

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

In the Matter of the First Amended
Accusation Against:

David Peter Kao, M.D.

Physician's and Surgeon's
Certificate No. A 87967

Respondent

Case No.: 800-2020-066199

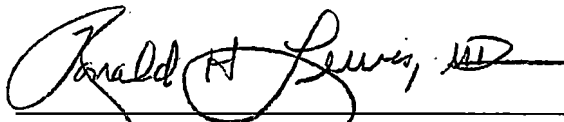
DECISION

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

This Decision shall become effective at 5:00 p.m. on August 12, 2021.

IT IS SO ORDERED: July 13, 2021.

MEDICAL BOARD OF CALIFORNIA



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

1 MATTHEW RODRIQUEZ
Acting Attorney General of California
2 JANE ZACK SIMON
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8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation
Against:

Case No. 800-2020-066199

12 **DAVID PETER KAO, M.D.**
13 684 S. Williams Street
Denver, CO 80209

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Physician's and Surgeon's Certificate No.
15 A87967

16 Respondent.

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

19 **PARTIES**

20 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
21 California (Board). He brought this action solely in his official capacity and is represented in this
22 matter by Matthew Rodriquez, Acting Attorney General of the State of California, by Jane Zack
23 Simon, Supervising Deputy Attorney General.

24 2. Respondent David Peter Kao, M.D. (Respondent) is represented in this proceeding by
25 attorney Courtney E. Pilchman, Pilchman & Kay, 2030 Main Street Suite 1300, Irvine, CA
26 92614.

1 3. On July 1, 2004, the Board issued Physician's and Surgeon's Certificate No. A87967
2 to David Peter Kao, M.D. (Respondent). The Physician's and Surgeon's Certificate is renewed
3 and current, with an expiration date of April 30, 2022.

4 **JURISDICTION**

5 4. First Amended Accusation No. 800-2020-066199 (Accusation) was filed before the
6 Board, and is currently pending against Respondent. The Accusation and all other statutorily
7 required documents were properly served on Respondent, who filed a Notice of Defense
8 contesting the Accusation.

9 5. A copy of First Amended Accusation No. 800-2020-066199 is attached as Exhibit A.

10 **ADVISEMENT AND WAIVERS**

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in the Accusation. Respondent has also carefully read, fully discussed
13 with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

22 **CULPABILITY**

23 9. Respondent understands and agrees that the charges and allegations in First Amended
24 Accusation No. 800-2019-052252, if proven at a hearing, constitute cause for imposing discipline
25 upon his Physician's and Surgeon's Certificate, and agrees that, at a hearing, Complainant could
26 establish a prima facie case or factual basis for the charges in the Accusation, and that
27 Respondent hereby gives up his right to contest those charges.
28

1 16. In consideration of the foregoing admissions and stipulations, the parties agree the
2 Board may, without further notice to or opportunity to be heard by Respondent, issue and enter
3 the following Disciplinary Order:

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A87967 issued
6 to Respondent David Peter Kao, M.D. is revoked. However, the revocation is stayed and
7 Respondent is placed on probation for seven (7) years on the following terms and conditions:

8 1. CONTROLLED SUBSTANCES - TOTAL RESTRICTION. Respondent shall not
9 order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in
10 the California Uniform Controlled Substances Act.

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

14 If Respondent forms the medical opinion, after an appropriate prior examination and a
15 medical indication, that a patient's medical condition may benefit from the use of marijuana,
16 Respondent shall so inform the patient and shall refer the patient to another physician who,
17 following an appropriate prior examination and a medical indication, may independently issue a
18 medically appropriate recommendation or approval for the possession or cultivation of marijuana
19 for the personal medical purposes of the patient within the meaning of Health and Safety Code
20 section 11362.5. In addition, Respondent shall inform the patient or the patient's primary
21 caregiver that Respondent is prohibited from issuing a recommendation or approval for the
22 possession or cultivation of marijuana for the personal medical purposes of the patient and that
23 the patient or the patient's primary caregiver may not rely on Respondent's statements to legally
24 possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall
25 fully document in the patient's chart that the patient or the patient's primary caregiver was so
26 informed. Nothing in this condition prohibits Respondent from providing the patient or the
27 patient's primary caregiver information about the possible medical benefits resulting from the use
28 of marijuana.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 In formulating his or her opinion as to whether Respondent is safe to return to either part-
8 time or full-time practice and what restrictions or recommendations should be imposed, including
9 participation in an inpatient or outpatient treatment program, the evaluator shall consider the
10 following factors: Respondent's license type; Respondent's history; Respondent's documented
11 length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use);
12 Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical
13 history and current medical condition; the nature, duration and severity of Respondent's
14 substance abuse problem or problems; and whether Respondent is a threat to himself or herself or
15 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 Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall
2 not be accepted towards the fulfillment of this requirement. The cost of any clinical diagnostic
3 evaluation, including any and all testing deemed necessary by the examiner, the Board or its
4 designee, shall be borne by 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
7 not 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 (2)
9 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. Within seven
15 (7) days of the effective date of this Decision, Respondent shall provide to the Board the names,
16 physical addresses, mailing addresses, and telephone numbers of any and all employers and
17 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's
18 worksite monitor, and Respondent's employers and supervisors to communicate regarding
19 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. Respondent shall immediately submit to
24 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
25 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
26 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall
27 make daily contact with the Board or its designee to determine whether biological fluid testing is
28 required. Respondent shall be tested on the date of the notification as directed by the Board or its

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

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

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

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

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

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

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

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

25 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day
26 of receipt and all specimens collected shall be handled pursuant to chain of custody
27 procedures. The laboratory shall process and analyze the specimens and provide legally
28 defensible test results to the Board within seven (7) business days of receipt of the

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

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

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

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

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

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

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

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

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

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

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

27 If a biological fluid test result indicates Respondent has used, consumed, ingested, or
28 administered to himself or herself a prohibited substance, the Board shall order Respondent to

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

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

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

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

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

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

23 10. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days
24 of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its
25 prior approval, the name of a substance abuse support group which he or she shall attend for the
26 duration of probation. Respondent shall attend substance abuse support group meetings at least
27 once per week, or as ordered by the Board or its designee. Respondent shall pay all substance
28 abuse support group meeting costs.

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

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

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

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

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

1 Respondent shall pay all worksite monitoring costs.

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

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

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

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

1 practice of medicine within three (3) calendar days after being so notified. Respondent shall
2 cease the practice of medicine until a replacement monitor is approved and assumes monitoring
3 responsibility.

4 12. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING
5 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of
6 probation.

7 A. If Respondent commits a major violation of probation as defined by section
8 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take
9 one or more of the following actions:

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

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

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

22 B. If Respondent commits a minor violation of probation as defined by section
23 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
24 one or more of the following actions:

25 (1) Issue a cease-practice order;

26 (2) Order practice limitations;

27 (3) Order or increase supervision of Respondent;

28 (4) Order increased documentation;

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

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

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

6 C. Nothing in this Decision shall be considered a limitation on the Board's authority
7 to revoke Respondent's probation if he or she has violated any term or condition of probation. If
8 Respondent violates probation in any respect, the Board, after giving Respondent notice and the
9 opportunity to be heard, may revoke probation and carry out the disciplinary order that was
10 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed
11 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
12 is final, and the period of probation shall be extended until the matter is final.

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

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

22 14. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
23 NURSES.

24 During probation, Respondent is prohibited from supervising physician assistants and
25 advanced practice nurses.

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

1 16. QUARTERLY DECLARATIONS. Respondent shall submit quarterly
2 declarations under penalty of perjury on forms provided by the Board, stating whether there has
3 been compliance with all the conditions of probation.

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

6 17. GENERAL PROBATION REQUIREMENTS.

7 Compliance with Probation Unit

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

9 Address Changes

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

15 Place of Practice

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

19 License Renewal

20 Respondent shall maintain a current and renewed California physician's and surgeon's
21 license.

22 Travel or Residence Outside California

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

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

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

4 19. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board
5 or its designee in writing within 15 calendar days of any periods of non-practice lasting more than
6 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
7 defined as any period of time Respondent is not practicing medicine as defined in Business and
8 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
9 patient care, clinical activity or teaching, or other activity as approved by the Board. If
10 Respondent resides in California and is considered to be in non-practice, Respondent shall
11 comply with all terms and conditions of probation. All time spent in an intensive training
12 program which has been approved by the Board or its designee shall not be considered non-
13 practice and does not relieve Respondent from complying with all the terms and conditions of
14 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
15 on probation with the medical licensing authority of that state or jurisdiction shall not be
16 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
17 period of non-practice.

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

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

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

25 Periods of non-practice for a Respondent residing outside of California will relieve
26 Respondent of the responsibility to comply with the probationary terms and conditions with the
27 exception of this condition and the following terms and conditions of probation: Obey All Laws;
28 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or

1 Controlled Substances; and Biological Fluid Testing.

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

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

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

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

28 ///

1 24. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply
2 for a new license or certification, or petition for reinstatement of a license, by any other health
3 care licensing action agency in the State of California, all of the charges and allegations contained
4 in Accusation No. 800-2020-066199 shall be deemed to be true, correct, and admitted by
5 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
6 restrict license.

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

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ACCEPTANCE

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

DATED: 4.23.2021 
DAVID PETER KAO, M.D.
Respondent


I have read and fully discussed with Respondent David Peter Kao, 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: 4/23/21 
COURTNEY E. PILCHMAN
Attorney for Respondent

ENDORSEMENT

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

DATED: 4/23/2021

Respectfully submitted,
MATTHEW RODRIQUEZ
Acting Attorney General of California

JANE ZACK SIMON
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2020-066199

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 State Bar No. 116564
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3521
5 Facsimile: (415) 703-5480
E-mail: Janezack.simon@doj.ca.gov
6 *Attorneys for Complainant*

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 800-2020-066199

13 **David Peter Kao, M.D.**
14 684 S. Williams Street
Denver, CO 80209-4537

FIRST AMENDED ACCUSATION

15 Physician's and Surgeon's Certificate
16 No. A87967,

Respondent.

17
18 **PARTIES**

19 1. William Prasifka (Complainant) brings this First Amended Accusation solely in his
20 official capacity as the Executive Director of the Medical Board of California, Department of
21 Consumer Affairs (Board).

22 2. On July 1, 2004, the Medical Board issued Physician's and Surgeon's Certificate
23 Number A87967 to David Peter Kao, M.D. (Respondent). The Physician's and Surgeon's
24 Certificate is delinquent, having expired on April 30, 2020.
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1 JURISDICTION

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

5 A. Section 2227 of the Code provides in part that the Board may revoke, suspend for a
6 period not to exceed one year, or place on probation, the license of any licensee who has
7 been found guilty under the Medical Practice Act, and may recover the costs of probation
8 monitoring.

9 B. Section 2305 of the Code provides, in part, that the revocation, suspension, or other
10 discipline, restriction or limitation imposed by another state upon a license to practice
11 medicine issued by that state, or the revocation, suspension, or restriction of the authority
12 to practice medicine by any agency of the federal government, that would have been
13 grounds for discipline in California under the Medical Practice Act, constitutes grounds for
14 discipline for unprofessional conduct.

15 C. Section 141 of the Code provides:

16 “(a) For any licensee holding a license issued by a board under the
17 jurisdiction of a department, a disciplinary action taken by another state, by any
18 agency of the federal government, or by another country for any act
19 substantially related to the practice regulated by the California license, may be
20 a ground for disciplinary action by the respective state licensing board. A
21 certified copy of the record of the disciplinary action taken against the licensee
22 by another state, an agency of the federal government, or by another country
23 shall be conclusive evidence of the events related therein.

24 “(b) Nothing in this section shall preclude a board from applying a specific statutory
25 provision in the licensing act administered by the board that provides for discipline
26 based upon a disciplinary action taken against the licensee by another state, an agency
27 of the federal government

28 D. Section 2228.1 of the Code provides, in pertinent part, that the Board shall require a
licensee who is disciplined based on drug or alcohol abuse to the extent that such use
impairs the ability of the licensee to practice safely to disclose to his or her patients
information regarding his or her probation status. The licensee is required to disclose:
Probation status, the length of the probation, the probation end date, all practice restrictions

1 placed on the license by the Board, the Board's telephone number, and an explanation of
2 how the patient can find further information on the licensee's probation on the Board's
3 Internet Web site.

4 **PAST LICENSE HISTORY**

5 4. Respondent was licensed by the Medical Board in 2004. In 2012, the Colorado
6 Medical Board issued a disciplinary order relating to Respondent's substance abuse. The facts
7 underlying the 2012 Colorado discipline were that Respondent had abused prescription sedatives
8 by occasionally taking twice the recommended dosage; during Respondent's cardiology
9 fellowship, Respondent began using illegal drugs; Respondent self-reported his substance use
10 disorder to the Colorado Physician Health Program¹ in December 2009; Respondent underwent
11 substance abuse treatment from January 2010 through April 2010; on June 28, 2011, Respondent
12 was arrested for purchasing heroin; and on August 2, 2011, Respondent pled guilty to a
13 misdemeanor possession of a Schedule V controlled substance.

14 An Accusation was filed by the Medical Board of California in 2012, and when Respondent
15 did not respond, his California license was revoked in a Default Decision effective January 2,
16 2013.

17 In 2016, Respondent filed a Petition for Reinstatement of his California license. At the
18 hearing on that Petition, Respondent presented evidence about his recovery, represented he had
19 been sober since January 2010, and was found to be "totally committed to his recovery."
20 In a Decision effective December 28, 2017, Respondent's California Physician's and Surgeon's
21 Certificate was reinstated.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Discipline, Restriction, or Limitation Imposed by Another State)**

24 5. On March 20, 2020, a Stipulation and Final Agency Order issued by the Colorado
25 Medical Board became effective. The Stipulation and Final Agency Order contains findings that
26 Respondent has a physical or mental illness or condition that requires treatment and monitoring in
27

28 ¹ The Colorado Physician Health Program provides diagnostic evaluations, treatment
referral, treatment monitoring and support services for issues including substance abuse

1 order for him to safely practice, and that Respondent failed to notify the Colorado Board of his
2 condition. A Letter of Admonition was issued, and Respondent was placed on probation for five
3 years. Respondent must abstain from alcohol and habit-forming drugs or controlled substances,
4 and undergo treatment deemed to be appropriate by the Colorado Physician Health Program. He
5 must comply with instructions and recommendations of the Colorado Physician Health Program,
6 and must undergo tissue testing. A copy of the Stipulation and Final Agency Order issued by the
7 Colorado Medical Board is attached as Exhibit A.


8 6. Respondent's conduct and the action of the Colorado Medical Board, as set forth in
9 paragraphs 4 and 5, above, constitute cause for discipline pursuant to sections 2305 and/or 141 of
10 the Code.

11 **PRAYER**

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

- 14 1. Revoking or suspending Physician's and Surgeon's Certificate Number A87967,
15 issued to David Peter Kao, M.D.;
- 16 2. Revoking, suspending or denying approval of David Peter Kao, M.D.'s authority to
17 supervise physician assistants and advanced practice nurses;
- 18 3. Ordering David Peter Kao, M.D., if placed on probation, to pay the Board the costs of
19 probation monitoring;
- 20 4. Ordering Respondent, if placed on probation, to provide patient notification in
21 accordance with Business and Professions Code sections 2228.1; and
- 22 5. Taking such other and further action as deemed necessary and proper.

23 DATED: **MAR 29 2021**

24 
25 WILLIAM PRASIFKA
26 Executive Director
27 Medical Board of California
28 Department of Consumer Affairs
State of California
Complainant

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COLORADO

Department of
Regulatory Agencies

Division of Professions and Occupations

I, Paula E. Martinez, Program Director for the Colorado Medical Board ("Board"), am the official custodian of the records of the Board. I hereby certify that the following is a true and correct copy of the March 20, 2020 Stipulation and Final Agency Order issued to Dr. David Kao.

Address on file:

3391 Hayward Place

Denver, CO 80211

Dated April 29, 2020 at Denver Colorado

A handwritten signature in cursive script that reads "Paula E. Martinez".

Paula E. Martinez
Program Director

Colorado Medical Board
1560 Broadway, Suite 1350
Denver, CO 80202

BEFORE THE COLORADO MEDICAL BOARD

STATE OF COLORADO

CASE NO. 2019-3255-B

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF DAVID KAO, M.D., LICENSE NUMBER DR-48010,

Respondent.

IT IS HEREBY STIPULATED and agreed by and between Inquiry Panel B ("Panel") of the Colorado Medical Board ("Board") and David Kao, M.D. ("Respondent") (collectively, the "Parties") as follows:

JURISDICTION AND CASE HISTORY

1. Respondent was licensed to practice medicine in the state of Colorado on July 15, 2009 and was issued license number DR-48010, which Respondent has held continuously since that date ("License").
2. The Panel and the Board have jurisdiction over Respondent and over the subject matter of this proceeding.
3. On September 19, 2019, the Panel reviewed case number 2019-3255-B and determined that further proceedings by formal complaint were warranted pursuant to Section 12-240-125(4)(c)(V), C.R.S. The Parties have agreed to resolution of this matter prior to referral to the Attorney General.
4. It is the intent of the parties and the purpose of this Stipulation and Final Agency Order ("Order") to provide for a settlement of all matters set forth in case number 2019-3255-B, without the necessity of conducting a formal disciplinary hearing. This Order constitutes the entire agreement between the parties, and there are no other agreements or promises, written or oral, which modify, interpret, construe or affect this Order.
5. Respondent understands that:

- a. Respondent has the right to be represented by an attorney of the Respondent's choice, and Respondent is represented by counsel in this matter;
- b. Respondent has the right to a formal complaint and disciplinary hearing pursuant to Sections 12-240-125(4)(c)(V) and 12-240-125(5), C.R.S.;
- c. By entering into this Order, Respondent is knowingly and voluntarily giving up the right to a formal complaint and disciplinary hearing, admits the facts contained in this Order, and relieves the Panel of its burden of proving such facts;
- d. Respondent is knowingly and voluntarily giving up the right to present a defense by oral and documentary evidence and to cross-examine witnesses who would testify on behalf of the Panel; and
- e. Respondent is knowingly and voluntarily waiving the right to seek judicial review of this Order.

FACTUAL BASIS

6. Respondent specifically admits and the Panel finds that:
 - a. Respondent has a physical or mental illness or condition that renders Respondent able to perform a medical service with reasonable skill and safety to patients in the context of treatment and monitoring.
7. Respondent admits and the Panel finds that the conduct set forth above constitutes unprofessional conduct as defined in Sections 12-240-121(1)(i), C.R.S., which state:

(1) Unprofessional conduct" as used in this article 240 means:

(i) Failing to notify the board, as required by section 12-30-108(1), of a physical illness, physical condition or behavioral, mental health, or substance use disorder that impacts the licensee's ability to perform a medical service with reasonable skill and safety to patients; failing to act within the limitations created by a physical illness, physical condition or behavioral, mental health, or substance use disorder that renders the licensee unable to perform a medical service with reasonable skill and safety to the patient; or failing to comply with the limitations agreed to under a confidential agreement entered into pursuant to section 12-30-108 and 12-240-126.

8. Based upon the above, the parties agree and stipulate that the terms of this Order are authorized by Section 12-240-125(5)(c)(III), C.R.S.

LETTER OF ADMONITION

9. This provision shall constitute a Letter of Admonition as set forth in Sections 12-240-125(4)(c)(IV) and 12-240-125(5)(c)(III), C.R.S. Respondent is hereby admonished for the acts and omissions described in the factual basis above.

10. By entering this Order, Respondent agrees to waive the rights provided by Section 12-20-404(4), C.R.S., to contest this Letter of Admonition.

PROBATIONARY TERMS

11. Respondent's License is hereby placed on probation for five years commencing on the effective date of this Order. All terms of probation shall be effective throughout the probationary period and shall constitute terms of this Order.

12. During the probationary period, Respondent agrees to be bound by the terms and conditions set forth below.

ABSTINENCE FROM ADDICTIVE SUBSTANCES

13. Respondent shall totally abstain from the use of alcohol and the use of any habit-forming drug or controlled substance, other than as administered, dispensed or prescribed by an authorized person other than Respondent. Respondent shall use such habit-forming drug or controlled substance only as directed by such authorized person and only for the condition identified by such authorized person.

AUTHORIZED USE OF ADDICTIVE SUBSTANCES

14. Except in the case of a bona fide medical emergency, the Respondent shall not use a habit-forming drug or controlled substance given by an authorized person unless Respondent has received prior written approval of the use from the treatment monitor, as that term is defined *infra*. In the case of a bona fide medical emergency, Respondent may use the habit-forming drug or controlled substance as prescribed by the authorized person, but must notify the treatment monitor within 24 hours of the use. Also within 24 hours of the use, Respondent must obtain written approval from the treatment monitor for continued use of the habit-forming drug or controlled substance.

15. Approvals for the use of habit-forming drugs or controlled substances made by the treatment monitor shall go only to the particular medication, indication, dosage and amount of refills understood and acknowledged by the treatment monitor. The burden shall be on the Respondent to assure that the treatment monitor understands fully the drug regimen the treatment monitor is approving.

TREATMENT MONITORING

16. During the probationary period, Respondent shall receive such treatment as is determined to be appropriate by the Colorado Physician Health Program

("CPHP"). All instructions and recommendations to Respondent by CPHP shall constitute terms of this Order, and Respondent must comply with any such instructions and recommendations. Failure to comply with such instructions and recommendations shall constitute a violation of this Order. CPHP shall also function as the "treatment monitor" as that term is used in this Order.

17. Within 30 days of the effective date of this Order, Respondent shall sign any and all releases necessary to allow CPHP to communicate with the Panel. Within 60 days of the effective date of this Order, Respondent shall provide the Panel with a copy of such releases. This information may include alcohol and drug abuse treatment program records that may be confidential under federal or state law. Respondent shall update any and all releases as often as may reasonably be required to allow the Panel access to Respondent's privileged or confidential information. Respondent shall not revoke such releases prior to successful completion of the probationary period as set forth in this Order. Any failure to execute such a release, failure to provide copies to the Panel, or any premature revocation of such a release shall constitute a violation of this Order. In the event Respondent revokes such release, CPHP may, because of confidentiality concerns, refuse to acknowledge Respondent's participation in CPHP. CPHP's refusal to acknowledge Respondent's participation with that organization shall constitute a violation of this Order.

18. Respondent shall also complete any and all unrestricted releases as are necessary to permit CPHP to disclose to the Panel information generated by other sources. Respondent authorizes the Panel to re-disclose and make public, consistent with Board Policy 10-18, information obtained from CPHP necessary for the limited purposes of enforcing this Order, seeking sanctions for noncompliance with this Order, or other purposes authorized in the Medical Practice Act. Medical records shall not become public records by virtue of such use. Any failure to execute such a release, failure to provide copies to the Panel, or any premature revocation of such a release shall constitute a violation of this Order.

19. CPHP's treatment monitoring activities shall constitute ongoing examinations of Respondent for the purpose of Section 12-240-125(8)(a), C.R.S. Respondent's failure to comply with CPHP's instructions and recommendations shall have the full force and effect of a violation of an order pursuant to Section 12-240-125(8)(a), C.R.S. and subject Respondent to action pursuant to Sections 12-240-125(5)(c)(IV) and 12-240-125(8)(a), C.R.S.

20. CPHP shall monitor Respondent's compliance with this Order in the following manner:

a. CPHP shall perform tissue testing of Respondent, in the manner CPHP deems appropriate, to ensure compliance with this Order. CPHP's testing may include urine screening or other tissue testing, including but not limited to hair, skin, blood, sweat or breath testing, at CPHP's discretion. If CPHP tests

Respondent through urine testing, CPHP shall require Respondent to submit to urine tests on randomly selected days on a frequency of approximately eight times per month. Upon notice to Respondent by CPHP that a urine sample must be given, Respondent must provide a urine sample as soon as possible, and in accordance with CPHP's direction. Within these guidelines, CPHP shall make reasonable effort to ensure that the Respondent will not be able to predict which days Respondent will be tested. CPHP shall take all reasonable measures, including observation of the giving of a urine sample and ordering testing to detect the presence of EtG on all dilute urine samples, to ensure that the urine testing is effective. CPHP shall schedule any other tissue testing at the appropriate frequency that will ensure compliance with this Order. Tissue testing by means other than urine testing shall require Respondent to produce a sample as soon as possible after notification and at any time of the day CPHP determines reasonable and appropriate.

21. Respondent shall ensure that CPHP submits quarterly written reports to the Panel. The reports shall briefly describe CPHP's ongoing examinations and treatment monitoring of Respondent. The reports shall also state whether Respondent is in compliance with this Order. If at any time CPHP has reasonable cause to believe that Respondent has violated the terms of this Order, is unable to practice with reasonable skill and with safety to patients or has committed unprofessional conduct as defined in Section 12-240-121(1), C.R.S., CPHP shall immediately inform the Panel.

22. Respondent shall not consume any alcohol-containing food or products or any substances such as poppy seeds, cough syrup or mouthwash that result in a "false positive" for urine or other tissue testing. Further, Respondent shall not use alcohol-based soaps and/or hand sanitizers or any other alcohol-based products. Any false positive caused by the consumption of alcohol-containing food or products, poppy seeds, cough syrup, mouthwash, alcohol-based food products and/or the use of alcohol-based soaps and/or hand sanitizers or any other alcohol-based products shall constitute a violation of this Order. Additionally, any consumption and/or use of any other substance Respondent has reason to believe will cause a false positive shall also constitute a violation of this Order.

23. Nothing in this agreement shall limit the ability of CPHP to test more frequently or for more substances than set forth above or to impose any other condition as part of its treatment monitoring of Respondent. Any of CPHP's treatment monitoring recommendations shall constitute terms of this Order for so long as this Order remains in effect.

24. CPHP's treatment monitoring instructions and recommendations shall constitute terms of this Order for so long as this Order remains in effect. Nothing in this agreement shall limit the ability of CPHP to impose any other instruction or recommendation as part of its treatment monitoring of Respondent.

25. If at any time, CPHP believes that any of the above terms are no longer necessary, CPHP may relax the terms as it deems appropriate and, at CPHP's direction, the Respondent may comply with this Order as determined by CPHP. CPHP shall inform the Panel of any such action relaxing the above terms in its quarterly report. All such reports shall be reviewed by the Board's staff and, at the staff's discretion, may be reviewed by the Panel. Following receipt and review of such a quarterly report, the Panel reserves the right to reject and nullify CPHP's decision regarding the relaxing of such terms. If the Panel nullifies CPHP's decision regarding the relaxing of any of the above terms, the Respondent specifically agrees to comply with the Order as set forth above in accordance with the Panel's directions.

26. It is the responsibility of the Respondent to provide information to CPHP in a timely and complete manner and to assure that all CPHP written reports are timely transmitted to the Panel.

TERMINATION OF TREATMENT MONITORING

27. After successful completion of five (5) years of monitoring by CPHP, including any time CPHP has monitored Respondent prior to the effective date of this Order, Respondent may petition the panel to terminate the Treatment Monitoring terms set forth in this Order. With any request, Respondent must provide the Panel with a report from CPHP finding Respondent safe to practice with skill and safety to patients. The parties agree that the Panel's decision regarding such a petition shall be made at the sole discretion of the Panel. Respondent hereby waives any right to appeal the Panel's decision on this issue. The parties agree that any decision the Panel may make to terminate treatment monitoring will not also terminate the probationary period.

TOLLING OF THE PROBATIONARY PERIOD

28. If at any time, Respondent ceases the active clinical practice of medicine, defined for the purposes of this Order as evaluating or treating a minimum of five patients per month, the probationary period shall be tolled for the time the Order is in effect and Respondent is not engaged in the active clinical practice of medicine.

29. Respondent must comply with all other terms of the Order and all other terms of probation. Unless otherwise specified, all terms of the Order and all terms of probation shall remain in effect, regardless of whether the probationary period has been tolled, from the effective date of this Order until probation is terminated. The probationary period shall be tolled for any time Respondent is not in compliance with any term of this Order.

OUT OF STATE PRACTICE

30. Respondent may wish to leave Colorado and practice in another state. At any time other than during a period of suspension imposed by this Order, and whether to practice out of state or for any other reason, Respondent may request, in writing, that the Board place Respondent's license on inactive status as set forth in Section 12-

240-141, C.R.S. Respondent's request to place his license on inactive status must include written evidence that Respondent has reported this Order to all other jurisdictions in which Respondent is licensed, as required by the "Other Terms" section of this Order. Upon the approval of such request, Respondent may cease to comply with the terms of this Order. Failure to comply with the terms of this Order while inactive shall not constitute a violation of this Order. While inactive, Respondent shall not perform any act in the state of Colorado that constitutes the practice of medicine, nor shall Respondent perform any act in any other jurisdiction pursuant to the authority of a license to practice medicine granted by the state of Colorado. Unless Respondent's license is inactive, Respondent must comply with all terms of this Order, irrespective of Respondent's location. The probationary period will be tolled for any period of time Respondent's license is inactive.

31. Respondent may resume the active practice of medicine at any time pursuant to written request and as set forth in Section 12-240-141(5), C.R.S. With such written request, Respondent shall cause CPHP to perform an updated evaluation of Respondent. Respondent shall be permitted to resume the active practice of medicine only after submission of and approval of an updated evaluation from CPHP.

TERMINATION OF PROBATION

32. Upon the expiration of the probationary period, Respondent may submit a written request for restoration of Respondent's license to unrestricted status. If Respondent has complied with the terms of probation, and if Respondent's probationary period has not been tolled, such release shall be granted by the Panel in the form of written notice.

OTHER TERMS

33. The terms of this Order were mutually negotiated and determined.

34. Both parties acknowledge that they understand the legal consequences of this Order; both parties enter into this Order voluntarily; and both parties agree that no term or condition of this Order is unconscionable.

35. All costs and expenses incurred by Respondent to comply with this Order shall be the sole responsibility of Respondent, and shall in no way be the obligation of the Board or Panel.

36. If Respondent is licensed by any other jurisdiction, Respondent shall report this Order to all other jurisdictions in which Respondent is licensed.

43. During the probationary period or any period in which a physician is subject to prescribing restrictions, no physician shall perform an assessment of a

patient's medical history and current medical condition, including a personal physical examination, for the purpose of concluding that a patient may benefit from the use of medical marijuana, recommending the use of medical marijuana or certifying a debilitating medical condition for an applicant to the Colorado Medical Marijuana Program. Respondent hereby understands and agrees that he shall not certify to the state health agency that a patient has a debilitating medical condition or that the patient may benefit from the use of medical marijuana.

37. Respondent shall obey all state and federal laws while the terms of this Order are in effect.

38. So that the Board may notify hospitals of this agreement pursuant to section 12-240-125(11), C.R.S., Respondent presently holds privileges at or is employed by the following hospitals and facilities:

UHealth, University of Colorado Hospital

39. This Order and all its terms shall have the same force and effect as an order entered after a formal disciplinary hearing pursuant to section 12-240-125(5)(c)(III), C.R.S., except that it may not be appealed. Failure to comply with the terms of this Order may be sanctioned by the Inquiry Panel as set forth in section 12-240-125(5)(c)(IV), C.R.S. This Order and all its terms also constitute a valid board order for purposes of section 12-240-121(1)(n), C.R.S.

40. This Order shall be admissible as evidence at any proceeding or future hearing before the Board.

41. Invalidation of any portion of this Order by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

42. During the pendency of any action arising out of this Order, the terms of this Order shall be deemed to be in full force and effect and shall not be tolled.

43. Respondent acknowledges that the Panel may choose not to accept the terms of this Agreement and that if the Agreement is not approved by the Panel and signed by a Panel member or other authorized person, it is void.

44. This Order shall be effective upon (a) mailing by first-class mail to Respondent at Respondent's address of record with the Board, or (b) service by electronic means on Respondent at Respondent's electronic address of record with

the Board. Respondent hereby consents to service by electronic means if Respondent has an electronic address on file with the Board.

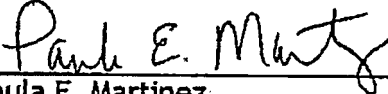
45. Upon becoming effective, this Order shall be open to public inspection and shall be publicized pursuant to the Board's standard policies and procedures. This Order constitutes discipline against Respondent's license. Additionally, this Order shall be reported to the Federation of State Medical Boards, the National Practitioner Data Bank and as otherwise required by law.



DAVID KAO, M.D.

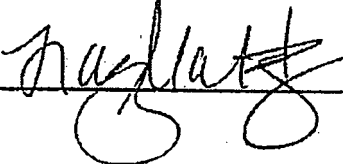
THE FOREGOING Stipulation and Final Agency Order is approved this 19th day
of March, 2020.

FOR THE COLORADO MEDICAL BOARD INQUIRY
PANEL B



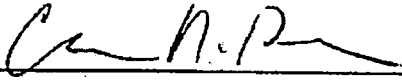
Paula E. Martinez
Program Director
Delegated Authority to Sign by Inquiry Panel

THE FOREGOING Stipulation and Final Agency Order is effective upon service to
Respondent, on March 20, 2020.



APPROVED AS TO FORM

FOR RESPONDENT

A handwritten signature in black ink, appearing to read 'Carmen N. Decker', written over a horizontal line.

Carmen N. Decker, Esq
Hershey Decker
10463 Park Meadows Dr Ste 209
Lone Tree, CO 80124-5355