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

In the Matter of the Accusation Against: Stephen Peter Markus, M.D. Physician's and Surgeon's Certificate No. G 153534 Respondent.	Case No.: 800-2020-070630

DECISION

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

This Decision shall become effective at 5:00 p.m. on August 20, 2021.

IT IS SO ORDERED: July 22, 2021.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, M.D., Chair
Panel B

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

In the Matter of the Accusation Against:

STEPHEN PETER MARKUS, M.D.,

Physician's and Surgeon's Certificate No. G 153534

Respondent.

Agency Case No. 800-2020-070630

OAH No. 2021020927

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on June 3, 2021, by videoconference.

Deputy Attorney General Rebecca D. Wagner represented complainant William Prasifka, Executive Director of the Medical Board of California.

Respondent Stephen Peter Markus, M.D., appeared and represented himself.

The matter was submitted for decision on June 3, 2021.

FACTUAL FINDINGS

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 153534 to respondent Stephen Peter Markus, M.D., on January 8, 2018. At the time of hearing, this certificate was active and was scheduled to expire October 31, 2021.

2. Acting in his official capacity as the Executive Director of the Board, complainant William Prasifka filed an accusation against respondent. Complainant alleges that the State of Washington Medical Commission (Washington Medical Commission) has taken disciplinary action against respondent for reasons that also constitute grounds for disciplinary action in California, and seeks disciplinary action in California as a result. Respondent requested a hearing.

Education and Professional Experience

3. Respondent has held a license to practice medicine in Washington since 1984. His primary experience is in laboratory medicine, and he also has experience in addiction medicine. Respondent is not board-certified in any specialty.

4. Respondent obtained his California medical license because he serves as medical director for a medical laboratory that performs laboratory services for California clients. He has never otherwise practiced medicine in California and has no current plan to begin doing so.

5. Between 2014 and 2017, respondent served as medical director for several outpatient substance abuse treatment clinics in Washington. His chief responsibilities were to screen patients for admission to treatment, to review laboratory testing results, to prescribe medications where appropriate in substance

abuse treatment, and to refer patients for other mental and physical health care if their substance abuse treatment revealed a need for such care.

6. In addition to serving as a laboratory medical director, respondent currently provides addiction treatment and primary care. He does not treat patients for chronic pain.

Unprofessional Conduct and Washington Disciplinary Action

7. On June 5, 2019, the Executive Director of the Washington Medical Commission filed a statement of charges against respondent. This statement of charges alleged that the owner of some of the outpatient clinics where respondent served as medical director, as described in Finding 5, had defrauded patients' insurance carriers by billing them for unnecessary urine drug testing, upon representation to the insurance carriers that respondent had ordered the testing. The statement of charges alleged further that respondent either ordered this testing despite knowing that it was unnecessary, or should have known that the clinics' owner was billing fraudulently.

8. The Executive Director of the Washington Medical Commission amended the statement of charges described in Finding 7 in August 2020. As amended, the statement of charges alleges, in addition to the allegations described in Finding 7, that respondent prescribed controlled substances to a friend in an imprudent manner over the course of approximately three years.

9. Upon respondent's consent, the Washington Medical Commission entered an order effective late in August 2020 restricting respondent's Washington medical practice for at least four years. In agreeing to entry of this order (the WA Order), respondent agreed that he should have known about the "scheme to order

and bill unnecessary urine drug tests," and that he had not prescribed medications to his friend prudently.

10. The WA Order requires respondent to undergo a clinical competence assessment and to take a prescribing practices course and an ethics course. The order prohibits respondent from serving as medical director of a pain management or substance abuse treatment clinic, and calls for him to submit to regular review of his practice records by a practice monitor. In addition, although it permits respondent to supervise nurses, the WA Order prohibits him from supervising other physicians, physician assistants, or nurse practitioners. Finally, the order assesses a significant fine.

Additional Evidence

11. Respondent testified credibly that in his experience, many outpatient substance abuse treatment clinics use inexpensive screening urinalysis to confirm patients' abstinence from alcohol and unprescribed mood-altering drugs. Respondent routinely ordered such screening urinalyses for patients at the clinics described in Finding 5.

12. In some contexts, when a screening urinalysis suggests alcohol or drug use, the sample undergoes further confirmatory analysis. These confirmatory analyses are expensive, and in respondent's view are usually unnecessary for patients in an outpatient substance abuse treatment program. For these reasons, he rarely or never ordered them.

13. The owner of the facilities described in Findings 5 and 7 frequently ordered confirming analyses, however, representing falsely to insurance carriers that respondent had ordered them. Respondent acknowledged (as described in Finding 9, and at the hearing) that he should have taken steps as medical director to ensure that

such fraud did not occur; he also presented evidence showing that when he did learn about the fraud, he acted to stop it. Respondent's testimony is credible that he did not knowingly participate in or profit from his employer's fraud.

14. Respondent believed when he prescribed medication for his colleague and friend (as described in Findings 8 and 9) that he was helping his friend, including helping his friend to save money. He recognizes now that he allowed their personal relationship to affect his professional judgment. Although respondent does not believe that his prescriptions caused actual harm to his friend and patient, he recognizes that they exposed the patient to unnecessary risk.

15. Respondent undertook a clinical competence assessment to satisfy the WA Order in October 2020, at the Center for Personalized Education for Professionals (CPEP). The CPEP assessment found respondent competent to continue practicing medicine, but recommended some focused continuing medical education including regular chart review with a preceptor or practice monitor.

16. Respondent completed the prescribing practices course required by the WA Order in November 2020. He completed the instructional portion of the ethics course required by the WA Order in February 2021 and was in a six-month follow-up program at the time of the hearing. Respondent has paid the fine the WA Order assessed, and testified credibly that his ongoing medical practice conforms to the WA Order's restrictions.

17. Respondent has completed a board-certification examination preparation course from the American Society of Addiction Medicine, as well as other continuing medical education relating to addiction treatment.

18. Rubin Maidan, M.D., wrote a letter to the Washington Medical Commission supporting respondent's continued licensure. Respondent offered this same letter to the Board. Dr. Maidan is a cardiologist to whom respondent has referred patients. Dr. Maidan describes respondent as a "thoughtful practitioner" with good clinical judgment, and believes that respondent's "segue" from primary care into addiction medicine reflects his commitment to helping patients "with the most challenging and difficult medical problems."

LEGAL CONCLUSIONS

1. Discipline against a medical license respondent holds in another state, on grounds that would have been cause for discipline in California, is cause for discipline against respondent's California physician's and surgeon's certificate. (Bus. & Prof. Code, §§ 141, 2305.) The out-of-state disciplinary order itself is "conclusive evidence" of the facts the order states. (*Id.*, § 141, subd. (a).) Clear and convincing evidence must prove any additional facts supporting California discipline.

2. Participating in or facilitating insurance fraud, and excessive or unsafe prescribing, are unprofessional conduct in California. (Bus. & Prof. Code, §§ 810, 2234, 2242.)

3. The matters stated in Findings 9 and 10 constitute discipline against respondent's Washington medical license. The matters stated in Findings 7 through 9 and in Legal Conclusion 2 confirm that the Washington Medical Commission took this disciplinary action because of conduct that also qualifies in California as unprofessional conduct. These matters constitute cause under Business and

Professions Code sections 141 and 2305 for the Board to take disciplinary action against respondent.

4. The matters stated in Findings 4, 7 through 9, and 11 through 18 do not show that revocation of respondent's California physician's and surgeon's certificate is necessary to protect Californians against potential harm. Rather, these matters along with the matters stated in Finding 10 show that a period of probation in California on conditions substantially similar to the conditions of the WA Order will allow the Board to ensure that respondent can maintain safe medical practice.

5. Complainant advocated at hearing for respondent's probation conditions to include a requirement that he take a medical record keeping course. The matters stated in Findings 4, 7 through 9, and 11 through 18 do not show such a course to be necessary for public protection in California.

6. This disciplinary order results solely from the Washington matters described in Findings 7 through 10, and not from any other unprofessional conduct.

ORDER

Physician's and Surgeon's Certificate No. G 153534, issued to respondent Stephen Peter Markus, M.D., is revoked. The revocation is stayed, however, and respondent is placed on probation for three years upon the following terms and conditions.

1. Controlled Substances: Partial Restriction

Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by the California Uniform Controlled Substances

Act, except for those drugs listed in Schedule(s) III, IV, and V of the Act and except for naloxone hydrochloride (N-allyl-14-hydroxy-nordihydromorphinone hydrochloride).

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

2. Controlled Substances: Maintain Records and Access to Records and Inventories

Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

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

3. Education Course

Within 60 calendar days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its

designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

4. Prescribing Practices Course

Within 60 calendar days of the effective date of this decision, respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one year of enrollment. The prescribing practices course shall be at respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

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

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

5. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this decision, respondent shall enroll in a professionalism program that meets the requirements of California Code of Regulations, title 16, section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

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

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

6. Practice and Billing Monitor

Within 30 calendar days of the effective date of this decision, respondent shall submit to the Board or its designee, for prior approval as a practice and billing monitor, the name and qualifications of one or more licensed physicians and surgeons

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

The Board or its designee shall provide the approved monitor with copies of the decision and accusation (with WA Order attachment) and a proposed monitoring plan. Within 15 calendar days of receipt of the decision, accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the decision and accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

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

If respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

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

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

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

7. Notification

Within seven days of the effective date of this decision, the respondent shall provide a true copy of this decision and accusation (with WA Order attachment) to the

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

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

8. Supervision of Physician Assistants and Advanced Practice Nurses

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

9. Obey All Laws

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

10. Quarterly Declarations

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

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

11. General Probation Requirements

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

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

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

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

Travel or Residence Outside California: Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

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

12. Interview with the Board or its Designee

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

13. Non-Practice While on Probation

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

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current

version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

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

14. Completion of Probation

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

15. Violation of Probation

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

16. License Surrender

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

17. Probation Monitoring Costs

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

DATE:06/17/2021

Juliet E. Cox

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
REBECCA D. WAGNER
Deputy Attorney General
State Bar No. 165468
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3760
Facsimile: (415) 703-5480
E-mail: Rebecca.Wagner@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Accusation Against: **Stephen Peter Markus, M.D.** **1935 4th St.** **Kirkland WA 98033-4914** **Physician's and Surgeon's Certificate No. G 153534,** Respondent.	Case No. 800-2020-070630 **ACCUSATION**

PARTIES

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

2. On or about January 8, 2018, the Medical Board issued Physician's and Surgeon's Certificate Number G 153534 to Stephen Peter Markus, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2021, unless renewed.

JURISDICTION

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

4. Section 2227 of the Code states:

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

"(1) Have his license revoked upon order of the board;

"(2) Have his right to practice suspended for a period not to exceed one year 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;

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

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

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

5. Section 2305 of the Code states:

"The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the

federal government, that would have been grounds for discipline in California of a licensee under this chapter [Chapter 5, the Medical Practice Act] shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

6. Section 141 of the Code states:

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

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

CAUSE FOR DISCIPLINE

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

7. Respondent Stephen Peter Markus, M.D. is subject to disciplinary action under section 141(a) and/or 2305 of the Code in that on August 21, 2020, the State of Washington Medical Commission issued a Stipulated Findings of Fact, Conclusions of Law, and Agreed Order which placed restrictions and conditions on Respondent's medical license. The circumstances are as follows:

8. Between July 2014 and around May 2017, Respondent entered into agreements to be the Medical Director for multiple outpatient substance use disorder clinics in Washington. At some of these facilities, a urinalysis testing scheme was implemented to maximize insurance reimbursements, and thereby increase profits, regardless of prior medical history. Respondent's signature was used to authorize unnecessary urine drug testing. The Washington Medical Commission found that either Respondent knew or should have known that unnecessary urine

drug tests were being ordered under his name; and that he failed to protect patients from wrongful billing, unnecessary testing, possible false diagnosis, and potentially inaccurate medical history.

9. In addition, from October 1, 2015 until April 16, 2019, Respondent improperly prescribed opioids to Patient A, with whom he had a professional relationship. Respondent committed boundary violations and practiced below the standard of care in relation to his care and treatment of Patient A, and created an unreasonable risk of harm to Patient A because he failed to: consult the Prescribing Monitoring Program; document a detailed health history; recognize and respond to red flags in continuing the opioid therapy of Patient A; and appreciate the risks to other patients in that Patient A was an owner/operator of a chemical dependency agency.

10. As a result of Respondent's actions outlined in Paragraphs 8 and 9, the Washington Medical Commission, on August 21, 2020, found that Respondent had committed unprofessional conduct and placed restrictions and limitations on Respondent's medical license, including but not limited to: restriction from supervision of other medical providers except nurses; restriction from having any ownership interest in any diagnostic or biological specimen testing laboratory center; restriction from prescribing opioids for the treatment of chronic pain; and restriction from being an owner/operator or medical director, manager or supervisor at any new practice. Respondent also was ordered to complete as a condition of licensure: a competency assessment program, an Ethics Course, a Prescribing Course, and to submit to periodic practice reviews.

11. Respondent's conduct and the actions of the Washington Medical Commission as set forth in Paragraphs 7 through 10, above and within the Washington Medical Commission documents attached as Exhibit A, constitutes unprofessional conduct within the meaning of section 2305, and conduct subject to discipline within the meaning of section 141(a).

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 153534, issued to Stephen Peter Markus, M.D.;

2. Revoking, suspending or denying approval of Stephen Peter Markus, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Stephen Peter Markus, 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: FEB 0 1 2021

REJI VARGHESE
DEPUTY DIRECTOR

For: WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SF2020401632
Stephen Markus, M.D. Accusation

Exhibit A

Washington Medical Commission Stipulated

Findings of Fact, Conclusions of Law, and Agreed Order Dated August 21, 2020

STATE OF WASHINGTON
WASHINGTON MEDICAL COMMISSION

In the Matter of the License to Practice as a Physician and Surgeon of: **STEPHEN P. MARKUS, MD** License No. MD.MD.00021837 Respondent.	**No. M2018-94** **STIPULATED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND AGREED ORDER**

The Washington Medical Commission (Commission), through RICK GLEIN, Commission Staff Attorney, and Respondent, represented by counsel, DOUGLAS YOSHIDA and FRANCES SCHOPICK, stipulate and agree to the following. This Agreed Order resolves the two underlying cases to M2018-94 (2017-3445 and 2019-10700)

1. PROCEDURAL STIPULATIONS

1.1 On June 5, 2019, the Commission issued a Statement of Charges against Respondent alleging violation of RCW 18.130.180(1), (4), and (13).

1.2 In August 2020, the Commission signed an Amended Statement of Charges against Respondent alleging violation of RCW 18.130.180(1), (4), (7), and (13) and WAC 246-919-853, -854, -855, -857, and -860.

1.3 The Commission is prepared to proceed to a hearing on the allegations in the Amended Statement of Charges.

1.4 Respondent has the right to defend against the allegations in the Statement of Charges by presenting evidence at a hearing.

1.5 The Commission has the authority to impose sanctions pursuant to RCW 18.130.160 if the allegations are proven at a hearing.

1.6 The parties agree to resolve this matter by means of this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order (Agreed Order).

1.7 Respondent waives the opportunity for a hearing on the Statement of Charges if the Commission accepts this Agreed Order.

1.8 This Agreed Order is not binding unless it is accepted and signed by the Commission.

//

1.9 If the Commission accepts this Agreed Order, it will be reported to the National Practitioner Data Bank (45 CFR Part 60), the Federation of State Medical Boards' Physician Data Center, and elsewhere as required by law.

1.10 This Agreed Order is a public document. It will be placed on the Department of Health's website, disseminated via the Commission's electronic mailing list, and disseminated according to the Uniform Disciplinary Act (Chapter 18.130 RCW). It may be disclosed to the public upon request pursuant to the Public Records Act (Chapter 42.56 RCW). It will remain part of Respondent's file according to the state's records retention law and cannot be expunged.

1.11 If the Commission rejects this Agreed Order, Respondent waives any objection to the participation at hearing of any Commission members who heard the Agreed Order presentation.

2. FINDINGS OF FACT

For purposes of these proceedings only, Respondent and the Commission acknowledge that the evidence is sufficient to justify the following findings of fact, and the Commission makes these findings:

2.1 On July 25, 1984, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active. Respondent is not board certified.

INAPPROPRIATE BUSINESS PRACTICES

2.2 From on or about July 2014 through at least May 2017, Respondent entered into agreements to be the Medical Director for multiple outpatient substance use disorder clinics in Washington.

2.3 The agreements set forth the following Medical Director duties and responsibilities: make recommendations on random urinalysis screenings; participate in administrative decision making and recommend policies and procedures; organize and coordinate physician services and services provided by other professionals as they relate to individual care; monitor all evaluations and recommendations including treatment and lab results; ensure agency compliance with law, regulations and contracts; laboratory

services; and evaluate potential for withdrawal and order medications when appropriate for safe detoxification, including referral to a medical facility.

2.4 In exchange for Respondent's Medical Director services, the agreements set forth a monthly payment, plus additional payments per initial patient interview and per follow-up interview, on a case by case basis when requested by the facility owner.

2.5 Some facilities for which Respondent served as medical director were owned by John Dorman. John Dorman had implemented a urinalysis testing scheme at outpatient substance use disorder clinics he owned and operated which involved the following:

a. Contracting with a specific laboratory for urine drug testing.

b. Contracting with a specific physician to act as the center's medical director, to order the urine drug testing.

c. Requiring all clients in intensive outpatient treatment undergo two urine drug tests each week, regardless of any determination of medical necessity.

d. Sending each urine sample to a laboratory for definitive testing of a large number of substances regardless of any prior medical history to maximize insurance reimbursements.

2.6 In approximately September of 2015, John Dorman brought the owner and the director of a chemical dependency treatment center to Respondent's office to discuss contracting with Respondent as medical director to implement this scheme. At this meeting, Respondent provided a proposed medical director services agreement to them. This scheme would increase profits for the treatment center. No agreement was ever signed.

2.7 In response to the Commission's investigator, Respondent indicated he had no knowledge of any such scheme. Respondent claimed that the facilities with which he contracted were using his signature without his knowledge and/or forging his signature to authorize unnecessary urine drug testing.

2.8 Medical directors are responsible for the medical care and treatment of patients in the healthcare facility or institution for which they have agreed to be the medical director. Respondent was responsible for setting laboratory testing policies and being aware that all policies are being followed correctly.

2.9 The scheme to order and bill unnecessary urine drug tests could only be carried out by having a physician order the urine drug testing as the testing must be on order of a physician. As a medical director with the knowledge and training of Respondent he should have known of the scheme. Alternatively, if he did not know, he was deficient in his duty as medical director for the facilities with which he contracted.

INADEQUATE CARE OF PATIENT A

2.10 On or about June 1, 2015, Respondent became the Medical Director of a licensed behavioral health agency.

2.11 On or about October 1, 2015, Respondent initially saw Patient A who was the owner of a behavioral health agency where Respondent served as Medical Director. In addition to being the owner, Patient A was a licensed chemical dependency counselor and provided treatment to vulnerable patients at his agency. Patient A presented with lumbar pain and was taking Buprenorphine – Naloxone (Suboxone), an opioid, to manage his pain. Respondent continued Patient A on Suboxone.

2.12 Respondent did not consult the Prescription Monitoring Program (PMP) prior to prescribing medication to Patient A. Patient A had been dispensed a 30-day supply of Tramadol, 50 mg. daily (5 MED equivalent), twice in August 2015, by another provider, prior to initiating care with Respondent. Tramadol is an opioid used to help relieve mild to moderate pain.

2.13 Respondent ended the business relationship with the licensed behavioral health agency on or about March 31, 2016.

2.14 Respondent continued to see Patient A several times a year. Patient A reported work stress, anxiety, sleep issues, and pain. Respondent continued to prescribe Suboxone and Zolpidem Tartrate (Ambien) as needed for sleep issues.

2.15 In November 2017, Respondent started prescribing Alprazolam (for anxiety) 0.5 mg., 20 tablets to last greater than 30 days, to Patient A while continuing him on Suboxone.

2.16 Beginning in February 2018 and over the course of the next year, Patient A was prescribed oxycodone and hydrocodone by six different providers (not Respondent). Oxycodone and hydrocodone are both opioids with a risk for abuse and addiction. During

this time, Respondent continued to prescribe Suboxone which was dispensed to Patient A. Respondent also continued to prescribe benzodiazepines and Zolpidem.

2.17 Respondent last saw Patient A on February 14, 2019. However, Patient A continued to fill prescriptions from Respondent for Buprenorphine and Zolpidem in March and April of 2019.

2.18 Patient A passed away on April 16, 2019. The Cause of Death was "Cardiac Arrest", and the Manner of Death was "Natural."

3. CONCLUSIONS OF LAW

The Commission and Respondent agree to the entry of the following Conclusions of Law:

3.1 The Commission has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 Respondent has committed unprofessional conduct in violation of RCW 18.130.180 (4), (7) and WAC 246-919-853, -854, -855, -857, and -860.

3.3 The above violations provide grounds for imposing sanctions under RCW 18.130.160.

4. AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, Respondent agrees to entry of the following Agreed Order:

4.1 **Compliance Orientation.** Respondent shall complete a compliance orientation in person or by telephone within **two (2) months** of the effective date of this Order. Respondent must contact the Compliance Unit at the Commission by calling (360) 236-2763, or by sending an email to: medical.compliance@wmc.wa.gov within **twenty (20) days** of the effective date of this Agreed Order. Respondent must provide a contact phone number where Respondent can be reached for scheduling purposes.

4.2 **Restriction from Supervising Medical Providers.** Respondent is RESTRICTED from employing, overseeing, or directing any other medical providers, i.e., physicians, physician assistants, or nurse practitioners for the duration of this Agreed

Order. This restriction does not apply to nursing staff such as registered nurses (RN) or licensed practical nurses (LPN).

4.3 **Restriction from Laboratories.** Respondent is RESTRICTED from having an ownership interest in any type of diagnostic or biological specimen testing laboratory center and may not refer his patients for lab work to a lab in which he has a financial interest or from which he receives any benefit for the duration of this Agreed Order.

4.4 **Competency Assessment.** Within **one hundred twenty (120) days** of the effective date of this Agreed Order, Respondent will be assessed by a competency assessment program which must be pre-approved by the Commission's Medical Consultant. Respondent will cause the program to submit a final report to the Commission. The Center for Personalized Education for Professionals (CPEP) program is pre-approved. https://www.cpepdoc.org/

4.4.1 Respondent must contract with CPEP or another pre- approved program to conduct a complete and thorough competency assessment. The assessment must include screening examinations, including at a minimum history and physical, cognitive, and psychological screening. The assessment must also include reviews of Respondent's:

- actions which resulted in this case;
- responses to his patients' negative outcomes (if any);
- reasoning and decision making;
- knowledge and understanding of controlled substances, especially opioids/narcotics, including his knowledge of the appropriate use of controlled substances, their risks alone and in combination with other drugs, and how to document decision making when prescribing controlled substances;
- ability to create meaningful and appropriate medical records and evaluate the medical records of his patients' other health care providers; and
- ability to identify his knowledge gaps and implement appropriate responses to any such areas of deficiency.

4.4.2 Respondent must provide CPEP with any release for information that is requested and must unconditionally cooperate with CPEP during the evaluation.

Respondent must sign a waiver of confidentiality and a release to permit CPEP and the Commission to share information. The Commission will provide CPEP with records from the Commission's files that the Commission deems appropriate.

4.4.3 Respondent must authorize CPEP to provide a comprehensive written report, including any third-party evaluation reports, to the Commission. Respondent must ensure that CPEP provides its report to the Commission.

4.4.4 Respondent must follow all recommendations in CPEP's evaluation report, including recommendations for educational and other remediation, medical or other treatment, the use of a preceptor, additional evaluations indicated by the assessment's screening examinations, and re-assessment after completion of remediation. Respondent agrees that the recommendations will be incorporated into a modified Commission Order.

4.4.5 Proof of enrollment, evaluation, and completion of the program shall be sent to the Compliance Unit at Medical.Compliance@wmc.wa.gov.

4.5 **Limitation on Prescribing.** Respondent shall not prescribe opioids for the treatment of chronic pain. This limitation does not apply to prescriptions for Suboxone. Respondent may prescribe medications for the treatment of substance use disorder.

4.6 **Commission Approval of Practice Site/Restriction on Medical Director Expansion.** Respondent is RESTRICTED from performing in any way as an owner, operator, medical director, manager and/or supervisor of any medical, pain management, substance abuse, behavioral health facility or laboratory other than his private practice currently located in Kirkland, WA and USBiotek and IEH Labs, where he is currently the laboratory medical director. Within **thirty (30) days** of the effective date of this Agreed Order, Respondent must notify the Commission of his current worksite. Prior to starting practice at a new location or facility, Respondent must obtain pre-approval by the Commission or its designee for the remainder of this Agreed Order.

4.7 **Ethics Courses.** Within **nine (9) months** of the effective date of this Agreed Order, Respondent shall enroll in and successfully complete both the 2.5-day Professional/Problem Based Ethics (ProBE) course and the in-depth follow-up six-month course, the ProBE Plus Program, offered by CPEP. https://www.cpepdoc.org/cpep-courses/probe-ethics-boundaries-program-united-states-2/. To satisfy this provision,

Respondent must obtain an "unconditional pass" at the conclusion of each course. Respondent will permit CPEP to communicate with the Commission regarding his participation in the courses and will provide the Commission a copy of the essays the Respondent writes as part of the courses. A failure by the Respondent to obtain an "unconditional pass" upon completion of either coursework may result in the Commission requiring Respondent to re-take the course. Respondent will submit proof of the successful completion of each course to the Commission within **thirty (30) days** to the Compliance Officer at the address listed in paragraph 4.4.5.

4.8 **Practice Reviews.** In order to monitor compliance with this Agreed Order, Respondent will submit to periodic practice reviews of his private practice currently located in Kirkland, WA and his work as a medical laboratory director performed by an entity pre-approved by the Commission or its designee. Charles Chabal, MD, or the Physician Enhancement Program (PEP) through the Physician Assessment and Clinical Education (PACE) program at the University of California, San Diego School of Medicine are pre-approved. Respondent is responsible for all costs associated with the practice monitoring program. The program will include, but is not limited to, the following components:

- The representative will conduct an on-site visit, of Respondent's private practice, including but not limited to a site assessment, longitudinal chart review, interview, patient visit observation, and a site visit every six months for the duration of the program.
- The representative and Respondent will jointly create a Personal and Practice Development Plan (PPDP) to educate Respondent on the process of self-managed continuous quality improvement and objectively measure the results.
- The representative will conduct a monthly chart audit, and Respondent will engage in a monthly phone call to discuss progress on documentation, quality of care, and the PPDP.
- The representative will provide the Compliance Officer listed in paragraph 4.4.5 with brief summary reports on a monthly basis and a detailed report summarizing progress in the program and further recommendations on a quarterly basis.

- Respondent will participate in a Physicians Universal Leadership Skills Education (PULSE) survey after initial enrollment and after approximately six months to measure improvement.

Respondent will maintain waivers of confidentiality authorizing full exchange of information between the evaluator, the practice review entity, and the Commission. The Commission may take additional action, in a separate case, if the practice review reveals ongoing concerns regarding Respondent's practice.

4.9 **Prescribing Course.** Within **six (6) months** of the effective date of this Agreed Order, Respondent shall take and successfully complete one of the following courses, or a similar course pre-approved by the Commission's Medical Consultant:

A. Intensive Course in "Controlled Substance Prescribing" at Case Western Reserve University in Cleveland, Ohio, (216) 983-1239.
https://case.edu/medicine/cme/courses-activities/intensive-course-series/

B. "Prescribing Controlled Drugs" at Vanderbilt University Medical Center, Center for Professional Health, Nashville, Tennessee, (615) 936-0678.
https://medsites.mc.vanderbilt.edu/cph/live-courses

C. "The Physician Prescribing Course" at the University of California, San Diego School of Medicine, (619) 543-6770.
http://www.paceprogram.ucsd.edu/CME/Prescribing.aspx

Respondent shall submit proof of the completion of the CME hours within **seven (7) months** of the effective date of this Agreed Order to the Compliance Officer listed in paragraph 4.4.5. The course shall not count toward the credits required to maintain licensure.

4.10 **Paper.** Following completion of the courses required in paragraphs 4.7 and 4.9, Respondent must prepare and submit a typewritten paper to the Commission. The paper must be a minimum of two thousand (2,000) words, contain a bibliography, refer to the courses completed in paragraphs 4.7 and 4.9, and state how Respondent intends to apply what he learned in his practice with a specific emphasis on the duties and responsibilities of a medical director for a recovery program. The paper must be submitted for approval within **three (3) months** after completing the related courses pursuant to paragraphs 4.7 and 4.9. Respondent should be prepared to discuss the subject matter of

the written paper with the Commission at his next personal appearance. The paper must be submitted to the Commission in electronic format to the Compliance Officer listed in paragraph 4.4.5.

4.11 **Peer Group Presentation.** Respondent shall organize and present his paper to a peer group with interest in the duties and responsibilities of a medical director for a recovery program within **three (3) months** of approval by the Commission. Proof of completion, attendance, and materials must be submitted to the Compliance Officer listed in paragraph 4.4.5.

4.12 **Prescription Monitoring Program (PMP).** Within **thirty (30) days** of the effective date of this Agreed Order, Respondent will register with the Washington Prescription Monitoring Program (PMP) if he has not already done so. Respondent will query the PMP regularly for all patients that he prescribes controlled substances for under the terms of paragraph 4.5. Respondent will document the PMP query in the patient's medical records and will note any evidence of aberrant behavior.

4.13 **Pain Management Rules.** Respondent will fully comply with the pain management rules found at WAC 246-919-905 through -955.

4.14 **Personal Appearances.** Within **twelve (12) months** of the effective date of this Agreed Order, Respondent must personally appear at a date and location determined by the Commission, or as soon thereafter as the Commission's schedule permits. Thereafter, Respondent must make personal appearances annually or as frequently as the Commission requires unless the Commission waives the need for an appearance. Respondent must participate in a brief telephone call with the Commission's Compliance Unit prior to the appearance. The purpose of appearances is to provide meaningful oversight over Respondent's compliance with the requirements of this Agreed Order. The Commission will provide reasonable notice of all scheduled appearances.

4.15 **Fine.** Within **nine (9) months** of the effective date of this Agreed Order, Respondent must pay fifteen thousand dollars ($15,000) to the Commission. The fine will be paid by certified check or money order, made payable to the Department of Health, and mailed to: Washington Medical Commission, Department of Health, P.O. Box 1099, Olympia, Washington, 98504-1099.

4.16 **Modification.** Respondent may petition in writing for modification of this Agreed Order after **two (2) years** of full compliance following the effective date of this Agreed Order. The Commission will have sole discretion to grant or deny Respondent's petition. Respondent may petition for modification, but not termination.

4.17 **Notice to Employer.** Respondent must provide a copy of this Agreed Order to his current healthcare employer and any subsequent healthcare employers for the duration of this Agreed Order and ensure that the employer understands the Commission's decision in this case. Within **seven (7) days** of entry of this Agreed Order or within **seven (7) days** of the start of new employment, Respondent will cause his employer to inform the Commission, in writing, of the employer's knowledge of this Agreed Order.

4.18 **Demographic Census.** Washington law[1] requires physicians and physician assistants to complete a demographic census with their license renewal. Respondent must submit a completed demographic census[2] to the Commission within **thirty (30) days** of the effective date of this Agreed Order, or at the time of renewal, whichever comes first.

4.19 **Self-Reporting.** Respondent shall report in writing, by email to medical.compliance@wmc.wa.gov, within **thirty (30) days** of the occurrence of any of the following events:

a. Denial, restriction, suspension or revocation of any healthcare-related license for the Respondent in another state;

b. Denial, restriction, suspension or revocation of privileges for the Respondent in any healthcare facility;

c. Any felony or gross misdemeanor charge against the Respondent; and

d. The filing of a complaint in superior court or federal district court against Respondent alleging negligence or request for mediation pursuant to chapter 7.70 RCW.

This requirement supplements and does not supersede the reporting obligations imposed by WAC 246-919-700, et seq. and WAC 246-16-230.

4.20 **Obey Laws.** Respondent must obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

4.21 **Costs.** Respondent is responsible for all costs of complying with this Agreed Order.

4.22 **Violation of Order.** If Respondent violates any provision of this Agreed Order in any respect, the Commission may initiate further action against Respondent's license up to and including revocation of his license.

4.23 **Change of Address or Name.** Respondent must inform the Commission and Adjudicative Clerk Office in writing, of changes in his residential and/or business address and/or his name within thirty (30) days of such change.

4.24 **Effective Date.** The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective of this Agreed Order.

4.25 **Termination.** Respondent may not petition to terminate the terms and conditions of this Agreed Order until at least **four (4) years** after the effective date of this Agreed Order, and only after successful completion of all terms and conditions. When Respondent files such a petition, a date and time will be arranged for Respondent's appearance before the Commission, unless the Commission waives the need for Respondent's personal appearance. The Commission will have sole discretion to grant or deny Respondent's petition.

5. COMPLIANCE WITH SANCTION RULES

5.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions, including stipulations to informal disposition under RCW 18.130.172. Tier B of the "Practice Below Standard of Care" schedule, WAC 246-16-810, applies to cases where substandard practices caused moderate patient harm or risk of moderate to severe patient harm.

The fraudulent urine drug testing scheme sought to increase profits while failing to protect the patients from wrongful billing; unnecessary testing; perceived false diagnoses or more severe medical conditions than patients have; and an inflated and potentially inaccurate medical history.

With respect to the boundary violations and practice below the standard of care regarding Patient A, Respondent may have failed to probe sensitive areas when taking Patient A's medical history with whom he had both a personal and professional

relationship. Although Respondent did not cause Patient A's death, Respondent's substandard care of Patient A created an unreasonable risk of harm in that Respondent failed to: consult the PMP; document a detailed health history along with a review of the PMP; and ultimately recognize and respond to red flags in continuing opioid therapy. Respondent also failed to appreciate the risk to the patients of the chemical dependency agency owned and operated by Patient A.

5.2 Tier B requires the imposition of sanctions ranging from two to five years of oversight. Under WAC 246-16-800(3)(d), the starting point for the duration of the sanctions is the middle of the range. The Commission uses aggravating and mitigating factors to move towards the maximum or minimum ends of the range.

5.3 The gravity of the aggravating factors over the mitigating factors supports the imposition of a four-year oversight period. The sanctions in this case include license restrictions, a competency assessment, limitation on prescribing, Commission approval of practice site, an ethics course, practice reviews, a prescribing course, a paper with peer group presentation, registration with the PMP, a fine, and other practice conditions for a four-year period, with the ability to modify the Agreed Order after two years. These sanctions are appropriate within the Tier B range given the alleged facts of the case and the following aggravating and mitigating factors:

MITIGATING FACTORS:

- Respondent has not been the subject of prior discipline with the Commission.
- Respondent has cooperated with the Commission investigation.

AGGRAVATING FACTORS:

- Respondent's medical license was a necessary component of the scheme to order and bill unnecessary urine drug testing for profit. Such scheme brings ill repute upon the medical profession.
- Respondent was deficient in his duty as medical director for the facilities with which he contracted.
- Respondent failed to appreciate the risk to the patients of the chemical dependency agency owned and operated by Patient A.

6. FAILURE TO COMPLY

Protection of the public requires practice under the terms and conditions imposed in this Agreed Order. Failure to comply with the terms and conditions of this Agreed Order may result in further action on Respondent's license after a show cause hearing. If Respondent fails to comply with the terms and conditions of this Agreed Order, the Commission may hold a hearing to require Respondent to show cause why the license should not be revoked. Alternatively, the Commission may bring additional charges of unprofessional conduct under RCW 18.130.180(9). In either case, Respondent will be afforded notice and an opportunity for a hearing on the issue of non-compliance.

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

7. RESPONDENT'S ACCEPTANCE

I, STEPHEN P. MARKUS, MD, Respondent, certify that I have read this Agreed Order in its entirety; that my counsel of record, DOUGLAS YOSHIDA and FRANCES SCHOPICK, have fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Commission without my appearance. If the Commission accepts the Agreed Order, I understand that I will receive a signed copy.

STEPHEN P. MARKUS, MD RESPONDENT	08/19/20 DATE
DOUGLAS YOSHIDA, WSBA NO. 17365 ATTORNEY FOR RESPONDENT	08/19/2020 DATE
/s/ Frances Schopick FRANCES SCHOPICK, WSBA NO. 44912 ATTORNEY FOR RESPONDENT	8/19/20 DATE

//

//

//

//

//

//

//

//

//

//

//

8. COMMISSION'S ACCEPTANCE AND ORDER

The Commission accepts and enters this Stipulated Findings of Fact, Conclusions of Law and Agreed Order.

DATED: 8/21, 2020.

STATE OF WASHINGTON
WASHINGTON MEDICAL COMMISSION

T. Murphy MD
PANEL CHAIR

PRESENTED BY:

R. Glein
RICK GLEIN, WSBA NO. 23692
COMMISSION STAFF ATTORNEY

I hereby certify that this is a true and accurate copy of the original document on file with the Washington State Department of Health

Michael J. Kramer
Date
9-14-20

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

FILED
JUN 05 2019
Adjudicative Clerk Office

In the Matter of the License to Practice as a Physician and Surgeon of: **STEPHEN P. MARKUS, MD** License No. MD.MD.00021837 Respondent.	No. M2018-94 **STATEMENT OF CHARGES**

The Executive Director of the Medical Quality Assurance Commission (Commission) is authorized to make the allegations below, which are supported by the evidence contained in file number 2017-3445.

1. ALLEGED FACTS

1.1 On July 25, 1984, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active. Respondent is not board certified.

1.2 From on or about July 2014 through at least May 2017, Respondent entered into agreements to be the Medical Director for multiple outpatient substance use disorder clinics in Washington.

1.3 The agreements set forth the following Medical Director duties and responsibilities: make recommendations on random urinalysis screenings; participate in administrative decision making and recommend policies and procedures; organize and coordinate physician services and services provided by other professionals as they relate to individual care; monitor all evaluations and recommendations including treatment and lab results; ensure agency compliance with law, regulations and contracts; laboratory services; and evaluate potential for withdrawal and order medications when appropriate for safe detoxification, including referral to a medical facility.

1.4 In exchange for Respondent's services, the agreements set forth a payment of $1,500 to $10,000 per month, plus an additional $350 per initial patient interview and an additional $130 per follow-up interview.

1.5 Several facilities for which Respondent served as medical director were owned by John Dorman. John Dorman had implemented a urinalysis testing scheme at

ORIGINAL

outpatient substance use disorder clinics he owned and operated which involved the following:

a. Contracting with a specific laboratory for definitive urine drug screens (UDS).

b. Contracting with a specific physician to act as the center's medical director, to order the UDS.

c. Requiring all clients in intensive outpatient treatment undergo two UDS each week, regardless of any determination of medical necessity.

d. Sending each urine sample to a laboratory for definitive testing of a large number of substances regardless of any prior medical history to maximize insurance reimbursements.

1.6 In approximately September of 2015, John Dorman brought the owner and the director of a chemical dependency treatment center to Respondent's office to discuss contracting with Respondent as medical director to implement this scheme. At this meeting, Respondent provided a proposed medical director services agreement to them. This scheme would increase profits for the treatment center.

1.7 In response to the Commission's Investigator, Respondent indicated he had no knowledge of any such scheme. Respondent claimed that the facilities with which he contracted were using his signature without his knowledge to authorize unnecessary urine drug screens.

1.8 Medical directors are responsible for the medical care and treatment of patients in the healthcare facility or institution for which they have agreed to be the medical director. Respondent was responsible for setting laboratory testing policies and being aware that all policies are being followed correctly.

1.9 Respondent either knowingly participated in the scheme to order and bill unnecessary urine drug screens, or as medical director should have known of the scheme. Alternatively, if he did not know, he was deficient in his duty as medical director for the facilities with which he contracted.

2. ALLEGED VIOLATIONS

2.1 Based on the Alleged Facts, Respondent has committed unprofessional conduct in violation of RCW 18.130.180(1), (4), and (13).

RCW 18.130.180 Unprofessional conduct. The following conduct, acts, or conditions constitute unprofessional conduct for any license holder under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

...

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

...

(13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

....

2.2 The above violations provide grounds for imposing sanctions under RCW 18.130.160.

//

//

//

//

//

//

//

//

//

3. NOTICE TO RESPONDENT

The charges in this document affect public health and safety. The Executive Director of the Commission directs that a notice be issued and served on Respondent as provided by law, giving Respondent the opportunity to defend against these charges. If Respondent fails to defend against these charges, Respondent shall be subject to discipline and the imposition of sanctions under Chapter 18.130 RCW.

DATED: June 4, 2019.

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

MELANIE DE LEON
EXECUTIVE DIRECTOR

ROBERT W. FERGUSON
ATTORNEY GENERAL

KRISTIN G. BREWER, WSBA NO. 38494
SENIOR COUNSEL

I hereby certify that this is a true and accurate copy of the original document on file with the Washington State Department of Health

Michael J. Kramer

Date 9-14-20

STATE OF WASHINGTON * OFFICIAL SEAL * DEPARTMENT OF HEALTH

ORIGINAL

STATE OF WASHINGTON
WASHINGTON MEDICAL COMMISSION

In the Matter of the License to Practice as a Physician and Surgeon of: **STEPHEN P. MARKUS, MD** License No. MD.MD.00021837 Respondent.	**No. M2018-94** **AMENDED STATEMENT OF CHARGES**

The Executive Director of the Washington Medical Commission (Commission) is authorized to make the allegations below, which are supported by the evidence contained in file numbers 2017-3445 and 2019-10700. The patient referred to in this Amended Statement of Charges is identified in the attached Confidential Schedule.

1. ALLEGED FACTS

1.1 On July 25, 1984, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active. Respondent is not board certified.

INAPPROPRIATE BUSINESS PRACTICES

1.2 From on or about July 2014 through at least May 2017, Respondent entered into agreements to be the Medical Director for multiple outpatient substance use disorder clinics in Washington.

1.3 The agreements set forth the following Medical Director duties and responsibilities: make recommendations on random urinalysis screenings; participate in administrative decision making and recommend policies and procedures; organize and coordinate physician services and services provided by other professionals as they relate to individual care; monitor all evaluations and recommendations including treatment and lab results; ensure agency compliance with law, regulations and contracts; laboratory services; and evaluate potential for withdrawal and order medications when appropriate for safe detoxification, including referral to a medical facility.

1.4 In exchange for Respondent's services, the agreements set forth a payment of $1,500 to $10,000 per month, plus an additional $350 per initial patient interview and an additional $130 per follow-up interview.

1.5 Several facilities for which Respondent served as medical director were owned by John Dorman. John Dorman had implemented a urinalysis testing scheme at outpatient substance use disorder clinics he owned and operated which involved the following:

a. Contracting with a specific laboratory for definitive urine drug screens (UDS).

b. Contracting with a specific physician to act as the center's medical director, to order the UDS.

c. Requiring all clients in intensive outpatient treatment undergo two UDSs each week, regardless of any determination of medical necessity.

d. Sending each urine sample to a laboratory for definitive testing of a large number of substances regardless of any prior medical history to maximize insurance reimbursements.

1.6 In approximately September of 2015, John Dorman brought the owner and the director of a chemical dependency treatment center to Respondent's office to discuss contracting with Respondent as medical director to implement this scheme. At this meeting, Respondent provided a proposed medical director services agreement to them. This scheme would increase profits for the treatment center.

1.7 In response to the Commission's investigator, Respondent indicated he had no knowledge of any such scheme. Respondent claimed that the facilities with which he contracted were using his signature without his knowledge to authorize unnecessary urine drug screens.

1.8 Medical directors are responsible for the medical care and treatment of patients in the healthcare facility or institution for which they have agreed to be the medical director. Respondent was responsible for setting laboratory testing policies and being aware that all policies are being followed correctly.

1.9 Respondent either knowingly participated in the scheme to order and bill unnecessary urine drug screens, or as medical director should have known of the scheme. Alternatively, if he did not know, he was deficient in his duty as medical director for the facilities with which he contracted.

//

//

INADEQUATE CARE OF PATIENT A

1.10 On or about June 1, 2015, Respondent became the Medical Director of a licensed behavioral health agency.

1.11. On or about October 1, 2015, Respondent initially saw Patient A who was the owner of a behavioral health agency where Respondent served as Medical Director. In addition to being the owner, Patient A was a licensed chemical dependency counselor and provided treatment to vulnerable patients at his agency. Patient A presented with lumbar pain and was taking Buprenorphine – Naloxone (Suboxone), an opioid, to manage his pain. Respondent continued Patient A on Suboxone.

1.12 Respondent did not consult the Prescription Monitoring Program (PMP) prior to prescribing medication to Patient A. Patient A had been dispensed a 30-day supply of Tramadol, 50 mg., twice in August 2015. Tramadol is an opioid used to help relieve moderate to moderately severe pain.

1.13 Respondent ended the business relationship with the licensed behavioral health agency on or about March 31, 2016.

1.14 Respondent continued to see Patient A several times a year. Patient A described work stress, anxiety, sleep issues, and pain. Respondent continued to prescribe Suboxone and started him on Zolpidem Tartrate (Ambien) in January of 2017 for sleep issues.

1.15 In November 2017, Respondent started prescribing Alprazolam to Patient A while continuing him on Suboxone and Ambien.

1.16 Beginning in February 2018 and over the course of the next year, Patient A was prescribed oxycodone and hydrocodone by six different providers in addition to Respondent. Oxycodone and hydrocodone are both opioids with a risk for abuse and addiction. During this time, Respondent continued to prescribe Suboxone which was dispensed to Patient A.

1.17 In August 2018, Respondent started prescribing Lorazepam (used for anxiety) to Patient A.

1.18 Respondent last saw Patient A on February 14, 2019. However, Patient A continued to fill prescriptions from Respondent in March and April of 2019.

1.19 Patient A passed away on April 16, 2019. The cause of death was cardiac arrest.

2. ALLEGED VIOLATIONS

2.1 Based on the Alleged Facts, Respondent has committed unprofessional conduct in violation of RCW 18.130.180(1), (4), (7), and (13) and WAC 246-919-853, -854, -855, -857, and -860[1], which provide in part:

> **RCW 18.130.180 Unprofessional conduct.** The following conduct, acts, or conditions constitute unprofessional conduct for any license holder under the jurisdiction of this chapter:
>
> (1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;
>
> ...
>
> (4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;
>
> ...
>
> (7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;
>
> ...
>
> (13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;
>
> ....
>
> **WAC 246-919-853**
> **Patient evaluation.**
>
> The physician shall obtain, evaluate, and document the patient's health history and physical examination in the health record prior to treating for chronic noncancer pain.
>
> (1) The patient's health history shall include:

[1] The opioid prescribing rules were updated on January 1, 2019. The new rules for Chronic Pain Management are codified under WAC 246-919-905 through -955. The alleged violation reflects the rules that were in place at the time the alleged conduct occurred.

(a) Current and past treatments for pain;

(b) Comorbidities; and

(c) Any substance abuse.

(2) The patient's health history should include:

(a) A review of any available prescription monitoring program or emergency department-based information exchange; and

(b) Any relevant information from a pharmacist provided to a physician.

(3) The initial patient evaluation shall include:

(a) Physical examination;

(b) The nature and intensity of the pain;

(c) The effect of the pain on physical and psychological function;

(d) Medications including indication(s), date, type, dosage, and quantity prescribed;

(e) A risk screening of the patient for potential comorbidities and risk factors using an appropriate screening tool. The screening should address:

(i) History of addiction;

(ii) Abuse or aberrant behavior regarding opioid use;

(iii) Psychiatric conditions;

(iv) Regular concomitant use of benzodiazepines, alcohol, or other central nervous system medications;

(v) Poorly controlled depression or anxiety;

(vi) Evidence or risk of significant adverse events, including falls or fractures;

(vii) Receipt of opioids from more than one prescribing practitioner or practitioner group;

(viii) Repeated visits to emergency departments seeking opioids;

(ix) History of sleep apnea or other respiratory risk factors;

(x) Possible or current pregnancy; and

(xi) History of allergies or intolerances.

(4) The initial patient evaluation should include:

(a) Any available diagnostic, therapeutic, and laboratory results; and

(b) Any available consultations.

(5) The health record shall be maintained in an accessible manner, readily available for review, and should include:

(a) The diagnosis, treatment plan, and objectives;

(b) Documentation of the presence of one or more recognized indications for the use of pain medication;

(c) Documentation of any medication prescribed;

(d) Results of periodic reviews;

(e) Any written agreements for treatment between the patient and the physician; and

(f) The physician's instructions to the patient.

WAC 246-919-854
Treatment plan.

(1) The written treatment plan shall state the objectives that will be used to determine treatment success and shall include, at a minimum:

(a) Any change in pain relief;

(b) Any change in physical and psychosocial function; and

(c) Additional diagnostic evaluations or other planned treatments.

(2) After treatment begins the physician should adjust drug therapy to the individual health needs of the patient. The physician shall include indications for medication use on the prescription and require photo identification of the person picking up the prescription in order to fill. The physician shall advise the patient that it is the patient's responsibility to safeguard all medications and keep them in a secure location.

(3) Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

WAC 246-919-855
Informed consent.

The physician shall discuss the risks and benefits of treatment options with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is without health care decision-making capacity.

//

//

WAC 246-919-857
Periodic review.

The physician shall periodically review the course of treatment for chronic noncancer pain, the patient's state of health, and any new information about the etiology of the pain. Generally, periodic reviews shall take place at least every six months. However, for treatment of stable patients with chronic noncancer pain involving nonescalating daily dosages of forty milligrams of a morphine equivalent dose (MED) or less, periodic reviews shall take place at least annually.

(1) During the periodic review, the physician shall determine:

(a) Patient's compliance with any medication treatment plan;

(b) If pain, function, or quality of life have improved or diminished using objective evidence, considering any available information from family members or other caregivers; and

(c) If continuation or modification of medications for pain management treatment is necessary based on the physician's evaluation of progress towards treatment objectives.

(2) The physician shall assess the appropriateness of continued use of the current treatment plan if the patient's progress or compliance with current treatment plan is unsatisfactory. The physician shall consider tapering, changing, or discontinuing treatment when:

(a) Function or pain does not improve after a trial period;

(b) There is evidence of significant adverse effects;

(c) Other treatment modalities are indicated; or

(d) There is evidence of misuse, addiction, or diversion.

(3) The physician should periodically review information from any available prescription monitoring program or emergency department-based information exchange.

(4) The physician should periodically review any relevant information from a pharmacist provided to the physician.

WAC 246-919-860
Consultation—Recommendations and requirements.

(1) The physician shall consider, and document the consideration, referring the patient for additional evaluation and treatment as needed to achieve treatment objectives. Special attention should be given to those chronic noncancer pain patients who are under eighteen years of age, or who are at risk for medication misuse, abuse, or diversion. The management of pain in patients with a history of substance abuse or with comorbid psychiatric disorders may require extra care, monitoring,

documentation, and consultation with, or referral to, an expert in the management of such patients.

(2) The mandatory consultation threshold for adults is one hundred twenty milligrams morphine equivalent dose (MED)(oral). In the event a physician prescribes a dosage amount that meets or exceeds the consultation threshold of one hundred twenty milligrams MED (orally) per day, a consultation with a pain management specialist as described in WAC 246-919-863 is required, unless the consultation is exempted under WAC 246-919-861 or 246-919-862. Great caution should be used when prescribing opioids to children with chronic noncancer pain and appropriate referrals to a specialist is encouraged.

(a) The mandatory consultation shall consist of at least one of the following:

(i) An office visit with the patient and the pain management specialist;

(ii) A telephone consultation between the pain management specialist and the physician;

(iii) An electronic consultation between the pain management specialist and the physician; or

(iv) An audio-visual evaluation conducted by the pain management specialist remotely, where the patient is present with either the physician or a licensed health care practitioner designated by the physician or the pain management specialist.

(b) A physician shall document each mandatory consultation with the pain management specialist. Any written record of the consultation by the pain management specialist shall be maintained as a patient record by the specialist. If the specialist provides a written record of the consultation to the physician, the physician shall maintain it as part of the patient record.

(3) Nothing in this chapter shall limit any person's ability to contractually require a consultation with a pain management specialist at any time. For the purposes of WAC 246-919-850 through 246-919-863, "person" means an individual, a trust or estate, a firm, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

2.2 The above violations provide grounds for imposing sanctions under RCW 18.130.160.

//

3. NOTICE TO RESPONDENT

The charges in this document affect public health and safety. The Executive Director of the Commission directs that a notice be issued and served on Respondent as provided by law, giving Respondent the opportunity to defend against these charges. If Respondent fails to defend against these charges, Respondent shall be subject to discipline and the imposition of sanctions under Chapter 18.130 RCW.

DATED: August 14, 2020.

STATE OF WASHINGTON
WASHINGTON MEDICAL COMMISSION

Melanie de Leon

MELANIE DE LEON
EXECUTIVE DIRECTOR

ROBERT W. FERGUSON
ATTORNEY GENERAL

Kristin G Brewer

KRISTIN G. BREWER, WSBA NO. 38494
SENIOR COUNSEL

I hereby certify that this is a true and accurate copy of the original document on file with the Washington State Department of Health

Michael J. Kramer

Date
9-14-20

STATE OF WASHINGTON * DEPARTMENT OF HEALTH * OFFICIAL SEAL

CONFIDENTIAL SCHEDULE

This information is confidential and is NOT to be released without the consent of the individual or individuals named below. RCW 42.56.240(1)

Patient A