

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

In the Matter of the Petition to Revoke
Probation Against:

David Stephen Benjamin, M.D.

Physician's and Surgeon's
License No. G 75256

Respondent

Case No. 800-2020-066285

DECISION

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

This Decision shall become effective at 5:00 p.m. on July 2, 2021.

IT IS SO ORDERED: June 4, 2021.

MEDICAL BOARD OF CALIFORNIA



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

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 COLLEEN M. MCGURRIN
Deputy Attorney General
4 State Bar Number 147250
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 269-6546
Facsimile: (916) 731-2117
7 *Attorneys for Complainant*

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

12 In the Matter of the Petition to Revoke
13 Probation Against:

14 **DAVID STEPHEN BENJAMIN, M.D.**

15 Loma Linda Urology
11370 Anderson Street, Suite 1100
16 Loma Linda, CA 92354-3450

17 **Physician's and Surgeon's Certificate No. G**
75256

18 Respondent.
19

Case No. 800-2020-066285

OAH No. 2020091001

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

22 **PARTIES**

23 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
24 California (Board). He brought this action solely in his official capacity and is represented in this
25 matter by Xavier Becerra, Attorney General of the State of California, by Colleen M. McGurrin,
26 Deputy Attorney General.

27 2. David Stephen Benjamin, M.D. (Respondent) is represented in this proceeding by
28 attorney Albert J. Garcia, whose address is 2000 Powell Street, Suite 1290, Emeryville, CA

1 94608.

2 3. On or about September 29, 1992, the Board issued Physician's and Surgeon's
3 Certificate No. G 75256 to David Stephen Benjamin, M.D., Respondent. The Physician's and
4 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in
5 Petition to Revoke Probation No. 800-2020-066285, and will expire on August 31, 2022, unless
6 renewed.

7 **JURISDICTION**

8 4. Petition to Revoke Probation No. 800-2020-066285 was filed before the Board, and is
9 currently pending against Respondent. The Petition to Revoke Probation and all other statutorily
10 required documents were properly served on Respondent on July 24, 2020. Respondent timely
11 filed his Notice of Defense contesting the Petition to Revoke Probation.

12 5. A copy of Petition to Revoke Probation No. 800-2020-066285 is attached as exhibit
13 A and incorporated herein by reference.

14 **ADVISEMENT AND WAIVERS**

15 6. Respondent has carefully read, fully discussed with counsel, and understands the
16 charges and allegations in Petition to Revoke Probation No. 800-2020-066285. Respondent has
17 also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated
18 Settlement and Disciplinary Order.

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

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

28 //

1 **CULPABILITY**

2 9. Respondent agrees that, at a hearing, Complainant could establish a factual basis for
3 the charges set forth in paragraphs 18, 19, and 20 in the First Cause to Revoke Probation, in that
4 he failed to check-in to determine if he was required to provide a biological fluid sample for
5 testing and failed to provide biological fluid samples on November 3, 2019, February 16, 2020
6 and March 19, 2020, as alleged in Petition to Revoke Probation No. 800-2020-066285.

7 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
8 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
9 Disciplinary Order below.

10 **CIRCUMSTANCES IN MITIGATION**

11 11. Respondent David Stephen Benjamin, M.D. provided biological fluid samples on
12 each of the days following those set forth in paragraph 9, namely, on November 4, 2019,
13 February 17, 2020, and March 20, 2020, and did not test positive for alcohol, alcohol metabolites
14 or any other prohibited substances. Respondent has never tested positive for alcohol, alcohol
15 metabolites or any other prohibited substances while on probation in his prior disciplinary action
16 entitled *In the Matter of the Accusation Against David Stephen Benjamin, M.D.* before the Board
17 in Case No. 800-2016-024147.

18 **CONTINGENCY**

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

1 13. Respondent agrees that if he ever petitions for early termination or modification of
 2 probation, or if an accusation and/or petition to revoke probation is filed against him before the
 3 Board, all of the charges and allegations contained in Petition to Revoke Probation No. 800-2020-
 4 066285 shall be deemed true, correct and fully admitted by respondent for purposes of any such
 5 proceeding or any other licensing proceeding involving Respondent in the State of California.

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

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

12 **DISCIPLINARY ORDER**

13 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 75256 issued
 14 to Respondent DAVID STEPHEN BENJAMIN, M.D. is revoked. However, the revocation is
 15 stayed and Respondent's current probationary term is extended for one (1) year subject to all of
 16 the terms and conditions in, and is to run consecutive to, and shall take effect immediately upon
 17 completion of the seven (7) year probationary term ordered in Case No. 800-2016-024147.

18 **ACCEPTANCE**

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

24 DATED: 1/22/21

25 DAVID STEPHEN BENJAMIN, M.D.
 26 Respondent

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

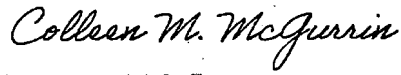
DATED: 1-25-21 
ALBERT J. GARCIA
Attorney for Respondent

ENDORSEMENT

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

DATED: January 25, 2021

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General


COLLEEN M. MCGURRIN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Petition to Revoke Probation No. 800-2020-066285

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 COLLEEN M. MCGURRIN
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5 300 South Spring Street, Suite 1702
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6 Telephone: (213) 269-6546
Facsimile: (916) 731-2117
7 *Attorneys for Complainant*

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

11 In the Matter of the Petition to Revoke
Probation Against:

Case No. 800-2020-066285

12 **DAVID STEPHEN BENJAMIN, M.D.**
13 **Loma Linda Urology**
14 **11370 Anderson Street, Suite 1100**
Loma Linda, CA 92354-3450

PETITION TO REVOKE PROBATION

15 **Physician's and Surgeon's Certificate**
16 **Number G 75256**

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. William Prasifka (Complainant) brings this Petition to Revoke Probation solely in his
21 official capacity as the Executive Director of the Medical Board of California, Department of
22 Consumer Affairs (Board).

23 2. On or about September 29, 1992, the Board issued Physician's and Surgeon's
24 Certificate Number G 75256 to David Stephen Benjamin, M.D. (Respondent). The Physician's
25 and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will
26 expire on August 31, 2022, unless renewed.

27 //

28

1 **DISCIPLINARY HISTORY**

2 3. In a disciplinary action entitled *In the Matter of Accusation Against David Stephen*
3 *Benjamin, M.D.*, Case No. 800-2016-024147, the Board issued a decision, effective February 3,
4 2017 ("Decision"), in which Respondent's Physician's and Surgeon's Certificate was revoked.
5 However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was
6 placed on probation for a period of seven (7) years with certain terms and conditions. A copy of
7 the Decision is attached as Exhibit A and is incorporated herein by reference.

8 **JURISDICTION**

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

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

13 The board shall have the responsibility for the following:

- 14 (a) The enforcement of the disciplinary . . . provisions of the Medical Practice Act.
15 (b) The administration and hearing of disciplinary actions.
16 (c) Carrying out disciplinary actions appropriate to findings made by a panel or an
17 administrative law judge.
18 (d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
19 disciplinary actions.
20 (e) . . . (i).

21 6. Section 2227 of the Code provides, in pertinent part:

- 22 (a) A licensee whose matter has been heard by an administrative law judge of
23 the Medical Quality Hearing Panel . . . , or whose default has been entered, and
24 who is found guilty, or who has entered into a stipulation for disciplinary action
25 with the board, may, in accordance with the provisions of this chapter:
26 (1) Have his . . . license revoked upon order of the board.
27 (2) Have his . . . right to practice suspended for a period not to exceed one year
28 upon order of the board.
(3) Be placed on probation and be required to pay the costs of probation
monitoring upon order of the board.

1 (4)

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

4 (b) Any matter heard pursuant to subdivision (a), except for warning letters,
5 medical review or advisory conferences, professional competency
6 examinations, continuing education activities, and cost reimbursement
7 associated therewith that are agreed to with the board and successfully
8 completed by the licensee, or other matters made confidential or privileged by
9 existing law, is deemed public, and shall be made available to the public by the
10 board pursuant to Section 803.1.

11 7. Section 1361.52, subdivision (a), of Title 16, California Code of Regulations
12 provides, in pertinent part:

13 (a) A licensee who does any of the following shall be deemed to have committed a
14 major violation of his . . . probation:

15 (1) . . . (4)

16 (5) Fails to undergo biological fluid testing when ordered;

17 (6) . . . (8) .

18 (b) If a licensee commits a major violation, the Board will take one or more of the
19 following actions:

20 (1) Issue an immediate cease-practice order and order the licensee to undergo a
21 clinical diagnostic evaluation at the expense of the licensee. Any order issued by
22 the Board pursuant to this subsection shall state that the licensee must test negative
23 for at least a month of continuous biological fluid testing before being allowed to
24 resume practice.

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

26 (3) Refer the licensee for further disciplinary action, such as suspension,
27 revocation, or other action as determined by the Board.

28 (c) . . . (d).

(e) Nothing in this section shall be considered a limitation on the Board's authority to
revoke the probation of a licensee who has violated a term or condition of that
probation.

FIRST CAUSE TO REVOKE PROBATION

(Biological Fluid Testing)

8. Respondent's probation is subject to revocation because he failed to comply with
Condition 9 of his probationary order in the Decision. The facts and circumstances regarding this
violation are as follows:

1 9. At all times after the effective date of the Decision, Condition 9 of the Board's related
2 disciplinary order stated, in pertinent part:

3 "BIOLOGICAL FLUID TESTING

4 Respondent shall immediately submit to biological fluid testing, at respondent's
5 expense, upon request of the Board or its designee. "Biological fluid testing" may include,
6 but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug
7 screening approved by the Board or its designee. Respondent shall make daily contact with
8 the Board or its designee to determine whether biological fluid testing is required.
9 Respondent shall be tested on the date of the notification as directed by the Board or its
10 designee. The Board may order a respondent to undergo a biological fluid test on any day,
11 at any time, including weekends and holidays. Except when testing on a specific date as
12 ordered by the Board or its designee, the scheduling of biological fluid testing shall be done
13 on a random basis. The cost of biological fluid testing shall be borne by the respondent.
14 . . . Prior to practicing medicine, respondent shall contract with a laboratory or service,
15 approved in advance by the Board or its designee, that will conduct random, unannounced,
16 observed, biological fluid testing . . .

17 (a) . . . (c).

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

19 (e) . . . (g).

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

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

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

25 (k) . . . (m).

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

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

 . . .

 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.

1 For purposes of this condition, the term "prohibited substance" means an illegal drug,
2 a lawful drug not prescribed or ordered by an appropriately licensed health care provider for
3 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"

4 10. On or about January 9, 2017, the Board's Probation Analyst sent Respondent a letter
5 advising him that he was required to enroll with FirstLab (now FirstSolutions) as the Board's
6 approved laboratory service that would administer Respondent's random biological fluid testing,
7 and that he must check in daily between 12:00 a.m. and 5:00 p.m. to determine if he was required
8 to provide a sample that day.

9 11. On or about January 18, 2017, Respondent signed an "Acknowledgement of
10 Decision" acknowledging that he had received a copy of the Decision, the terms and conditions
11 were fully explained to him and he understood the terms and conditions of his probation order.

12 12. On or about May 13, 2017, Respondent failed to check-in to determine if he was
13 required to submit a biological fluid sample that day. Respondent provided an excuse for the
14 missed check in.

15 13. On or about July 22, 2017, Respondent failed to check-in to determine if he was
16 required to submit a biological fluid sample that day. Respondent provided an excuse for the
17 missed check in.

18 14. On or about September 23, 2017, Respondent failed to check-in to determine if he
19 was required to submit a biological fluid sample that day. On that day, Respondent was selected
20 to provide a biological fluid sample, but he failed to provide a sample that day as required.

21 15. On or about October 17, 2017, the Board issued Citation Order 8002017037593 to
22 Respondent for his failure to check in and provide a biological fluid sample on September 23,
23 2017, as required.

24 16. On or about July 29 and 30, 2019, Respondent was unable to check-in to determine if
25 he was required to submit a biological fluid sample on these days because his account was
26 suspended due to his failure to make timely payment to the service as required. Respondent was
27 selected to provide biological fluid samples on these days; however, he failed to provide samples
28 as required.

1 17. On or about September 18, 2019, the Board issued Citation Order and Abatement
2 Order 8002019059666 to Respondent for his failure to check in and provide biological fluid
3 samples on July 29 and 30, 2019, as required.

4 18. On or about November 3, 2019, Respondent was selected to provide a biological fluid
5 sample. However, he failed to check in and to provide a sample as required.

6 19. On or about February 16, 2020, Respondent was selected to provide a biological fluid
7 sample. However, he failed to provide a sample as required.

8 20. On or about March 10, 2020, Respondent was selected to provide a biological fluid
9 sample. However, he failed to provide a sample as required.

10 21. Respondent's probation is subject to revocation due to his failure to comply with
11 Condition 9.

12 **SECOND CAUSE TO REVOKE PROBATION**

13 (Violation of Probation)

14 22. Respondent's probation is subject to revocation because he failed to comply with
15 Probation Condition 20. The facts and circumstances regarding this violation are as follows:

16 23. At all times after the effective date of the Decision, Condition 20 of the Board's
17 related disciplinary order stated, in pertinent part:

18 "VIOLATION OF PROBATION. Failure to fully comply with any term or condition
19 of probation is a violation of probation.

20 A. If respondent commits a major violation of probation as defined by section
21 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall
take one or more of the following actions:

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

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

2 (3) Refer respondent for further disciplinary action, such as suspension, revocation,
3 or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, §
4 1361.52, subd. (b).)

5 B

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

14 24. The allegations of the First Cause to Revoke Probation are incorporated herein by
15 reference as if fully set forth.

16 **DISCIPLINARY CONSIDERATIONS**

17 25. On or about October 17, 2017, the Board issued Citation Order 8002017037593, in
18 the amount of \$350.00, for violating Section 1364.11, subdivision (b), of Title 16, California
19 Code of Regulations when he failed to check in with FirstLab (now FirstSolutions) and provide a
20 biological fluid sample as required on September 23, 2017, in violation of Condition 9 of his
21 probationary order. That Citation is final.

22 26. On or about September 18, 2019, the Board issued Respondent Citation Order and
23 Abatement Order 8002019059666 for violating Section 1364.11, subdivision (b), of Title 16,
24 California Code of Regulations when he failed to check in with FirstSolutions and provide a
25 biological fluid sample as required on July 29 and 30, 2019, in violation of Condition 9 of his
26 probationary order. That Citation is final.

27 **PRAYER**

28 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 the probation that was granted by the Medical Board of California in Case
No. 800-2016-024147 and imposing the disciplinary order that was stayed thereby revoking

1 Physician's and Surgeon's Certificate No. G 75256 issued to David Stephen Benjamin, M.D.;


2 2. Revoking or suspending Physician's and Surgeon's Certificate No. G 75256, issued to
3 David Stephen Benjamin, M.D.;

4 3. Revoking, suspending or denying approval of David Stephen Benjamin, M.D.'s
5 authority to supervise physician's assistants, pursuant to section 3527 of the Code;

6 4. If placed on probation, ordering David Stephen Benjamin, M.D. to pay the Medical
7 Board of California the costs of probation monitoring; and

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

9
10 DATED: JUL 24, 2020


11 WILLIAM PRASTFKA
12 Executive Director
13 Medical Board of California
14 Department of Consumer Affairs
15 State of California
16 *Complainant*

15 LA2020600312
16 63452280.docx

Exhibit A

Decision and Order

Medical Board of California Case No. 800-2016-024147

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

In the Matter of the Accusation)	
Against:)	
)	
)	
David Stephen Benjamin, M.D.)	Case No. 800-2016-024147
)	
Physician's and Surgeon's)	
Certificate No. G 75256)	
)	
Respondent)	
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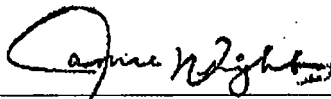
DECISION

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

This Decision shall become effective at 5:00 p.m. on February 3, 2017.

IT IS SO ORDERED: January 5, 2017.

MEDICAL BOARD OF CALIFORNIA



**Jamie Wright, J.D., Chair
Panel A**

1 KAMALA D. HARRIS
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 JANNSEN TAN
Deputy Attorney General
4 State Bar No. 237826
California Department of Justice
5 1300 I Street, Suite 125
P.O. Box 944255
6 Sacramento, CA 94244-2550
Telephone: (916) 445-3496
7 Facsimile: (916) 327-2247

8 *Attorneys for Complainant*

9

10

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

11

12

13

In the Matter of the Accusation Against:

Case No. 800-2016-024147

14

DAVID STEPHEN BENJAMIN, M.D.
200 S. Lexington Dr., Apt. 214
15 Folsom, CA 95630-7021

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15

16

Physician's and Surgeon's Certificate No. G 75256

17

Respondent.

18

19

20

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

22

PARTIES

23

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Kamala D. Harris, Attorney General of the State of California, by Jannsen Tan,
26 Deputy Attorney General.

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28

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1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 800-2016-024147, if proven at a hearing, constitute cause for imposing discipline upon his
4 Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
8 those charges.

9 11. Respondent agrees that if he ever petitions for early termination or modification of
10 probation, or if an accusation and/or petition to revoke probation is filed against him, before the
11 Medical Board of California, all of the charges and allegations contained in Accusation No. No.
12 800-2016-024147 shall be deemed true, correct and fully admitted by Respondent for purposes of
13 that proceeding or any other licensing proceeding involving Respondent in the State of California.

14 12. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
15 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
16 Disciplinary Order below.

17 RESERVATION

18 13. The admissions made by Respondent herein are only for the purposes of this
19 proceeding, or any other proceedings in which the Medical Board of California or other
20 professional licensing agency is involved, and shall not be admissible in any other criminal or
21 civil proceeding.

22 CONTINGENCY

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

1 Respondent is placed on probation for seven (7) years on the following terms and conditions.

2 1. ACTUAL SUSPENSION. As part of probation, Respondent is suspended from the
3 practice of medicine for 60 days. The suspension shall be effective August 12, 2016.

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

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

14 If Respondent has a confirmed positive biological fluid test for any substance (whether or
15 not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall
16 receive a notification from the Board or its designee to immediately cease the practice of
17 medicine. The Respondent shall not resume the practice of medicine until final decision on an
18 accusation and/or a petition to revoke probation. An accusation and/or petition to revoke
19 probation shall be filed by the Board within 15 days of the notification to cease practice. If the
20 Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board
21 shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent
22 stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or
23 the Board within 15 days unless good cause can be shown for the delay. The cessation of practice
24 shall not apply to the reduction of the probationary time period.

25 If the Board does not file an accusation or petition to revoke probation within 15 days of the
26 issuance of the notification to cease practice or does not provide Respondent with a hearing
27 within 30 days of a such a request, the notification of cease practice shall be dissolved.

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

3 If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall
4 receive a notification from the Board or its designee to immediately cease the practice of
5 medicine. The Respondent shall not resume the practice of medicine until final decision on an
6 accusation and/or a petition to revoke probation. An accusation and/or petition to revoke
7 probation shall be filed by the Board within 15 days of the notification to cease practice. If the
8 Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board
9 shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent
10 stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or
11 the Board within 15 days unless good cause can be shown for the delay. The cessation of practice
12 shall not apply to the reduction of the probationary time period.

13 If the Board does not file an accusation or petition to revoke probation within 15 days of the
14 issuance of the notification to cease practice or does not provide Respondent with a hearing
15 within 30 days of a such a request, the notification of cease practice shall be dissolved.

16 4. PROFESSIONALISM PROGRAM (ETHICS COURSE. Within 60 calendar days of
17 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
18 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.
19 Respondent shall participate in and successfully complete that program. Respondent shall
20 provide any information and documents that the program may deem pertinent. Respondent shall
21 successfully complete the classroom component of the program not later than six (6) months after
22 Respondent's initial enrollment, and the longitudinal component of the program not later than the
23 time specified by the program, but no later than one (1) year after attending the classroom
24 component. The professionalism program shall be at Respondent's expense and shall be in
25 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

1 been approved by the Board or its designee had the program been taken after the effective date of
2 this Decision.

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

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

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

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

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

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

1 location.

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

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

15 7. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS:

16 Within thirty (30) calendar days of the effective date of this Decision, and on whatever
17 periodic basis thereafter as may be required by the Board or its designee, respondent shall
18 undergo and complete a clinical diagnostic evaluation, including any and all testing deemed
19 necessary, by a Board-appointed board certified physician and surgeon. The examiner shall
20 consider any information provided by the Board or its designee and any other information he or
21 she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

22 The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon
23 who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of
24 physicians and surgeons with substance abuse disorders, and is approved by the Board or its
25 designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable
26 professional standards for conducting substance abuse clinical diagnostic evaluations. The
27 evaluator shall not have a current or former financial, personal, or business relationship with
28 respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and

1 independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's
2 opinion, whether respondent has a substance abuse problem, whether respondent is a threat to
3 himself or herself or others, and recommendations for substance abuse treatment, practice
4 restrictions, or other recommendations related to respondent's rehabilitation and ability to practice
5 safely. If the evaluator determines during the evaluation process that respondent is a threat to
6 himself or herself or others, the evaluator shall notify the Board within twenty-four (24) hours of
7 such a determination.

8 In formulating his or her opinion as to whether respondent is safe to return to either part-
9 time or full-time practice and what restrictions or recommendations should be imposed, including
10 participation in an inpatient or outpatient treatment program, the evaluator shall consider the
11 following factors: respondent's license type; respondent's history; respondent's documented length
12 of sobriety (i.e., length of time that has elapsed since respondent's last substance use);
13 respondent's scope and pattern of substance abuse; respondent's treatment history, medical history
14 and current medical condition; the nature, duration and severity of respondent's substance abuse
15 problem or problems; and whether respondent is a threat to himself or herself or the public.

16 For all clinical diagnostic evaluations, a final written report shall be provided to the Board
17 no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator
18 requests additional information or time to complete the evaluation and report, an extension may
19 be granted, but shall not exceed thirty (30) days from the date the evaluator was originally
20 assigned the matter.

21 The Board shall review the clinical diagnostic evaluation report within five (5) business
22 days of receipt to determine whether respondent is safe to return to either part-time or full-time
23 practice and what restrictions or recommendations shall be imposed on respondent based on the
24 recommendations made by the evaluator. Respondent shall not be returned to practice until he or
25 she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating
26 that he or she has not used, consumed, ingested, or administered to himself or herself a prohibited
27 substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of
28 Regulations.

1 A clinical diagnostic evaluation before the effective date of this Decision may be accepted
2 towards fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including
3 any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by
4 the licensee.

5 Respondent shall not engage in the practice of medicine until notified by the Board or its
6 designee that he or she is fit to practice medicine safely. The period of time that respondent is not
7 practicing medicine shall not be counted toward completion of the term of probation.

8 Respondent shall undergo biological fluid testing as required in this Decision at least two
9 (2) times per week while awaiting the notification from the Board if he or she is fit to practice
10 medicine safely.

11 Respondent shall comply with all restrictions or conditions recommended by the examiner
12 conducting the clinical diagnostic evaluation within fifteen (15) calendar-days after being notified
13 by the Board or its designee.

14 8. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION

15 Within seven (7) days of the effective date of this Decision, respondent shall provide to the
16 Board the names, physical addresses, mailing addresses, and telephone numbers of any and all
17 employers and supervisors. Respondent shall also provide specific, written consent for the Board,
18 respondent's worksite monitor, and respondent's employers and supervisors to communicate
19 regarding respondent's work status, performance, and monitoring.

20 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or
21 Well Being Committee Chair, or equivalent, if applicable, when the respondent has medical staff
22 privileges.

23 9. BIOLOGICAL FLUID TESTING

24 Respondent shall immediately submit to biological fluid testing, at respondent's expense,
25 upon request of the Board or its designee. "Biological fluid testing" may include, but is not
26 limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by
27 the Board or its designee. Respondent shall make daily contact with the Board or its designee to
28 determine whether biological fluid testing is required. Respondent shall be tested on the date of

1 the notification as directed by the Board or its designee. The Board may order a respondent to
2 undergo a biological fluid test on any day, at any time, including weekends and holidays. Except
3 when testing on a specific date as ordered by the Board or its designee, the scheduling of
4 biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall
5 be borne by the respondent.

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

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

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

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

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

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

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

26 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business
27 day of receipt and all specimens collected shall be handled pursuant to chain of custody
28 procedures. The laboratory shall process and analyze the specimens and provide legally

1 defensible test results to the Board within seven (7) business days of receipt of the specimen. The
2 Board will be notified of non-negative results within one (1) business day and will be notified of
3 negative test results within seven (7) business days.

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

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

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

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

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

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

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

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

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

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

28 If a biological fluid test result indicates respondent has used, consumed, ingested, or

1 administered to himself or herself a prohibited substance, the Board shall order respondent to
2 cease practice and instruct respondent to leave any place of work where respondent is practicing
3 medicine or providing medical services. The Board shall immediately notify all of respondent's
4 employers, supervisors and work monitors, if any, that respondent may not practice medicine or
5 provide medical services while the cease-practice order is in effect.

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

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

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

15 For purposes of this condition, the term "prohibited substance" means an illegal drug, a
16 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by
17 respondent and approved by the Board, alcohol, or any other substance the respondent has been
18 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

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

24 10. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS

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

1 Respondent shall pay all substance abuse support group meeting costs.

2 The facilitator of the substance abuse support group meeting shall have a minimum of
3 three (3) years' experience in the treatment and rehabilitation of substance abuse, and shall be
4 licensed or certified by the state or nationally certified organizations. The facilitator shall not
5 have a current or former financial, personal, or business relationship with respondent within the
6 last five (5) years. Respondent's previous participation in a substance abuse group support
7 meeting led by the same facilitator does not constitute a prohibited current or former financial,
8 personal, or business relationship.

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

14 11. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE

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

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

26 The worksite monitor shall have an active unrestricted license with no disciplinary action
27 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms
28 and conditions of respondent's disciplinary order and agrees to monitor respondent as set forth by

1 the Board or its designee.

2 Respondent shall pay all worksite monitoring costs.

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

7 The worksite monitor shall verbally report any suspected substance abuse to the Board
8 and respondent's employer or supervisor within one (1) business day of occurrence. If the
9 suspected substance abuse does not occur during the Board's normal business hours, the verbal
10 report shall be made to the Board or its designee within one (1) hour of the next business day. A
11 written report that includes the date, time, and location of the suspected abuse; respondent's
12 actions; and any other information deemed important by the worksite monitor shall be submitted
13 to the Board or its designee within 48 hours of the occurrence.

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

24 If the worksite monitor resigns or is no longer available, respondent shall, within five (5)
25 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior
26 approval, the name and qualifications of a replacement monitor who will be assuming that
27 responsibility within fifteen (15) calendar days. If respondent fails to obtain approval of a
28 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the

1 monitor, respondent shall receive a notification from the Board or its designee to cease the
2 practice of medicine within three (3) calendar days after being so notified. Respondent shall
3 cease the practice of medicine until a replacement monitor is approved and assumes monitoring
4 responsibility.

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

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

14 13. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
15 prohibited from supervising physician assistants.

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

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

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

24 16. GENERAL PROBATION REQUIREMENTS.

25 Compliance with Probation Unit

26 Respondent shall comply with the Board's probation unit and all terms and conditions of
27 this Decision.

28 Address Changes

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

6 Place of Practice

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

10 License Renewal

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

13 Travel or Residence Outside California

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

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

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

23 18. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
24 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
25 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
26 defined as any period of time Respondent is not practicing medicine in California as defined in
27 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
28 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All

1 time spent in an intensive training program which has been approved by the Board or its designee
2 shall not be considered non-practice. Practicing medicine in another state of the United States or
3 Federal jurisdiction while on probation with the medical licensing authority of that state or
4 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
5 not be considered as a period of non-practice.

6 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
7 months, Respondent shall successfully complete a clinical training program that meets the criteria
8 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
9 Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

12 Periods of non-practice will relieve Respondent of the responsibility to comply with the
13 probationary terms and conditions with the exception of this condition and the following terms
14 and conditions of probation: Obey All Laws; and General Probation Requirements.

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

19 20. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
20 of probation is a violation of probation.

21 A. If respondent commits a major violation of probation as defined by section
22 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall
23 take one or more of the following actions:

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

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

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

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

9 B. If respondent commits a minor violation of probation as defined by section
10 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
11 one or more of the following actions:

12 (1) Issue a cease-practice order;

13 (2) Order practice limitations;

14 (3) Order or increase supervision of respondent;

15 (4) Order increased documentation;

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

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

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

22 C. Nothing in this Decision shall be considered a limitation on the Board's authority
23 to revoke respondent's probation if he or she has violated any term or condition of probation. (See
24 Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If respondent violates probation in any respect, the
25 Board, after giving respondent notice and the opportunity to be heard, may revoke probation and
26 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke
27 Probation, or an Interim Suspension Order is filed against respondent during probation, the Board
28 shall have continuing jurisdiction until the matter is final, and the period of probation shall be

1 extended until the matter is final.

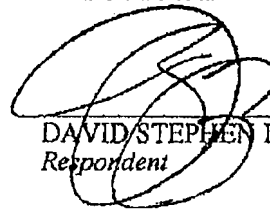
2 21. LICENSE SURRENDER. Following the effective date of this Decision, if
 3 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
 4 the terms and conditions of probation, Respondent may request to surrender his or her license.
 5 The Board reserves the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

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

17 ACCEPTANCE

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

23
24 DATED: 10/11/14



25 DAVID STEPHEN BENJAMIN, M.D.
26 Respondent

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

DATED: October 11, 2016

Albert Garcia
ALBERT J. GARCIA
Attorney for Respondent

ENDORSEMENT

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

Dated: *10/7/2016*

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

Jannsen Tan
JANNSEN TAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-024147

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Sept 21 20 16
BY D. Nicholas ANALYST

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8

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

12 In the Matter of the Accusation Against:

Case No. 800-2016-024147

13 **DAVID STEPHEN BENJAMIN, M.D.**
200 S. Lexington Dr., Apt. 214
14 Folsom, CA 95630-7021

ACCUSATION

15 Physician's and Surgeon's Certificate No. G 75256,
16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about September 29, 1992, the Medical Board issued Physician's and Surgeon's
25 Certificate Number G 75256 to David Stephen Benjamin, 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 August 31, 2018, 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 unless otherwise indicated.

4 4. Section 2227 of the Code states:

5 “(a) A licensee whose matter has been heard by an administrative law judge of the Medical
6 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
7 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
8 action with the board, may, in accordance with the provisions of this chapter:

9 “(1) Have his or her license revoked upon order of the board.

10 “(2) Have his or her right to practice suspended for a period not to exceed one year upon
11 order of the board.

12 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
13 order of the board.

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

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

18 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
19 review or advisory conferences, professional competency examinations, continuing education
20 activities, and cost reimbursement associated therewith that are agreed to with the board and
21 successfully completed by the licensee, or other matters made confidential or privileged by
22 existing law, is deemed public, and shall be made available to the public by the board pursuant to
23 Section 803.1.”

24 5. Section 2234 of the Code, states:

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

28 ///

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

3 “(b) Gross negligence.

4 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
5 omissions. An initial negligent act or omission followed by a separate and distinct departure from
6 the applicable standard of care shall constitute repeated negligent acts.

7 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate
8 for that negligent diagnosis of the patient shall constitute a single negligent act.

9 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
10 constitutes the negligent act described in paragraph (1), including, but not limited to, a
11 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
12 applicable standard of care, each departure constitutes a separate and distinct breach of the
13 standard of care.

14 “(d) Incompetence.

15 “(e) The commission of any act involving dishonesty or corruption which is substantially
16 related to the qualifications, functions, or duties of a physician and surgeon.

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

18 “(g) The practice of medicine from this state into another state or country without meeting
19 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
20 apply to this subdivision. This subdivision shall become operative upon the implementation of the
21 proposed registration program described in Section 2052.5.

22 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
23 participate in an interview by the board. This subdivision shall only apply to a certificate holder
24 who is the subject of an investigation by the board.”

25 6. Section 2239 of the Code states:

26 “(a) The use or prescribing for or administering to himself or herself, of any controlled
27 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
28 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to

1 any other person or to the public, or to the extent that such use impairs the ability of the licensee
2 to practice medicine safely or more than one misdemeanor or any felony involving the use,
3 consumption, or self-administration of any of the substances referred to in this section, or any
4 combination thereof, constitutes unprofessional conduct. The record of the conviction is
5 conclusive evidence of such unprofessional conduct.

6 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
7 deemed to be a conviction within the meaning of this section. The Medical Board may order
8 discipline of the licensee in accordance with Section 2227 or the Medical Board may order the
9 denial of the license when the time for appeal has elapsed or the judgment of conviction has been
10 affirmed on appeal or when an order granting probation is made suspending imposition of
11 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
12 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,
13 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
14 indictment.”

15 7. Section 2280 of the Code states:

16 “No licensee shall practice medicine while under the influence of any narcotic drug or
17 alcohol to such an extent as to impair his or her ability to conduct the practice of medicine with
18 safety to the public and his or her patients. Violation of this section constitutes unprofessional
19 conduct and is a misdemeanor.”

20 8. Section 820 of the Code states:

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

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1 9. Section 822 of the Code states:

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

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

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

7 "(c) Placing the licentiate on probation.

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

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

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Use of Alcoholic Beverages as to be Dangerous to the Public)**

16 **[Bus. & Prof. Code Section 2234 and 2239]**

17 10. Respondent is subject to disciplinary action under sections 822, 2227 and 2234, as
18 defined by section 2239, of the Code, in that he used alcoholic beverages in a manner as to be
19 dangerous to the public, as more particularly alleged hereinafter:

20 11. Respondent is a physician and surgeon who works as a urologist at the Mercy
21 Medical Group medical office in Folsom, CA.

22 12. On June 23, 2016, Respondent was in Mercy Medical Group (MMG) when he treated
23 patients while he was impaired under the influence of alcohol.

24 The facts and circumstances are as follows:

25 13. Respondent had a full schedule to see patients on June 23, 2016. He had already seen
26 patients during the first half of the day and was about to see his last patient for the morning. He
27 was scheduled to perform a cystoscopy procedure when before the procedure, Nurse MS heard a
28 "clinking" sound in Respondent's office.

1 14. Nurse MS then heard a "big clink", and saw Respondent walk out of his office.
2 Nurse MS entered Respondent's office and glanced down at Respondent's laptop-looking bag and
3 saw the top head of a Smirnoff bottle. Nurse MS bent down and saw what appeared to be another
4 bottle underneath the Smirnoff bottle. Nurse MS proceeded to report her findings to her
5 supervisor.

6 15. The Division Chief for Urology at MMG, Dr. P, received a message from Nurse MS's
7 supervisor. Dr. P together with AB, Vice President at MMG, proceeded to meet with
8 Respondent. Dr. P told Respondent that they had a suspicion of alcohol in Respondent's system.
9 Respondent agreed to be tested when AB asked.

10 16. Dr. F, the physician manager for Occupational Medicine at Mercy Medical Group,
11 together with Nurse CC and Medical Assistant MR were called to administer the breathalyzer test.
12 Nurse CC and MR are certified to administer breathalyzer tests. When they arrived, they set up
13 the breathalyzer machine at Respondent's office and performed an air blank test to verify the air
14 in the room did not register on the device.

15 17. MR handled the equipment and asked Respondent to blow until the device "dinged,"
16 or until she told him to stop. Respondent puffed up his cheeks simulating blowing of air but was
17 not blowing air into the tube. Nurse CC told Respondent he was not blowing air into the tube.
18 Respondent then blew and the device got a reading. The test was positive. Following this, the air
19 in Respondent's office became saturated. Nurse CC believed that Respondent had a strong
20 aftershave or cologne, and the air was filling with the smell. The second air blank registered a
21 background reading. Nurse CC concluded that they needed to do the test in another room.
22 Respondent at this point requested to speak with Dr. F alone.

23 18. After discussing this with AB, Dr. F spoke with Respondent in his office.
24 Respondent told Dr. F that he had been drinking, and was having personal and family issues.
25 Respondent told Dr. F he was willing to do whatever it took to get treatment and keep his job.

26 19. The next test was conducted in another office. Nurse CC and MR set up the
27 equipment, performed the air blank which showed a "zero-zero-zero." Respondent was shown
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1 the air blank. MR administered the test which revealed a positive result for alcohol. The
2 paperwork was completed, and a copy was given to Respondent.

3 20. Respondent's blood alcohol levels were 0.196 and 0.190 respectively.

4 21. Respondent's conduct, as set forth in paragraphs 10 to 20 above, constitutes
5 unprofessional conduct in that he was impaired while treating patients. His use of alcohol on
6 June 23, 2016, constitutes a danger to patients and/or the public and/or to such an extent as to
7 impair his ability to practice medicine in violation of Code sections 822, 2234 and 2239.

8 **SECOND CAUSE FOR DISCIPLINE**
9 **(Practice of Medicine Under the Influence)**
10 **[Bus. & Prof. Code Section 2234 and 2280]**

11 22. Paragraphs 10 through 20 above, are hereby incorporated by reference and realleged
12 as if fully set forth herein.

13 23. Respondent is further subject to disciplinary action under sections 2227 and 2280 of
14 the Code, in that he practiced medicine while impaired.

15 **THIRD CAUSE FOR DISCIPLINE**
16 **(General Unprofessional Conduct)**

17 24. Paragraphs 10 through 20 above, are hereby incorporated by reference and realleged
18 as if fully set forth herein.

19 25. Respondent is subject to disciplinary action under sections 2227 and 2234, in that he
20 has engaged in conduct which breaches the rules or ethical code of the medical profession, or
21 conduct which is unbecoming a member in good standing of the medical profession, and which
22 demonstrates an unfitness to practice medicine.

23 **PRAYER**

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

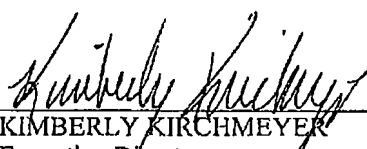
26 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 75256,
27 issued to David Stephen Benjamin, M.D.;

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- 2. Revoking, suspending or denying approval of David Stephen Benjamin, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
- 3. Ordering David Stephen Benjamin, 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: September 21, 2016


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

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