and undermined the public trust.

26. In mitigation, the acts which led to his conviction occurred approximately six to seven years ago, and his conviction occurred on September 27, 2018. Respondent's conviction has been dismissed pursuant to Penal Code section 1203.4.

27. Respondent's conduct is directly related to the nature and duties of the medical profession, as it involved medical billing, prescribing and selling medications and compound creams, and ordering urine toxicology tests for respondent's worker's compensation practice. He recklessly assigned his worker's compensation billing rights to Ms. King and KKM, MMG, and One Source, and left his office manager to deal with Ms. King and her activities.

28. Considering the Board's criteria discussed above, it has been established that respondent's conviction, to a substantial degree, evidences present or potential unfitness to perform the functions of a licensed physician and surgeon in a manner consistent with the public health, safety, or welfare. Therefore, the conviction is substantially related to the qualifications, functions, or duties of a licensed physician and surgeon.

PENALTY

29. It is undisputed that doctors are extremely busy people with immense responsibilities. Ms. King came to respondent's office in March 2014, offering to add

value to respondent's worker's compensation practice by in essence, providing one-stop shopping for medications, compound creams, and urinalysis testing. Ms. King would take care of all of the billing for these services. Ms. King appeared professional and honest. She gained respondent's trust, and he entered into contracts with her to his detriment. Respondent did not conduct his own due diligence by having an attorney review the contracts before he signed them. Had he done so in this case, he may have discovered that Ms. King owned the companies involved, and that he was assigning his worker's compensation billing rights to her.

30. Respondent is highly regarded amongst his peers as a dedicated and competent orthopedic surgeon. However, his competency as a physician and surgeon is not at issue here. Rather, his trustworthiness is. Respondent's conviction involves dishonesty. This "cannot be divorced from the obligation of utmost honesty and integrity to the patients whom the physician counsels, as well as numerous third-party entities and payors who act on behalf of patients." (*Krain v. Medical Bd.* (1999) 71 Cal.App.4th 1416, 1425, citing *Windham v. Bd. of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470.) Respondent still believes he, as well as the worker's compensation program, were victimized by an "unscrupulous lady." This lack of insight into his own conduct fails to assure the Board that he can correctly and appropriately submit worker's compensation, Medi-Cal, and Medicare claims, and carefully review all contracts.

31. Notwithstanding the above, respondent has learned a valuable and expensive lesson from this experience. As the owner of his own private medical practice, respondent now understands that he should carefully read and understand any document he signs, and have it reviewed by an attorney. Great care must be taken to avoid complacency and carelessness when conducting business dealings,

particularly with individuals soliciting products and services related to the state's vulnerable worker's compensation program.

32. Respondent is to be commended for providing vital and necessary medical services to low income, uninsured, undocumented patients in his community for the past 35 years. However, to continue in this work, respondent must restore his trustworthiness to the Board and the public. This can be accomplished by allowing respondent to retain his license but placing him on probation, with standard and various optional terms and conditions, as set forth below.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. The purpose of Medical Practice Act is to assure the high quality of medical practice. (*Shea v. Bd. of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.)

Burden and Standard of Proof

2. Complainant bears the burden of proving each of the grounds for discipline alleged in the Accusation, and must do so by clear and convincing evidence. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Applicable Law

UNPROFESSIONAL CONDUCT

3. Business and Professions Code section 2234 requires the Board to "take action" against a licensee who is charged with unprofessional conduct. Unprofessional conduct includes:

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

4. Business and Professions Code section 2236 provides that the conviction that is "substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct."

5. Unprofessional conduct under Business and Professions Code section 2234 is also 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. Bd. of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

Cause for Discipline

6. As set forth in Factual Findings 23 through 28, complainant established that respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensee, pursuant to California Code of Regulations, title 16, section 1360. Therefore, cause exists to discipline respondent's license pursuant to Business and Professions Code sections 2234, subdivision (a), and 2236, and California Code of Regulations, title 16, section 1360.

Disciplinary Guidelines

7. The Board's Disciplinary Guidelines provide the recommended minimum and maximum penalties for Business and Professions Code violations. For violation of Business and Professions Code section 2234 (general unprofessional conduct), the minimum penalty is stayed revocation and five years' probation with conditions designed to protect the public. The maximum penalty is revocation.

For violation of Business and Professions Code 2236 (conviction of substantially related crime constituting unprofessional conduct), the minimum penalty is stayed revocation and five to seven years of probation with conditions designed to protect the public. The maximum penalty is revocation.

8. The objective of an administrative proceeding relating to licensing is to protect the public. Such proceedings are not for the primary purpose of punishment. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) Respondent demonstrated unprofessional conduct when he was convicted of violating Penal Code section 529, a substantially related crime. When all of the evidence is considered, and consistent with the Disciplinary Guidelines, public protection will be ensured by placing respondent on five years' probation with the below terms and conditions.

ORDER

Physician and Surgeon's Certificate No. G 48633, issued to respondent Robert Edward Caton, 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. Community Service – Free Services

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval a community service plan in which respondent shall within the first two years of probation provide 150 hours of free services (e.g., medical or nonmedical) to a community or non-profit organization. If the term of probation is designated for two years or less, the community service hours must be completed not later than six months prior to the completion of probation.

Prior to engaging in any community service, respondent shall provide a true copy of the Decision to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where respondent provides community service and shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also apply to any change(s) in community service.

Community service performed prior to the effective date of the Decision shall not be accepted in fulfillment of this condition.

2. Professionalism Program (Ethics Course)

Within 60 days of the effective date of this Decision, respondent shall enroll in a professionalism program that meets the requirements of California Code of Regulations, title 16, section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after respondent's initial enrollment, and the longitudinal component of the program not later than the

time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

3. Monitoring –Practice/Billing

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 billing monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation,

fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

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

If respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, 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 monitor is approved to provide monitoring responsibility.

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

If the monitor resigns or is no longer available, respondent shall, within 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.

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

4. Prohibited Practice

During probation, respondent is prohibited from treating worker's compensation patients. After the effective date of this Decision, all worker's compensation patients being treated by respondent shall be notified that respondent is prohibited from treating worker's compensation patients. Any new worker's compensation patients must be provided this notification at the time of their initial appointment. Respondent shall refer worker's compensation patients to another physician for treatment.

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

or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

5. Notification

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

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

6. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.

7. 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 others.

8. 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.

9. General Probation Requirements

COMPLIANCE WITH PROBATION UNIT

Respondent shall comply with the Board's probation unit.

ADDRESS CHANGES

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

10. Interview with the Board or its Designee

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

11. 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; and Quarterly Declarations.

12. 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.

Respondent shall provide the Board with proof of full payment of all court-ordered restitution, fines and fees, in the case entitled *People of the State of California vs. Robert Edward Caton*, Orange County Superior Court Case No. 17CF0796, to the Board not later than 120 calendar days prior to the completion of probation. Failure to provide proof of full payment of all court-ordered restitution, fines, and fees, shall be treated as a violation of probation.

13. Violation of Probation

Failure to 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.

14. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his 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.

15. 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.

DATE: February 23, 2021

Danette C. Brown
Danette C. Brown (Feb 23, 2021 11:14 PST)

DANETTE C. BROWN

Administrative Law Judge

Office of Administrative Hearings

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO January 13, 2020
BY: Anna Logan ANALYST

8 *Attorneys for Complainant*

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

| | |
|---|--------------------------|
| 14 In the Matter of the Accusation Against: | Case No. 800-2017-032139 |
| 15 Robert Edward Caton, M.D. | ACCUSATION |
| 16 1524 McHenry Ave., Ste. 515 | |
| 17 Modesto, CA 95350 | |
| 18 Physician's and Surgeon's Certificate No. G 48633, | |
| 19 Respondent. | |

20 **PARTIES**

- 21 1. Christine J. Lally ("Complainant") brings this Accusation solely in her official
22 capacity as the Interim Executive Director of the Medical Board of California, Department of
23 Consumer Affairs ("Board").
- 24 2. On or about August 16, 1982, the Medical Board issued Physician's and Surgeon's
25 Certificate Number G 48633 to Robert Edward Caton, M.D. ("Respondent"). The Physician's
26 and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on October 31, 2021, unless renewed.

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JURISDICTION

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

5 4. Section 2234 of the Code, states:

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

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

11 ...

12 5. Section 2236 of the Code states:

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

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

25 (c) The clerk of the court in which a licensee is convicted of a crime shall,
26 within 48 hours after the conviction, transmit a certified copy of the record of
27 conviction to the board. The division may inquire into the circumstances surrounding
28 the commission of a crime in order to fix the degree of discipline or to determine if
the conviction is of an offense substantially related to the qualifications, functions, or
duties of a physician and surgeon.

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

6. Section 1360 of Title 16 of the California Code of Regulations states:

For the purposes of denial, suspension or revocation of a license, certificate or permit
pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
considered to be substantially related to the qualifications, functions or duties of a person

1 holding a license, certificate or permit under the Medical Practice Act if to a substantial
2 degree it evidences present or potential unfitness of a person holding a license, certificate or
3 permit to perform the functions authorized by the license, certificate or permit in a manner
4 consistent with the public health, safety or welfare. Such crimes or acts shall include but not
5 be limited to the following: Violating or attempting to violate, directly or indirectly, or
6 assisting in or abetting the violation of, or conspiring to violate any provision of the
7 Medical Practice Act.

8 **CAUSE FOR DISCIPLINE**

9 **(Conviction of Crime)**

10 7. Respondent's license is subject to disciplinary action under sections 2234,
11 subdivision (a), and 2236 of the Code, and under Title 16 of the California Code of Regulations
12 section 1360, in that he was convicted of a crime substantially related to the qualifications,
13 functions and duties of a person licensed to practice medicine. The circumstances are as follows:

14 8. On or about June 12, 2012, to August 12, 2015, Monarch Medical Group and King
15 Medical Management made payments to Respondent for him to refer his patients for urine
16 toxicology tests, to prescribe oral medications, and to dispense compound creams. For example,
17 during that period, Respondent referred patients to One Source Laboratories for quantitative urine
18 drug testing. Additionally, Respondent prescribed compound creams from Steven's Pharmacy to
19 his patients. Respondent did not incur any out of pocket expenses for any of the items that he
20 prescribed or dispensed because Monarch Medical Group provided them to him free of charge.
21 The companies then fraudulently billed the California Workmen's Compensation Program and
22 other insurance entities for the products that Respondent ordered, dispensed, and prescribed. On
23 April 20, 2017, the Orange County District Attorney's Office announced felony criminal charges
24 against Monarch Medical Group for insurance fraud, false and fraudulent claims, fee splitting,
25 and improper patient referrals. As part of the charges, Steven's Pharmacy and One Source
26 Laboratories, among other companies, were identified as improperly operating with Monarch
27 Medical Group in an insurance fraud scheme.

28 9. On or about April 3, 2017, the Orange County District Attorney's Office filed a 21-
count felony complaint in the *People of the State of California vs. Robert Edward Caton*, in the
Superior Court of California, County of Orange, alleging fraud, false claims, and rebates for
patient referrals, in case number 17CF0796. On or about September 27, 2018, Respondent pled

1 no contest to a misdemeanor violation of Penal Code section 549, false and fraudulent claim. The
2 District Attorney's Office dismissed the remaining charges, counts, and enhancements in
3 exchange for his plea. The Respondent stipulated to the following factual basis in support of his
4 plea:

5 In or about March 30, 2014, and August 12, 2015, in O.C., I unlawfully accepted
6 business from King Medical Management, Inc. and Once Source Labs, Inc. with reckless
7 disregard for whether King Management, Inc. and One Source Labs, Inc. intended to
8 violation Insurance Code Section 1871.4, in connection with worker compensation claims
9 only. No Medi-Cal or Medi-Care patients or claims were involved.

10 10. Because of his plea, the Court sentenced Respondent to three years' informal
11 probation, ordered him to pay fines and fees, and make restitution. In particular, the Court
12 ordered Respondent to pay \$175,270.00 in restitution to the Orange County District Attorney's
13 Office's Monarch Restitution Fund and donate \$18,000.00 to the victim witness emergency fund.
14 Respondent paid, in full, both the ordered restitution and the donation in advance of his
15 misdemeanor sentencing. The Court also ordered that Respondent could not accept non-
16 emergency workers compensation patients during the period of probation.

17 11. As noted above, Respondent's license is subject to disciplinary action in that he was
18 convicted of a crime substantially related to the practice of medicine.

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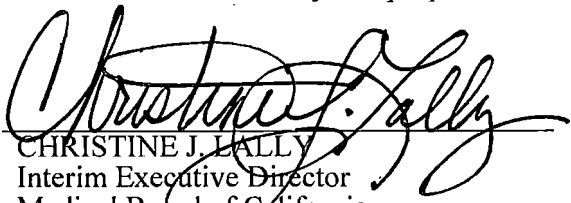
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PRAYER

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 48633, issued to Robert Edward Caton, M.D.;
2. Revoking, suspending, or denying approval of Robert Edward Caton, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Robert Edward Caton, 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: JAN 13 2020


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

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