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

In the Matter of the Second Amended Accusation and Petition to Revoke Probation Against: Tyron Cleon Reece, M.D. Physician's & Surgeon's Certificate No. A 31509 Respondent.	Case No.: 800-2017-031854

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the petition for reconsideration, filed by Albert J. Garcia, Esq., on behalf of Respondent, Tyron Cleon Reece, M.D., and the time for action having expired at 5:00 p.m. on December 24, 2021, the petition is deemed denied by operation of law.

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

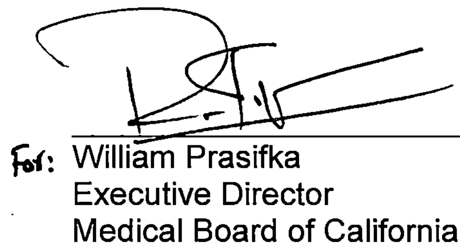
In the Matter of the Second Amended Accusation and Petition to Revoke Probation Against:	**Case No. 800-2017-031854**
Tyron Cleon Reece, M.D.	**ORDER GRANTING STAY**
Physician's & Surgeon's Certificate No. A 31509	**(Government Code Section 11521)**
Respondent.	

Albert Garcia, Esq., on behalf of Respondent, Tyron Cleon Reece, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of December 15, 2021, at 5:00 p.m.

Execution is stayed until December 24, 2021, at 5:00 p.m.

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

DATED: December 14, 2021



Reji Varghese
Deputy Director

For: William Prasifka
Executive Director
Medical Board of California

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

In the Matter of the Second Amended Accusation and Petition to Revoke Probation Against: Tyron Cleon Reece, M.D. Physician's and Surgeon's Certificate No. A 31509 Respondent.	Case No. 800-2017-031854

DECISION

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C), to correct a clerical error that does not affect the factual or legal basis of the Proposed Decision. The Proposed Decision is amended as follows:

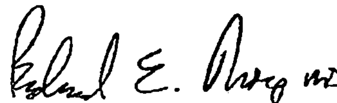
1. Page 1 and Page 40: the Certificate number is corrected to read 'A31509.'
2. Page 3: the Certificate expiration date is corrected to read "October 31, 2023.'
3. Page 37, Paragraph 23, Lines 2-3: the date is corrected to read "April 14, 2020."

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 December 15, 2021.

IT IS SO ORDERED November 15, 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 Second Amended Accusation and

Petition to Revoke Probation Against:

TYRON CLEON REECE, M.D.

Physician's and Surgeon's Certificate No. A 35109

Respondent.

Agency Case No. 800-2017-031854

OAH No. 2021030934

PROPOSED DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 13-16, 2021.

Vladimir Shalkevich, Deputy Attorney General, represented complainant William J. Prasifka, Executive Director, Medical Board of California (Board), Department of Consumer Affairs (Department).

Albert J. Garcia, Esq., represented respondent Tyron Cleon Reece, M.D.

The parties presented witness testimony and documentary evidence. The record closed and the matter was submitted for decision on September 16, 2021.

SUMMARY

Respondent is a family medicine physician who has been on probation with the Board since November 2014 following a criminal conviction for conspiring to distribute controlled substances in violation of federal law. In November 2017, the Board extended respondent's seven-year probation term by two more years due to probation violations. Complainant now requests that the Board revoke respondent's probation and physician's and surgeon's certificate for allegedly placing four patients off work for long periods without medical justification, committing errors in his care and treatment of the patients, writing a fraudulent off-work letter for a Department investigator posing as a patient, and losing another patient's medical records. Respondent admits he erred by writing an off-work letter for the investigator and by misplacing one patient's records, but he disputes the other charges and asks the Board to extend his probation again rather than revoke his certificate. Clear and convincing evidence established causes for disciplinary action and probation violations, and respondent's unprofessional conduct while on probation compels the conclusion that his certificate should be revoked.

FACTUAL FINDINGS

Background

1. On September 1, 1977, the Board issued Physician's and Surgeon's Certificate number A 31509 to respondent. The certificate was in effect at all times

relevant to the charges in this case and will expire on October 31, 2021, unless renewed.

2. Respondent earned a bachelor's degree in chemistry from Shaw University in Raleigh, North Carolina in 1961. He then served as a Captain in the United States Air Force from 1961 through 1969, serving in Vietnam in 1967 and 1968. He is the recipient of the Vietnam Service Medal with Bronze Service Star, the National Defense Service Medal, the Republic of Vietnam Commendation Medal, and the United States Air Force Good Conduct Medal.

3. In 1970, respondent received a master's degree in chemistry from St. Mary's University in San Antonio, Texas. He earned his medical degree from the University of Colorado in 1974. He then completed a surgery internship at Los Angeles County/USC Medical Center in 1975, and he was a neurosurgery resident at Martin Luther King, Jr. General Hospital, Los Angeles between 1976 and 1979, although he did not complete the residency program. Respondent currently practices family medicine under the name of Prism Medical Clinic in Rancho Cucamonga, California.

4. In 2013, complainants' predecessor as Executive Director for the Board filed an Accusation for disciplinary action against respondent charging him with conviction of a crime substantially related to the qualifications, functions, or duties of a physician; commission of acts involving dishonesty or corruption: excessive prescription of controlled substances; receipt of rebates for patient referrals; violation of drug statutes; and general unprofessional conduct. Specifically, the Accusation alleged respondent wrote prescriptions for controlled substances for money without seeing patients, and that he was convicted in the United States District Court, Southern District of California, for conspiring to distribute controlled substances in violation of federal law. (21 U.S.C. § 841.)

5. In October 2014, respondent agreed to a Stipulated Settlement and Disciplinary Order in which he admitted the truth of the allegations in the Accusation and waived his right to a hearing on the charges. In a Decision and Order effective December 24, 2014, the Board adopted the stipulation, revoked respondent's certificate, stayed the revocation, and placed him on probation for seven years. The probation terms included a 90-day suspension, a prohibition on prescribing controlled substances, and requirements to complete 100 hours of community service, education and prescribing practices courses, a professionalism (ethics) program, and psychiatric and medical evaluations. Other terms required respondent to have billing and practice monitors, to enroll in a physician assessment and clinical education program, to pay the costs of probation monitoring and of the psychiatric and medical evaluations, and to obey all laws while on probation, among other requirements.

6. In October 2016, complainant's predecessor filed a Petition to Revoke probation against respondent due to alleged probation violations. After a hearing, the Board extended respondent's probation for two years for violating terms of probation, including failure to participate in a professionalism enhancement program (ethics course), failure to pay the costs of probation monitoring, and failure to maintain a required log of his notifications to patients of the probation restrictions on his practice. The modified probation terms included an additional 30-day suspension unless respondent paid the Board $10,392.50 as reimbursement for the costs he owed, proved he was actively enrolled in the physician assessment and clinical education program required by his probation, and proved he maintained the required log of his notifications to patients.

Riverside Transit Agency Complaint

7. On April 17, 2017, the Board received a complaint from the Riverside Transit Agency (RTA), the primary transit agency for western Riverside County, California. The complaint stated RTA only offered Kaiser medical insurance to its employees, but "[f]our of our employees, who currently have Kaiser, went to Dr. Tyron[] Reece (non-Kaiser doctor) and [were] subsequently placed off work for at least three months each." (Exhibit 7.) RTA wrote it "suspect[ed] that Dr. Reece is placing people off work unethically." (*Ibid.*)

8. The Board investigated the complaint and subpoenaed respondent's medical records for the four patients. The patients were RTA bus drivers whom respondent placed on leave from work in 2016 or early 2017, three of whom he continued to see after the date of RTA's complaint to the Board. Respondent's records for the patients indicate the following.

PATIENT 1

9. Patient 1, a 34-year-old female, first saw respondent on November 23, 2016. She presented with complaints of stress, back pain, and insomnia. She filled out respondent's standard patient intake forms, and respondent completed his standard two-page Subjective, Objective, Assessment, and Plan (SOAP) note for the visit. In the Subjective section of the note, respondent wrote "stress, back pain," without further comment. In the Objective section, respondent wrote that the patient was hypervigilant and apprehensive with paraspinal hypotonicity, decreased range of motion, and "Flexion 20% [¶] Extension 15% [¶] Rotation <5% [¶] Patellar reflex 4+/4 [¶] Clonus." The Assessment section included respondent's diagnoses of stress reaction, lumbar stress, and psychosomatic vasoconstriction. In the Plan section,

respondent's recommendations were: "No lift, bend, pull, push, reach, stoop, kneel, squat, twist, stretch, sit/stand > 2 minutes, climb or crawl [¶] Stress Management – Crisis intervention," with a disability period of 90 days. (Exhibit 9, pp. A380-381.)

10. On the same day, respondent wrote a letter for the patient stating she could not work from November 22, 2016, to February 22, 2017. On December 21, 2016, respondent saw Patient 1 again and documented "stress" and "low back pain" without further clarification. The patient was noted as "hyper-vigilant suspicious," with otherwise the same physical exam as in the prior visit. Respondent's diagnoses were stress reaction and lumbar strain with "combat-like fatigue." Respondent recommended the same activity modifications as in the prior visit, along with "stress management - limbic exploration." Respondent signed the note with the parenthetical "(Viet-Nam Vet)" after his signature and also wrote "Non-compliant – P.T. ! !" (Exhibit 9, pp. A382-383.)

11. On January 13, 2017, respondent saw Patient 1 again and noted low back spasms and anxiety without additional history. Respondent also wrote that the patient was "agitated spatial" with similar physical exam comments as the notes of the prior visits. Respondent's diagnoses were again stress reaction and lumbar strain. The recommended activity modifications were the same as previously recommended with "Stress management - reality focus." (Exhibit 9, pp. A384-385.)

12. On February 24, 2017, respondent last saw Patient 1. Respondent's notes of the visit were similar to his notes of previous visits. There was no comment on whether Patient 1 would be returning to work. (Exhibit 9, pp. 386-387.)

PATIENT 2

13. Patient 2, a 34-year-old male, first saw respondent on March 22, 2017. The patient presented with chief complaints of sciatic nerve pain and back pain, and respondent's SOAP note for the visit recorded, "Shooting pain down his right leg especially after sitting long time when driving." Respondent's physical examination noted a blood pressure of 131/96, paralumbar tenderness, paraspinal hypertonicity, decreased range of motion, and various measurements of back range of motion (25% flexion, 15% extension, 5% rotation), straight leg raise (SLR)+ left 75 degrees and right 40 degrees, patellar reflexes of 3+/4, zero Babinski (a foot reflex test), and pinprick 2+/4. Respondent's diagnoses were acute lumbar strain and radiculopathy RLE [right lower extremity]. The plan was physical therapy and disability certification for 60 days to include "No lift, bend, pull, push, reach, stoop, kneel, squat, stretch, twist, sit/stand > 2 minutes climb." (Exhibit 11, pp. A402-403.)

14. On March 22, 2017, respondent wrote a letter for Patient 2 stating that the patient was completely unable to work until May 22, 2017.

15. On April 13, 2017, respondent saw Patient 2 again and documented complaints of sciatic nerve pain and low back pain 8/10. No other history was documented. Respondent's physical examination notes documented straight leg raising test 65 degrees on the left and 45 degrees on the right with pinprick 2+/6 and normal gait. Respondent recommended physical therapy and application of hot/cold to the right lower extremity. The patient was directed not to lift, pull, push, stoop, kneel, squat, twist or stretch. (Exhibit 11, pp. A404-405.)

16. On April 25, 2017, and May 18, 2017, respondent saw Patient 2 again and documented no changes in condition. On May 18, 2017, respondent wrote a letter

extending the initial two-months period of disability of the patient by three more months, to August 22, 2017.

17. On July 3, 2017, respondent saw Patient 2 again and wrote essentially the same progress note as for prior visits. Respondent recommended specific exercises to include pigeon pose, stand hamstring, and sit spinal stretch.

18. On August 16, 2017, respondent documented patient complaints of shooting pain right leg and low back pain, but no additional history. Respondent assessed the patient's range of motion and documented 25% flexion, 20% extension, 10% rotation, SLR+ left 80 degrees, right 55 degrees, and a normal gait. Respondent diagnosed the patient with sciatica (radiculopathy) and lumbar strain, but he returned Patient 2 to work with recommendations for leg positioning while driving a bus.

19. Respondent next saw Patient 2 on December 18, 2017, noting a chief complaint of sciatic nerve without additional documented history. The physical exam included a blood pressure of 133/90 and fasciculation RLE [right lower extremity] and pinprick 1+/6. Respondent recommended referral to a neurologist for nerve conduction studies and stated that Patient 2 should have intermittent time off (one episode/month for 1-3 days/episode).

20. On May 17, 2018, Respondent saw Patient 2 again and documented complaints of "R side R shoulder pain, R foot num [sic]," with no additional history. The physical examination noted: right glenoid effusion, range of motion (ROM) 80% abduct and internal rotation, hypertonicity, and pinprick 2+/6 RLE. Patient 2 was diagnosed with shoulder strain, lumbar strain, and sciatica radiculopathy. Physical therapy was recommended, and the patient was not to lift, squat, or stoop. (Exhibit 11, pp. A417-418.)

21. Between March 22, 2017, and August 16, 2017, respondent documented visits of Patient 2 for therapy. The therapy notes are on pre-printed forms and are essentially identical in documenting subjective complaints of severe lower back muscle spasms, with the therapy types marked as hot, massage, and ROM exercises.

PATIENT 3

22. Patient 3, a 34-year-old female, first visited respondent on April 14, 2017. She filled out patient intake forms indicating the main reason for her visit on that day were "high levels of stress" and lower back pain. The patient noted a personal medical history of hypertension and a family history of high blood pressure, asthma, diabetes, and stroke. On one form, she checked boxes indicating health problems over the last six months with her head, neck, bones/joints, skin (acne), mood, and fatigue. She also wrote, "I often have headaches, feel pressure, my lower back hurts, I have acne. I'm always tired from stressing sometimes irritable." (Exhibit 12, p. A457.)

23. Respondent's SOAP note for the visit lists the patient's complaints as "Stress [¶] Lower back pain 7/10 [¶] High blood pressure," with no additional history. In the Objective section of the note, respondent wrote that the patient was hypervigilant, apprehensive, and spatial, with paraspinal hypertonicity, with decreased range of motion (flexion 15-20%, extension 10%, rotation <5%), patellar reflex 4+/4, and clonus. Underlined on the page are pre-printed sections that include "Neurological - Alert/oriented X 3, Cognition – sound, adaptive, integrated. Behavior appropriate." The recorded vital signs include a blood pressure of 160/127, a pulse rate of 72, a respiratory rate of 21, a temperature 98.1, and a height and weight of 5 feet four inches and 171 pounds. In the Assessment section, respondent circled the words structural, psychological, and, dorsum, and he reported a diagnosis of lumbar strain and stress reaction. Respondent recommended physical therapy and listed activity

restrictions as "no lift, bend, pull, push, reach, stoop, kneel, squat, twist, stretch, sit/stand> 2 minutes, climb or crawl." Respondent also recommended stress management. There is no assessment or plan related to the blood pressure reading. (Exhibit 12, pp. A462-463.)

24. On April 14, 2017, Respondent completed out and gave Patient 3 a "Health Care Provider's Certification for Leave, Employee Illness," which stated that she was "completely unable to work from 4/14/17 to 7/14/17." (Exhibit 12, p. A459.)

25. On May 17, 2017, respondent again saw Patient 3 and wrote a progress note nearly identical to the note dated April 14, 2017. The only material differences are the date, a blood pressure reading of 150/110, and a reference to "stress management – crisis intervention" in the Plan section of the note. (Exhibit 12, p. A466-467.) On the same day, respondent wrote a letter stating that Patient 3 "remains under our care for conditions precluding all gainful activities and employment. These conditions warrant extension effective to July 14, 2017." (Exhibit 12, p. A468.)

26. On June 16, 2017, respondent again saw Patient 3. Respondent's SOAP note for the visit reports "stress, low back pain 9/10" and an elevated blood pressure reading of 146/113. The rest of the note is nearly identical to notes of prior visits, and the activity modifications are the same. (Exhibit 12, p. A469-A470.) Respondent wrote another letter stating that the patient's disability extended through July 14, 2017.

PATIENT 4

27. Patient 4, a 33-year-old male, first visited respondent on August 25, 2016, complaining of back pain and stress. Patient 4 admitted to using tobacco, alcohol, and caffeine in unstated quantities on the intake form, and provided no other medical history. In the Subjective section of respondent's SOAP note, respondent wrote:

"Stressed-excessive [¶] Low back pain 10/10 [¶] Complications in all environments - social, domestic, work [¶] not getting adequate rest at night." The Objective section includes a blood pressure of 142/98 with otherwise normal vital signs. Respondent wrote that the patient was "Hyper-vigilant [¶] Agitated [¶] Pressure speech [¶] Spatial (Combat-like fatigue). Respondent also wrote that the patient had paraspinal hypertonicity, decreased range of motion, "flexion 20%, extension 10%, rotation <5%, patellar reflex 4+/4, clonus (psychosomatic vasoconstriction) compromised tissue perfusion." The Assessment section has the terms "structural," "psychological," and "dorsum" circled, and respondent also wrote "stress reaction lumbar strain (acute)." Respondent's activity modifications and plan were "Stress management--crisis intervention. No lift, bend, pull, push, reach, stoop, kneel, squat, stretch, sit/stand> 2 minutes, climb." (Exhibit 13, pp. A487-488.)

28. On August 25, 2016, respondent wrote a letter stating that Patient 4's condition warranted "disability extension effective to November 25, 2016." (Exhibit 12, p. A489.) On September 22, 2016, respondent saw Patient 4 again and documented: "Anxiety – highly all day & night" and "Back pain 9/10," with no other history recorded. The patient's blood pressure was 139/86, and the patient was described as hyper-vigilant, spatial, agitated, and angry. The rest of the documentation of the physical examination, assessment, and plan sections were the same as the note on August 25, 2016. (Exhibit 12, pp. A 490-491.)

29. On October 14, 2016, respondent saw Patient 4 again and wrote that the patient was "severely frustrated [about] all the things around back spasms, trying to get out of bed, pain 9/10." The patient's blood pressure was documented as 148/96, and respondent described him as "apprehensive, spatial" with similar comments as in respondent's note of the prior visit. Respondent's diagnoses were subacute lumbar

strain, intractable stress reaction, no skeletal pathology, and compromised tissue perfusion secondary to a psychosomatic reaction. The activity restrictions were the same and respondent recommended "stress management – reality focus." (Exhibit 13, pp. A492-493.)

30. Patient 4's next visit was on November 23, 2016, and respondent wrote that the patient was "angry" and "combative." Respondent added a diagnosis of "combat-like fatigue" to the previous diagnoses of intractable stress reaction and lumbar strain. Respondent's plan was for physical therapy, stress management, no public vehicle operations, and no anxiolytics or muscle relaxers. After signing the document, respondent wrote under his signature "(Vietnam Vet) PTSD Survivor (Coaching Combat-Like Fatigue)." (Exhibit 13, pp. A494-495.) On the same day, respondent wrote a letter for Patient 4 extending the disability period by three more months to February 25, 2017.

31. On the next visit on December 16, 2016, respondent wrote that Patient 4 stated he "didn't want to be around anyone, can't sleep, wake-up in frantic state, back spasms more when extremely upset." The patient's blood pressure was 147/93, and he was noted as extremely hyper-vigilant, suspicious, flight fight phenomenon autonomic reaction, and compromised tissue perfusion (combat-like fatigue). Respondent diagnosed Patient 4 with subacute Post-Traumatic Stress Disorder (PTSD), lumbar strain, and "(Combat fatigue - Zenith)." The plan was activity restrictions as noted previously, with "no public vehicle operation or productive exposure of any form (stress management – reality focus). Refrain from any form of job contact (Walk on beach)." (Exhibit 13, pp. A498-499.)

32. On January 10, 2017, respondent again saw Patient 4, who on this occasion stated he was "tired/not feeling good inside, low back pain 8/10."

Respondent documented a blood pressure of 140/87, and his objective findings were essentially identical to the previous visit, including "flight/fight phenomenon (persist)." Respondent's diagnoses were stress reaction and lumbar strain, no skeletal pathophysiology. Physical therapy was recommended, the activity modifications were again "No lift, bend, push, pull, reach, kneel, stoop, squat, twist, stretch, sit/stand >2 minutes climb or crawl," and respondent also recommended "stress management, focus-minimizing (offensive nature)." (Exhibit 13, pp. 500-501.)

33. On February 24, 2017, Respondent saw Patient 4 and documented stress, 9/10; low back pain 7/10 (not as much spasm); a blood pressure of 139/93; and similar physical examination comments as in the notes of prior visits. The diagnoses were stress reaction, lumbar strain, and psychosomatic etiology for compromised tissue perfusion. Activity modifications continued as noted in the prior visit, with "Stress management [¶] Processing cognition-preparation [¶] Return to work (handling PTSD)." (Exhibit 13, pp. A502-503.) On February 25, 2017, respondent wrote a letter extending the patient's period of disability by three more months to May 25, 2017. (Exhibit 13, pp. A502-503.)

34. On March 23, 2017, respondent documented: "not as much stress (4-5 days out of the week), low back pain 7/10, very little spasms now when get out of bed." The patient's blood pressure was 143/89, and the patient was described as "combative suspicious . . . little reactive today flight/fight more focus for control." Respondent's diagnoses were again stress reaction, lumbar strain, and "combat-like fatigue." Physical therapy was recommended along with the same activity modifications and "stress management (education of limbic system)." (Exhibit 13, pp. A505-506.)

35. On April 28, 2017, respondent documented, "mind doesn't feel as heavy as it once did can focus a little bit more still feel little nervous when around lots of people low back pain 6-7/10, able to exercise more." The physical exam noted as blood pressure of 141/83, paraspinal hypertonicity, decreased range of motion, flexion 30-40%, extension 20%, rotation 15% patellar reflex 2-3+/4 minimal clonus, flight fright less combat-like fatigue (more control of feelings). Respondent recommended physical therapy, activity modifications as above, and "stress management identification of exogenous stress offensive." (Exhibit 13, pp. A507-508.)

36. On May 24, 2017, respondent saw Patient 4 again and noted stress and mild back pain 6/10, without any other history. Respondent's notes in the Objective section included the comment "jovial more focus." The patient's blood pressure was 117/74, and respondent documents physical examination findings of 40-50% flexion, 40% extension, rotation 30%, 1+/4 patellar reflex, and "0 clonus." Respondent also wrote, "Flight-fight minimal [¶] Able to tolerate shopping at mall more." Respondent's diagnoses were stress reaction and lumbar strain, and the plan was activity modification and "minimizing flight/fight phenomenon." (Exhibit 13, pp. A509-510.) Respondent wrote a letter for Patient 4 on the same day extending the period of disability by another three months to August 25, 2017. The total period of disability for the patient was one year from the first visit.

Undercover Operation

37. On January 21, 2020, the Health Quality Investigation Unit of the Department's Division of Investigation conducted an undercover operation at respondent's clinic. A Department Investigator using a fictitious name posed as a patient to receive an off-work order. The investigator, Tia Johnson – identified as Patient 5 in the Second Amended Accusation and Petition to Revoke Probation –

recorded the video and audio of her interactions with respondent using a hidden camera.

38. Johnson entered respondent's clinic waiting room and completed intake forms using a pseudonym. When Johnson was called to the back office, a medical assistant took her vital signs. When the medical assistant asked Johnson height and weight, the medical assistant recorded them in the chart without measurement. The medical assistant then asked Johnson why she was in the office. Johnson indicated she just was not feeling well and needed an off-work note. The medical assistant stated that there needed to be something wrong in the chart to justify an off-work note and asked if Johnson was feeling stressed or depressed. Johnson stated she was not.

39. Johnson was then instructed to wait in an examination room. Soon after, respondent entered the room and escorted Johnson to another office nearby. When meeting with Johnson, respondent reviewed her intake forms and stated that the word "stress" had been scratched out on a document the medical assistant had provided to respondent. Respondent asked Johnson what her medical condition was. Johnson stated she did not put the word "stress" on the document, and respondent asked what was wrong with her. Johnson replied she was fine and was simply trying to get off work to go to her sister's wedding for a few days. Respondent stated, "Oh, so you just need a medical excuse?" and typed and signed the off-work letter for her while Johnson sat in respondent's office.

40. The off-work letter respondent provided to Johnson stated, "Please be advised that the above patient was evaluated in this office as of January 28, 2020, for urgent medical condition requiring medical management. The patient will have intensive management effective through February 4, 2020, precluding all gainful activitie [sic]/employment for this period." (Exhibit 16, p. A565.)

Department of Insurance Complaint

41. In May 2018, the Board received a complaint from the California Department of Insurance regarding a patient respondent reported treating at his office who resided in Louisiana. The patient is identified as Patient 6 in the Second Amended Accusation and Petition to Revoke Probation.

42. Patient 6, a 65-year-old female, visited respondent first on May 29 or May 30, 2017, and a second time on June 29, 2017. The patient complained of injuries resulting from a slip and fall on or about May 26, 2017. On July 3, 2017, respondent signed a disability form for the patient's insurance company stating that the date of treatment was May 30, 2017. However, a pain management clinic in Louisiana also reported treating Patient 6 on the same date, and the insurance company noted the discrepancy. After learning of the discrepancy, respondent initially wrote that he treated the patient on May 25, 2017, which was one day before the reported date of the injury. When advised of that fact, respondent provided a letter to the insurance company's claim department correcting the date of treatment to May 29, 2017. The insurance company reported the inconsistent responses to the Department of Insurance, which complained to the Board.

43. On September 17, 2020, investigators from the Health Quality Investigation Unit of the Department's Division of Investigations interviewed respondent. During the interview, respondent stated he had treated Patient 6 but had misplaced her medical records. Respondent produced two pages of records he obtained from the patient herself (Exhibit 26), but he lost her patient file.

Procedural History

44. Complainant's predecessor filed the original Accusation and Petition to Revoke Probation on April 14, 2020, and respondent timely filed a Notice of Defense. Complainant filed the First Amended Accusation and Petition to Revoke Probation on February 22, 2021, and the Second Amended Accusation and Petition to Revoke Probation on July 28, 2021. The Second Amended Accusation and Petition to Revoke Probation and all other statutorily required documents were properly served on respondent. Respondent was not required to file a further notice of defense in response to the amended allegations and charges. (Gov. Code, § 11507.)

Hearing

COMPLAINANT'S CASE

45. Complainant presented evidence of respondent's license history and prior discipline, the complaints from RTA and the California Department of Insurance to the Board, medical records of the patients, and a video and audio recording of the undercover investigation in which Johnson posed as a patient. Complainant also presented transcripts of Board interviews of respondent, testimony from RTA employee Choung Chav and Investigator Johnson, and expert testimony and written reports from Nathan Carlson, M.D.

Choung Chav

46. Chav is a benefits administrator for RTA. She described the circumstances underlying RTA's complaint to the Board, testifying that RTA does not normally see physicians place its employees off work for three-month periods as an initial matter, and the off-work periods that respondent granted to the four bus drivers were highly

unusual. Chav also testified that RTA offers health insurance through Kaiser, which has facilities and providers close to RTA's main office. Three of the four RTA employees had Kaiser health insurance, but nonetheless chose to visit respondent, who was not a Kaiser physician. One of the employees (Patient 4) was off work in August 2016 before first seeing respondent in late August 2016, but the other three were not off work before they first visited respondent.

Tia Johnson

47. Johnson testified she paid $125 in cash for her office visit to respondent during the undercover operation. Johnson had her vitals taken, but respondent performed no physical examination of her. The Board later obtained respondent's records of Johnson's visit, and the SOAP note that respondent signed and produced to the Board has the word "stress" written on it as Johnson's chief complaint. It also includes a handwritten diagnosis that appears to read "stress reaction" and states respondent's plan of action is "stress management." (Exhibit 15, pp. A557-558.) The word "stress" is not crossed or scratched out anywhere on the note, and respondent did not produce any other medical record for Johnson on which it was.

Nathan Carlson, M.D.

48. Dr. Carlson graduated from the Loma Linda University School of Medicine in 1999. He is board certified in family medicine and a fellow in the American Academy of Family Physicians. Dr. Carlson practices family medicine for Kaiser Permanente in Fontana, California. He has about 1200-1600 patients in his practice, and he has been a medical reviewer for the Board since 2008.

49. In his testimony and written reports, Dr. Carlson opined that respondent departed from the standard of care in multiple respects. First, respondent committed

extreme departures by providing certifications of medical incapacity without adequate clinical justification to Patients 1 through 4 and a fraudulent certification of medical incapacity to Patient 5 (i.e., Investigator Johnson). The standard of care when a patient presents to a primary care clinic requesting modification of their employment status requires a physician to elicit and document a complete history relate to the medical condition. A certification that a patient is completely unable to work requires a moderate to severe medical condition where symptoms are unlikely to be controllable at the job site, even with reasonable accommodations. Further, taking patients off work for stress-related symptoms may be provided in primary care for a short time, but the patient should be referred to a practitioner who specializes in mental health care if the disabling mental health symptoms persist.

50. Dr. Carlson opined that nothing in respondent's limited documentation for the patients suggests any of them had high risk back pain, such as from a fracture, infection, or cancer. The durations of the certifications of medical incapacity were excessive for the clinical presentations, and nothing in the patients' presentations justified medical certificates of complete incapacity for those durations. The vast majority of musculoskeletal back pain in patients resolves within six weeks or less. Further, respondent gave an off-work letter to Investigator Johnson despite her stating there was nothing wrong with her.

51. Second, respondent committed an extreme departure from the standard of care in his medical record keeping for Patient 2. The patient's medical record is hard to read and partially illegible. Respondent's notes do not record a detailed history of the patient's present illness or update the status of the patient's pain, function, or response to therapy. Too little is documented in the records, and some of respondent's physical examination findings are non-standard and unclear, such as

"2+/6 pinprick," which does not have any meaning by itself. The records also do not clarify where the patient has decreased sensation.

52. Third, respondent committed extreme departures from the standard of care by failing to address the elevated blood pressures of Patient 3 and Patient 4. The patients came to respondent's office multiple times with high blood pressures, but neither patient was assessed for any symptoms related to hypertension. The standard of care requires that a provider document a history of present illness or injury when a patient presents to a clinic with elevated blood pressure. Previous blood pressure problems should be documented as well as therapies that have been tried. Respondent took no action with respect to any of the elevated blood pressure readings.

53. Fourth, respondent committed an extreme departure from the standard of care by failing to fully evaluate and treat Patient 3 for her worsening back injury. Respondent did not document a comprehensive back pain history, and it was unclear from the records if the patient had acute or chronic low back pain, if there were any triggers, or what the patient had done to treat it. Although the patient reported her back pain worsening, respondent did not perform any additional workup or refer the patient to specialists. Respondent also did not discuss, offer, or prescribe any medication to the patient or refer the patient to another physician who could have prescribed pharmaceuticals as part of the patient's treatment plan. While respondent was prohibited from prescribing controlled substances while on probation, respondent displayed a lack of knowledge regarding the use of even low risk medications for the treatment of musculoskeletal pain.

54. Fifth, respondent committed an extreme departure from the standard of care by failing to fully evaluate and treat Patient 4's anxiety. The patient presented

with potentially serious mental health symptoms that deserved further attention. There was no comprehensive psychiatric evaluation either done or recommended by respondent. There was also no documented psychiatric history or psychotropic medication history. Respondent's treatment was simply for the patient to have no exposure to work and "walk on the beach." Respondent did not offer medications that are useful for the treatment of mood disorders such as PTSD or refer the patient to another physician for such medications. Overall, respondent displayed a lack of knowledge or ability regarding the mental health diagnosis and treatment of the patient.

55. Sixth, respondent committed an extreme departure from the standard of care by failing to have any records for his care and treatment of Patient 6. The standard of care requires physicians to keep timely, accurate, completed, and legible records for patients, but respondent provided no records documenting his evaluation of the patient.

56. Dr. Carlson also opined that respondent's manner of keeping medical records of his care and treatment of Patients 1, 3, 4, and 5 departed from the standard of care. Respondent's medical records for the patients reflected a pattern of minimal documentation related to the progress of the patients' conditions. Physicians providing subsequent care would not be able to form a reasonable narrative of the patients' course of treatment based on the records.

57. Dr. Carlson also opined in one of his reports that respondent's failure to recognize and address elevated blood pressure readings for Patient 2 was a simple departure from the standard of care. But at the hearing, Dr. Carlson testified that upon further review, the patient's blood pressure was elevated only during his first visit, and

respondent's failure to address that one elevated reading was of limited concern given the patient's lower blood pressure readings on later visits.

RESPONDENT'S CASE

58. Respondent presented letters of reference, a certificate of completion of a medical record keeping course in July 2020, his own testimony, the testimony of three character witnesses, and expert testimony and a written report from Diana Koin, M.D.

Tyron Cleon Reece, M.D.

59. Respondent admits he erred by writing an off-work letter for the investigator (Patient 5) and by misplacing the records of Patient 6, but he denies acting improperly concerning Patients 1 through 4. Respondent testified he diagnosed the bus drivers with lumbar strain and stress, and that stress and back pain are conditions that often arise from the physical nature of the occupation, which requires long stretches in the sitting position and exposure to bumps that occur while driving on roads and surface streets. Respondent has extensive experience in diagnosing and treating bus drives, and there is a connection between stress and back pain in bus drivers that goes hand in hand.

60. The patients' presenting complaints, respondent's physical examination, and his objective findings, all support respondent's issuance of the certificates of medical incapacity. His progress notes document the patient's presenting complaints, medical histories, physical examinations, assessments, and treatment plans. He "always" places bus drivers off work for at least 90 days, because the drivers need that amount of time to avoid worsening back pain and associated stress.

61. Regarding the elevated blood pressures of Patients 3 and 4, respondent did not investigate the issues because he assumed that physicians at Kaiser were addressing those issues. Respondent also never believed Patient 3 had a worsening back injury, because he had concerns that she was malingering. This concern was based on a number of factors. First, his belief that the patient's subjective complaints were exaggerated. She described her pain on her final visit as 9 on a scale of 10. But there were no objective findings that verified the extent of that subjective pain complaint. Second, she was noncompliant with her physical therapy plan, and third, she failed to return after her fourth visit. Dr. Reece nevertheless gave the patient the benefit of the doubt because he determined her stress complaints to be credible. He did not prescribe pain medication to her because most pain medications are controlled substances that he cannot prescribe while on probation, and non-scheduled pain medications can irritate the stomach over the long term.

62. Patient 4's made respondent "nervous" because the patient's stress level was extreme. Respondent did not feel comfortable sending him back to work in that condition. He did not provide anxiolytics or muscle relaxers to the patient because respondent did not want them to interfere with the patient's treatment plan, and respondent did not trust the patient with muscle relaxers. Respondent also does not believe in prescribing psychiatric medications for stress. Respondent is a Vietnam veteran and PTSD survivor, and he refuses to take medication for stress. Patients become dependent on the medications, which do not solve the patients' problems.

63. In February 2020, respondent wrote a letter to a Board investigator stating he would shorten his disability periods to six weeks for all entities and attempt to implement returns to work with light duty, restrictions, or reasonable accommodations for two or three months pending reevaluations. But respondent

testified he has not shortened his disability periods as indicated. He took a record keeping course to improve his office's practices, but he did not specify any changes he made due to the course.

William Modeste

64. William Modeste is a retired guidance counselor from the State University of New York/Queens College. Modeste has known respondent for 64 years. He testified respondent is truthful and a man of integrity. Modeste finds it hard to conceive or believe that respondent acted as alleged during the undercover investigation by providing the off-work letter to Johnson. If he did, it is "totally out of character" for respondent, and Modeste's opinion of respondent would not change.

Uzoma Emezi

65. Uzoma Emezi had known respondent for over 23 years. Respondent is Emezi's personal physician and a friend. Emezi testified respondent is a man on honesty and integrity. Emezi's review of the Accusation does not change his positive opinion of respondent.

Marcellinus Osuji

66. Marcellinus Osuji has worked for respondent in his medical office for 24 years. Osuji was respondent's office manager during the time when respondent was accused of conspiring to distribute controlled substances in violation of federal law. Osuji testified he never saw respondent act improperly with respect to controlled substances, and that respondent was a God-fearing, reputable, and honest person. Osuji also testified respondent's record keeping practices have remained the same over the last few years.

Diana Koin, M.D.

67. Dr. Koin is board certified in internal medicine, although she retired from clinical practice in 2015. Her clinical practice involved geriatric medicine. Her physician's and surgeon's certificate is current but in retired status. She was in the same medical school class as respondent. Koin assessed and treated back pain often in her practice, but she never had to prepare a certificate of disability due to back pain.

68. In her testimony and written report, Dr. Koin opined that respondent acted within the standard of care by providing certificates of medical impairment to Patients 1-4. Respondent obtained histories and performed appropriate physicals for lower back pain on the patients, and his findings provided medical indications for the diagnoses and certificates of impairment. Given respondent's training in neurosurgery, respondent would have been very capable of assessing back and spine issues. Respondent's military history would also give him first-hand knowledge about stress disorders and PTSD. However, Koin could not comment on the appropriateness of the lengths of the disability periods, as she did not track the periods of disability with the clinical notes.

69. Regarding Patient 4, it appeared from the records that the patient's mental health was being monitored by Kaiser. Dr. Koin opined it was only a simple departure from the standard of care for respondent to confirm and document that Kaiser was managing the patient's mental health.

70. Regarding elevated blood pressure readings, Dr. Koin testified it is a common occurrence for blood pressure to be elevated when patients are in pain or consulting a doctor. Dr. Koin understood the patients at issue were all receiving their primary care from Kaiser where their blood pressure was presumably being managed.

In Dr. Koin's opinion, it was only a simple departure from the standard of care for respondent not to document that the blood pressures of Patients 3 and 4 were being followed by Kaiser.

71. Dr. Koin disagreed with Dr. Carlson's opinion that respondent demonstrated lack of knowledge or incompetence with respect to medications for mental health disorder. Respondent has considerable experience in the field of mental health, and his unwillingness to prescribe psychiatric medications is on the spectrum of acceptable practice regarding such medications.

72. Dr. Koin also opined that the records respondent prepared for Patients 1-4 were adequate. The lack of detail in some entries does not limit the care of the patients by respondent or other physicians.

73. Regarding Patient 5, Dr. Koin opined it was misconduct for respondent to issue a certificate of medical incapacity if the patient indicated she had no complaints, physical or otherwise. The unavailability of the medical records for Patient 6 was also a deviation from the standard of care.

Analysis of Evidence

74. Respondent does not dispute the charges against him regarding Patient 5 or Patient 6. Regarding Patient 5 (i.e., Investigator Johnson), respondent gave Johnson an off-work letter despite Johnson explicitly stating there was nothing wrong with her. Respondent's preparation of the letter was dishonest and fraudulent, and Dr. Carlson's testimony that it was an extreme departure from the standard of care was persuasive and unrebutted.

75. In addition, the SOAP note that respondent signed and produced to the Board for Johnson's visit is a false medical record created with fraudulent intent. It reports Johnson's chief complaint as "stress," a diagnosis of "stress reaction," and a recommendation for "stress management." Respondent prepared the note to support the fraudulent off-work letter. Further, while respondent referred to the word "stress" being scratched out from a document during Johnson's visit, the word is not scratched out on the SOAP note, and respondent did not produce any other medical record for Johnson to the Board on which it was. This suggests the medical records that respondent produced are either incomplete or were changed to restate falsely that Johnson complained of stress.

76. Regarding Patient 6, Dr. Carlson and Dr. Koin agree the lack of records for the patient was a departure from the standard of care, disagreeing only on whether the departure was ordinary or extreme. But complainant only charges respondent with a failure to maintain adequate and accurate records for the patient, not with gross negligence or ordinary negligence with respect to the missing records. The difference of expert opinion about the extent of the departure from the standard of care is immaterial as to whether respondent failed to maintain adequate and accurate records for Patient 6. He failed to do so and does not dispute that fact.

77. Dr. Carlson and Dr. Koin disagree more starkly about whether respondent's certifications of medical incapacity for Patients 1-4 were within the standard of care. Dr. Carlson's opinion that the months-long (and for Patient 4, one-year long) certifications of complete inability to work were extreme departures from the standard of care is persuasive. Respondent's examinations, notes, and determinations of medical incapacity for the patients were strikingly similar, bordering on formulaic. Dr. Carlson found nothing to suggest the patients had high risk back

pain, such as from a fracture, infection, or cancer, and Dr. Koin did not determine otherwise. In Dr. Carlson's view, the lengths of time of the certificates of complete disability were excessive for the clinical presentation, because the vast majority of musculoskeletal back pain resolve within six weeks or less.

78. In contrast, Dr. Koin testified she could not comment on the appropriateness of the lengths of the disability periods, as she did not track the periods of disability with the clinical notes. Dr. Koin's lack of analysis of the lengths of the disability periods diminishes the value of her opinion. The length of the disability periods, and the determination of complete disability for extended periods, are major problems with the certifications of medical incapacity as Dr. Carlson testified.

79. Dr. Carlson and Dr. Koin also disagree on whether respondent's record keeping for Patients 1-4 was within the standard of care. Dr. Koin opined it was, while Dr. Carlson opined it was not and that the record keeping for Patient 2 evidenced an extreme departure from the standard of care. Dr. Carlson's opinion that the records were inadequate and a departure standard of care violation is persuasive. The medical records for the patients show a pattern of minimal documentation and rote entries – some of them difficult to decipher and understand – related to the progress of the patients' conditions. Dr. Carlson's opinion that physicians providing subsequent care would not be able to form a reasonable narrative of the patients' course of treatment based on the records is also persuasive. However, it is unclear what is so different about Patient 2's records to support Dr. Carlson's opinion that those records in particular evidence an extreme departure from the standard of care. The records for that patient are not so different from the other records that they support a finding of an extreme departure versus a simple departure.

80. Dr. Carlson further opined that respondent committed extreme departures from the standard of care by failing to address the elevated blood pressures of Patient 3 and Patient 4. Dr. Koin disagreed that the departures were extreme, opining that respondent's failures to confirm the patients' blood pressures were being monitored by Kaiser physicians were simple departures from the standard of care. Dr. Carlson's opinion on this issue is persuasive. Respondent's records document repeated elevated blood pressure readings, but nothing in the records documents any assessment or discussion with the patient of those readings. Instead, respondent disregarded those readings repeatedly and never acted on them in any fashion. The nature and extent of the elevated readings over time support Dr. Carlson's opinion.

81. Dr. Carlson also opined that respondent committed an extreme departure from the standard of care by failing to adequately evaluate and treat Patient 3's worsening back injury. Respondent disputed that the patient's injury was worsening and testified he thought the patient was malingering, although respondent did not note that suspicion in his notes. The records include the patient's subjective reports of increasing back pain from 7/10 to 9/10. Respondent did not perform any additional workup or refer the patient to any specialists despite the reported lack of improvement in her condition. Respondent also did not discuss, offer, or prescribe any medication to the patient or refer the patient to another physician who could have prescribed pharmaceuticals as part of the patient's treatment plan. These facts support Dr. Carlson's opinion. Further, respondent displayed a lack of knowledge regarding the use of even low risk medications for the treatment of musculoskeletal pain, expressing an unwilling to recommend any medications at all for back pain.

82. Dr. Carlson's opinion that respondent committed an extreme departure from the standard of care by failing to fully evaluate and treat Patient 4's anxiety is also persuasive for similar reasons. The patient presented with potentially serious mental health symptoms, but respondent's treatment was primarily for the patient to have no exposure to work and "walk on the beach." Respondent did not offer medications that are useful for the treatment of mood disorders such as PTSD or refer the patient to another physician for such medications, and respondent expressed an unwillingness to recommend or refer for such medication under any circumstances. This displayed a lack of knowledge or ability regarding the mental health diagnosis and treatment of the patient.

LEGAL CONCLUSIONS

Legal Standards

1. "The board shall take action against any licensee who is charged with unprofessional conduct." (Bus. & Prof. Code, § 2234.)[1] Unprofessional conduct "includes, but is not limited to, gross negligence (§ 2234, subd. (b)), repeated negligent acts (§ 2234, subd. (c)), incompetence (§ 2234, subd. (d)), and "[t]he commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon" (§ 2234, subd. (e)). "Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine . . . which falsely represents the existence or nonexistence of a state of facts" also constitutes unprofessional conduct, as does "creating any false

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[1] Undesignated statutory references are to the Business and Professions Code.

medical record, with fraudulent intent." (§§ 2261, 2262.) Further, "[t]he failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct." (§ 2266.)

2. "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 . . . and who is found guilty, . . . may, in accordance with the provisions of this chapter: [¶] (1) Have his or her license revoked.......... [¶] (2) Have his or her right to practice suspended for a period not to exceed one year...........[¶] (3) Be placed on probation and be required to pay the costs of probation monitoring.......... [¶] (4) Be publicly reprimanded..........[¶] (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." (§ 2227, subd. (a).)

3. To impose discipline on a medical licensee, there must be a nexus between the professional misconduct and the physician's fitness or competence to practice medicine. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 769 (*Griffiths).*) Conduct may be substantially related to a physician's fitness even though the conduct does not relate to the skills needed for the practice of medicine. (See, e.g., *Krain v. Medical Board* (1999) 71 Cal.App.4th 1416, 1424–1425 [physician's criminal conviction for solicitation of subornation of perjury was substantially related to his qualifications as a physician]; *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 469-470 [criminal conviction for tax evasion was substantially related to a physician's fitness to practice].) Whether the conduct at issue qualifies as unprofessional conduct turns on whether the conduct sufficiently established respondent's unfitness to be a physician. (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1139; *Griffiths, supra,* 96 Cal.App.4th at p. 769.)

4. Complainant bears the burden of proving the alleged grounds for disciplinary action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence "requires a finding of high probability," and has been described as "requiring that the evidence be '"so clear as to leave no substantial doubt"; "sufficiently strong to command the unhesitating assent of every reasonable mind."' [Citation.]" (*In re Angelia P.* (1981) 28 Cal.3d 908, 919.) "Evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. [Citations.] The evidence need not establish the fact beyond a reasonable doubt." (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1090.)

5. Respondent's probation terms include a requirement that respondent "shall obey all federal, state, and local laws, [and] all rules governing the practice of medicine in California." (Exhibit 35, p. A867.) Another term states, "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." (Exhibit 35, p. A869.) Therefore, if complainant proves respondent is guilty of unprofessional conduct, the Board may revoke respondent's probation and carry out the revocation was stayed.

Analysis

6. The Second Amended Accusation and Petition to Revoke Probation includes seven causes for discipline. It also includes a petition to revoke probation based on the same facts underlying the causes for discipline. Complainant proved each cause for discipline by clear and convincing evidence. Further, respondent's misconduct involved the care and treatment of patients and his record keeping involving that care and treatment. Therefore, there is manifest nexus between

respondent's professional misconduct and his fitness or competence to practice medicine, which qualifies the conduct as unprofessional conduct. (*Griffiths, supra*, 96 Cal.App.4th at p. 769.)

FIRST CAUSE FOR DISCIPLINE – GROSS NEGLIGENCE

7. In the first cause for discipline, complainant charges respondent with gross negligence in the care and treatment of Patients 1 through 5 under section 2234, subdivision (b). "'Gross negligence' long has been defined in California and other jurisdictions as either a 'want of even scant care' or 'an extreme departure from the ordinary standard of conduct.' [Citations.]" (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 754; *Franz v. Board of Medical Quality Assurance* (1982) 31 Cal.3d 124, 138; *Gore v. Board of Medical Quality Assurance* (1980) 110 Cal.App.3d 184, 195-198.)

8. Complainant proved respondent committed extreme departures from the standard of care constituting gross negligence in the following respects:

a. Respondent provided certifications of medical incapacity for extended periods to Patients 1 through 4 without adequate clinical justification. He also provided a fraudulent certification of medical incapacity for Patient 5.

b. Respondent failed to recognize and address numerous elevated blood pressure readings in his care of treatment of Patients 3 and 4.

c. Respondent failed to fully evaluate and treat or refer Patient 3 for treatment of her back pain after she reported it was worsening.

d. Respondent failed to fully evaluate and treat or refer Patient 4 for treatment of anxiety.

SECOND CAUSE FOR DISCIPLINE – REPEATED NEGLIGENT ACTS

9. In the second cause for discipline, complainant charges respondent with repeated negligent acts with respect to Patients 1 through 5. A physician is negligent if he or she departs from the standard of care, i.e., fails to use the skill and care that a reasonably careful physician would have used in similar circumstances. (California Civil Jury Instructions (CACI) No. 600.)

10. Complainant proved respondent departed from the standard of care with respect to the matters described in the First Cause for Discipline. Further, respondent departed from the standard of care with respect to his manner of keeping medical records of his care and treatment of Patients 1 through 5. Therefore, complaint proved respondent committed repeated negligent acts constituting cause for discipline under section 2234, subdivision (c).

THIRD CAUSE FOR DISCIPLINE – INCOMPETENCE

11. In third cause for discipline, complainant charges respondent with incompetence. "Incompetence" is defined as a lack of knowledge or professional ability. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1054 (*Kearl*).) The term "incompetency" generally indicates "an absence of qualification, ability or fitness to perform a prescribed duty or function." (*Pollak v. Kinder* (1978) 85 Cal.App.3d 833, 837.) Incompetency is distinguishable from negligence; one "may be competent or capable of performing a given duty but negligent in performing that duty." (*Id.* at p. 838.) Thus, "'a single act of negligence . . . may be attributable to remissness in discharging known duties, rather than . . . incompetency respecting the proper performance.'" (*Id.* (citation omitted).) While it is conceivable that a single act of misconduct may be sufficient to reveal a general lack of ability to perform the

licensed duties, thereby supporting a finding of incompetency, a single, honest failing, without more, generally does not constitute the functional equivalent of incompetency. (*Id.* at p. 839.) However, several acts or decisions with a single patient can show incompetency. (*Kearl, supra,* 189 Cal.App.3d at p. 1056.) This includes flawed reasoning that leads to a negligent act. (*Ibid.*)

12. Complainant proved respondent displayed a lack of knowledge regarding the use of even low-risk medications in the treatment of musculoskeletal pain for Patient 3. Respondent also displayed a lack of knowledge with regard to the mental health treatment and diagnosis of Patient 4. This evidence established respondent displayed incompetence with respect to those patients constituting cause for discipline under section 2234, subdivision (d)

FOURTH CAUSE FOR DISCIPLINE – DISHONEST OR CORRUPT ACTS

13. In the Fourth Cause for Discipline, complainant charges respondent with acts of corruption or dishonesty in his care and treatment of Patient 5, i.e., Johnson.

14. Complainant proved respondent acted in a corrupt and dishonest manner with respect to Patient 5. Respondent provided Johnson with an off-work letter even though Johnson said there was nothing wrong with her. This corrupt and dishonest act was substantially related to the qualifications, functions, and duties of a physician and surgeon. Therefore, complainant proved this cause for discipline. (§ 2234, subd. (e).)

FIFTH CAUSE FOR DISCIPLINE – KNOWINGLY MAKING OR SIGNING A FALSE MEDICAL DOCUMENT

15. In the Fifth Cause for Discipline, complainant charges respondent with knowingly making or signing a false medical document in connection with his care and treatment of Johnson.

16. Complainant proved respondent fraudulently made and signed an off-work letter certifying that Johnson was unable to work. This was a false medical document that lacked medical justification. Therefore, complainant proved this cause for discipline. (§ 2261.)

SIXTH CAUSE FOR DISCIPLINE – CREATION OF A FALSE MEDICAL RECORD

17. In the Sixth Cause for Discipline, complainant charges respondent with creating a false medical record with fraudulent intent in connection with Patient 5 (i.e., Johnson).

18. Complainant proved this cause for discipline. (§ 2262.) The SOAP note that respondent signed for Johnson's visit is a false medical record created with fraudulent intent. It describes Johnson's chief complaint as "stress," and it also includes a diagnosis of "stress reaction" and a recommendation for "stress management," all of which were fraudulent.

SEVENTH CAUSE FOR DISCIPLINE – INADEQUATE AND INACCURATE MEDICAL RECORD KEEPING

19. In the Seventh Cause for Discipline, complainant charges respondent with inadequate and inaccurate medical record keeping for all six patients.

20. Complainant proved this cause for discipline. (§ 2266.) Respondent's records for Patients 1 through 5 are cryptic, formulaic, and lacking in detail, and Dr. Carlson's opinion that the records are inadequate was persuasive. Respondent also produced no records at all for Patient 6.

CAUSE TO REVOKE PROBATION

21. Complainant proved respondent is guilty of unprofessional conduct in multiple respects as described above, which constitutes a failure to obey all laws under the terms of respondent's probation with the Board. Therefore, the evidence establishes cause to revoke respondent's probation.

STATUTE OF LIMITATIONS

22. At the hearing, respondent alleged an affirmative defense of bar by the statute of limitations. Section 2230.5 requires that an accusation be filed three within three years after the Board discovers the act or omission that forms the grounds for discipline against a physician, or within seven years after the alleged act or omission occurred, whichever occurs first.

23. RTA submitted its complaint to the Board on April 17, 2017. The initial Accusation and Petition to Revoke Probation was signed by complainant on April 14, 2017, and the "[a]n accusation or petition to revoke probation shall be deemed 'filed on the date it is signed by the executive director ...." (Cal. Code Regs., tit. 16, § 1356.5.) Therefore, the Accusation and Petition to Revoke Probation was timely. Further, the Department's undercover operation took place in 2020, and the Board received the complaint from the California Department of Insurance in May 2018. The charges regarding those matters appear in the First Amended Accusation and Petition to Revoke Probation, which was filed in February 2021, less than three years after the

Department of Insurance complaint and the undercover operation. Therefore, the charges based on those facts are also not barred by the statute of limitations.

Disciplinary Action

24. With causes for disciplinary action established, the Board has discretion to determine the suitable discipline, "subject to the Legislative mandate that the Board's highest priority be protection of the public; and, secondarily, discipline should 'aid in the rehabilitation of the licensee.' (§ 2229, subds. (a) & (b).)" (*Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 448.) In exercising its discretion, the Board considers the Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition 2016) (Guidelines) that it has adopted. (Cal. Code Regs., tit. 16, § 1361, subd. (a).) "Deviation from these orders and guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines by adoption of a proposed decision or stipulation that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems." (*Ibid.*) The recommended disciplinary actions for the causes for discipline at issue range from a minimum of stayed revocation with five years' probation to a maximum of revocation. The recommended minimum disciplinary action for a violation of probation is a 30-day suspension, and the recommended maximum disciplinary action is revocation.

25. The maximum disciplinary action of revocation is warranted in this case. Respondent has been on Board probation since 2014 due to a federal criminal conviction involving dishonesty in his practice. Six years later in 2020, he acted dishonestly again in his practice, giving a fraudulent off-work letter to an undercover Department investigator. Respondent's recent act of dishonesty indicates his rehabilitation has not succeeded.

26. Further, respondent unprofessional conduct does not stop there. He also committed multiple acts of negligence and gross negligence with respect to four actual patients, kept inadequate records for them, displayed incompetence with respect to the medical conditions of two of the patients, and produced no records at all for another patient. Respondent's probation has already been extended once for two years due to other probation violations. The unprofessional conduct in this case is more serious than those violations and evidences a physician who is unlikely to be rehabilitated by a further extension of probation.

27. License revocation is a "drastic penalty." (*Cooper v. State Board of Medical Examiners* (1950) 35 Cal.2d 242, 252.) But with such serious misconduct and repeat dishonesty while respondent is on probation for dishonest acts, allowing respondent to continue practicing would not be protective of the public or of public confidence in the medical profession. Therefore, the proper disciplinary action is revocation of respondent's license, not another extension of probation as respondent requests.

Civil Penalty

28. In addition to any other disciplinary action, the Board may impose a civil penalty of $500 for creating a false medical record with fraudulent intent in a violation of section 2262. Complainant requests imposition of a civil penalty, and it is warranted on these facts. Therefore, respondent will be ordered to pay a $500 civil penalty to the Board.

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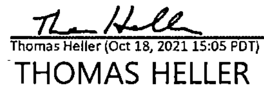
ORDER

Respondent Tyron Cleon Reece, M.D.'s probation is revoked.

Physician's and Surgeon's Certificate No. A 35109 issued to respondent Tyron Cleon Reece, M.D., is revoked.

Respondent is ordered to pay a civil penalty of $500 to the Board within 30 days of the effective date of this order.

DATE: 10/18/2021



Thomas Heller (Oct 18, 2021 15:05 PDT)

THOMAS HELLER

Administrative Law Judge

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

In the Matter of the Second Amended Accusation and Petition To Revoke Probation Against **TYRON CLEON REECE, M.D.** **9269 Utica Avenue, Suite 145** **Rancho Cucamonga, California 91730** **Physician's and Surgeon's Certificate No. A 31509,** Respondent.	Case No. 800-2017-031854 **SECOND AMENDED ACCUSATION AND PETITION TO REVOKE PROBATION**

PARTIES

1. William Prasifka (Complainant) brings this Accusation and Petition to Revoke Probation solely in his official capacity as the Executive Director of the Medical Board of California (Board).

2. On September 1, 1977, the Board issued Physician's and Surgeon's Certificate Number A 31509 to Tyron Cleon Reece, M.D. (Respondent). That license will expire on October 31, 2021, unless renewed.

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3. In a disciplinary action entitled *In the Matter of the Accusation Against Tyron Cleon Reece, M.D.*, Case No. 11-2010-211926, the Board issued a Decision, effective December 24, 2014, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed, and Respondent's license was placed on probation for seven (7) years with certain terms and conditions. A copy of that Decision is attached as **Exhibit A** and is incorporated by reference.

4. In a separate disciplinary action entitled *In the Matter of the Petition to Revoke Probation Against Tyron Cleon Reece, M.D.*, Case No. 800-2016-023827, the Board issued a Decision, effective November 3, 2017, in which Respondent's probation was extended by two years with terms and conditions. A copy of that Decision is attached as **Exhibit B** and is incorporated by reference. As a result of this Decision, Respondent is scheduled to be on probation until December 24, 2023.

JURISDICTION

5. This Second Amended Accusation and Petition to Revoke Probation 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.

6. 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 or her license revoked upon order of the board.
>
> (2) Have his or her 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.

7. Section 2234 of the Code, states, in pertinent part:

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

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

(b) Gross negligence.

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

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

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

(d) Incompetence.

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

8. Section 2261 of the Code states:

Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct.

9. Section 2262 of the Code states:

Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

In addition to any other disciplinary action, the Division of Medical Quality or the California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars ($500) for a violation of this section.

10. Section 2266 of the Code states:

The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

FACTUAL ALLEGATIONS

11. On April 17, 2017, the Board received a complaint from the Riverside Transit Agency (RTA), the primary transit agency for western Riverside County, California. RTA provides Kaiser medical insurance to their employees. However, four of their employees went to Respondent, a non-Kaiser doctor, and were placed off work for three months each.

12. Respondent practices family medicine under the name of Prism Medical Clinic, at 9269 Utica Avenue, Rancho Cucamonga, California 91730.

Patient 1[1]

13. Patient 1 was a 34-year-old female when first seen by Respondent on November 23, 2016. She presented with complaints of stress, back pain, and insomnia. Respondent documented in the Subjective Section of his note for that date, "stress, back pain," without further comment. Under Objective, the patient was described as "hyper-vigilant apprehensive" and "paraspinal hypotonicity, decreased range of motion, flexion 20%, extension 15%, rotation <5%, patellar reflex 4+_/4 clonus." The Definitive Diagnosis section noted, stress reaction, lumbar stress, psychosomatic vasoconstriction. The Recommendations were: no lift, bend, pull, push, reach, stoop, kneel, squat, twist, stretch, sit/stand > 2 minutes, climb or crawl. Stress Management - crisis intervention, with a disability period of 90 days.

14. On November 23, 2016, Respondent wrote a letter explaining that Patient 1 could not work for three months, from November 22, 2016, to February 22, 2017.

15. On December 21, 2016, Respondent saw Patient 1 and documented "stress" and "low back pain" without further clarification. The Patient was noted as "hyper-vigilant suspicious" with otherwise the same physical exam as in the prior visit. The diagnoses were stress reaction and lumbar strain with combat-like fatigue. The recommendations were activity modification as

[1] The patients are designated by number for privacy reasons.

above with stress management - limbic exploration. On the signature, Respondent identified himself as a Vietnam veteran and also wrote "non-compliant - p.t.!!"

16. On January 13, 2017, Respondent saw Patient 1 and noted, "low back spasms anxiety" without additional history. The Objective section noted "agitated spatial" with similar physical exam comments. The Assessments noted were stress reaction and lumbar strain. The activity modifications were the same as previously recommended with stress management - reality focus.

17. On February 24, 2017, Respondent last saw Patient 1. The notes were similar to the documentation on previous visits. There was no comment on whether or not Patient 1 would be returning to work.

18. In his treatment of Patient 1, Respondent provided to her employer a certificate of medical incapacity without adequate clinical justification. Nothing in this patient's presentation justified a medical certificate of complete incapacitation for three months. Respondent did not consider modified duty or a shorter period of incapacity, such as the interval between clinical evaluations.

19. In his treatment of Patient 1, Respondent failed to create a complete, adequate, and timely medical record for this patient. Respondent's medical records for Patient 1 contained minimal documentation and physicians providing subsequent care would not be able to form any reasonable narrative of this patient's course. Medication lists for Patient 1 were not documented and Respondent's allusions to psychological treatments are non-standard and unclear.

Patient 2

20. Patient 2 was a 34-year-old male who was first seen by Respondent on March 22, 2017, for sciatic nerve pain and 'back pain as chief complaints. The history noted shooting pain down right leg, especially after sitting long time when driving. The physical exam noted a blood pressure of 131/96 and paralumbar tenderness as well as various measurements of back range of motion (25% flexion, 15% extension, 5% rotation), straight leg raise (SLR) + L 75 degrees and R 40 degrees, and patellar reflexes of 3+/4, 0 Babinski and pinprick 2+/4. The diagnosis documented in Respondent's notes was acute lumbar strain and radiculopathy RLE [right lower

extremity]. The plan was physical therapy and disability certification for 60 days to include no lift, bend, pull, push, reach, stoop, kneel, squat, stretch, twist, sit/stand > 2 minutes or climb.

21. On March 22, 2017, Respondent wrote a letter stating that Patient 2 was completely unable to work until May 22, 2017.

22. On April 13, 2017, Respondent documented sciatic nerve pain low back pain 8/10. No other history was documented. The physical exam documented straight leg raising test 65 degrees on the left and 45 degrees on the right with pinprick 2+/6. Normal gait was also documented. Physical therapy was recommended, as was hot/cold to the right lower extremity. The patient was to not lift, pull, push, stoop, kneel, squat, twist or stretch.

23. On April 25, 2017, and May 18, 2017, Respondent saw Patient 2 and documented no changes in condition.

24. On May 18, 2017, Respondent wrote a disability extension letter for Patient 2, extending the period of disability by three months, to August 22, 2017.

25. On July 3, 2017, Respondent saw Patient 2 and documented essentially the same progress note as the prior visits. Respondent recommended specific exercises this time to include pigeon pose and stand hamstring and sit spinal stretch.

26. On August 16, 2017, Respondent documented shooting pain right leg, low back pain, but no additional history. Respondent documented 25% flexion, 20% extension, 10% rotation, SLR+ L 80 degrees, R 55 degrees, and a normal gait. Respondent diagnosed sciatica (radiculopathy) and lumbar strain. He returned Patient 2 to work with recommendations for leg positioning while driving a bus.

27. Respondent next saw Patient 2 on December 18, 2017, at which time he noted a chief complaint of sciatic nerve without additional documented history. The physical exam included a blood pressure of 133/90 and fasciculation[2] RLE [right lower extremity] and pin prick 1+/6. Respondent recommended referral to a neurologist for nerve conduction studies and stated that Patient 2 should have intermittent time off (one episode/month for 1-3 days/episode).

[2] A fasciculation, or muscle twitch, is a small, local, involuntary muscle contraction and relaxation which may be visible under the skin.

28. On May 17, 2018, Respondent saw Patient 2. Respondent documented "R side R shoulder pain, R foot num (sic)." There is no additional history. The physical exam noted: R glenoid effusion, ROM 80% abduct and internal rotation, hypertonicity, and pin prick 2+/6 RLE.' Patient 2 was diagnosed with shoulder strain, lumbar strain, and sciatica radiculopathy. Physical therapy was recommended, and the patient was not to lift, squat, or stoop.

29. From March 22, 2017, to August 16, 2017, for Patient 2, Respondent documented 21 visits for therapy. These notes are on pre-printed forms and are essentially identical, stating: back lower severe muscle spasms, with therapy type marked: hot, massage, ROM Exercises, therapy site: back lower.

30. In his treatment of Patient 2, Respondent is subject to disciplinary action under section 2234, subdivision (b) of the Code for gross negligence by failing to maintain complete, accurate, and timely medical records for Patient 2. The medical record for this patient is difficult to read and is only partially legible. The Subjective sections fail to record a detailed history of present illness or update the patient's pain, function, or response to therapy. Respondent documented physical exam findings that are non-standard and unclear. For example, "2+/6 pin prick" does not have any meaning by itself. Nor did Respondent clarify where the patient had decreased sensation.

31. In his treatment of Patient 2, Respondent provided a certificate of medical incapacity without adequate clinical justification.

32. In his treatment of Patient 2, Respondent failed to recognize and address the elevated blood pressure readings for this patient. Patient 2 presented with elevated blood pressure readings but was not assessed for any symptoms that may be related to hypertension. These elevated blood pressure readings were not acknowledged by Respondent in his progress notes, were not included in the assessments, nor were there any appropriate treatments or follow-up recommendations. When interviewed, Respondent stated that he "assumed" other physicians were managing the patient's blood pressure, and this is why he did not address it.

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Patient 3

33. Patient 3, a 34-year-old female, was first seen by Respondent on April 14, 2017. She filled out patient intake forms indicating the main reason for her visit on that day was high levels of stress, lower back pain. She noted a personal medical history of hypertension and a family history of high blood pressure, asthma, diabetes, and stroke. She marked areas on the form, under review of systems where she had health problems. She listed head, neck, bones/joints, skin (acne), mood, and fatigue. She also wrote, "I often have headaches, feel pressure, my lower back hurts, I have acne. I'm always tired from stressing sometimes irritable".

34. The progress note prepared by Respondent for Patient 3, dated April 14, 2017, contains the following information in the Subjective section: stress, lower back pain 7/10, high blood pressure. There is no additional history. The Objective section states: hyper-vigilant, apprehensive, spatial and paraspinal hypertonicity, decreased ROM [range of motion], flexion 15-20%, Ext [extension] 10%, rotation <5% patellar reflex 4/4 -clonus. Underlined on the page are pre-printed sections that include a neurological alert/oriented x 3, cognition-sound, adaptive, integrated. Behavior appropriate. The recorded vital signs are blood pressure 160/127, pulse rate 72, respiratory rate 21, temperature 98.1, height 5 feet, four inches, weight 171. The Assessment section has a pre-printed list circling differential structural psychological, anatomical dorsum, and definitive lumbar strain, stress reaction. Physical therapy is recommended, and activity restrictions are no lift, bend, pull, push, reach, stoop, kneel, squat, twist, stretch, sit/stand > 2 minutes, climb or crawl. Also recommended is stress management. There is no assessment or plan related to the blood pressure reading.

35. On April 14, 2017, Respondent filled out and gave Patient 3 a "Health Care Provider's Certification for Leave, Employee Illness," which stated that she was "completely unable to work from 4/14/17 to 7/14/17."

36. On May 17, 2017, Respondent again saw Patient 3. The progress note for that day is identical to the April 14, 2017 progress note. The only differences are the date and a blood pressure reading of 150/110. The same day, Respondent wrote a letter stating that Patient 3

"remains under our care for conditions precluding all gainful activities and employment. These conditions warrant extension effective to July 14, 2017."

37. On June 16, 2017, Respondent again saw Patient 3. The progress note in the Subjective section states: stress, low back pain 9/10. The Objective section is the same as prior notes except for a blood pressure of 146/113. The assessments are the same, and the Plan section has the activity modifications the same with stress management - crisis intervention. The records contain an identical letter about medical disability dated June 17, 2017.

38. In his treatment of Patient 3, Respondent failed to recognize and address the numerous elevated blood pressure readings. This patient came into Respondent's office numerous times with sharply elevated blood pressure readings. Despite that, the patient was not assessed for any symptoms related to hypertension. Moreover, these elevated blood pressure readings were not acknowledged by Respondent in his progress notes, nor were they included in the assessments, nor were any appropriate treatments, nor were follow-up recommendations made. When this patient's diastolic blood pressure was in the hypertensive urgency range, above 120, Respondent did not initiate care related to this patient's blood pressure.

39. In his treatment of Patient 3, Respondent failed to fully evaluate and properly treat a patient with worsening low back pain. Respondent did not document a comprehensive back pain history. For example, it is unclear if this patient had acute or chronic low back pain, if there were any triggers, or what the patient had done to treat it. Respondent failed to document the presence or absence of red flag symptoms. Respondent based treatment response on his own estimates of back movements, rather than an assessment of functional improvement of the patient. He did not discuss or offer any medications or application of cold or heat therapy to this patient. Almost all low-risk back pain improves or resolves, at most in a matter of a few weeks. When this did not occur, and in fact, when the patient's reported back pain level worsened from 7/10 initially to 9/10 in June, Respondent did not do any further workup, nor did he refer the patient to specialists. Additional off work orders without further evaluation were below standard of care. Respondent stated when interviewed that he did not believe that medications were useful in the care of

patients with musculoskeletal back pain. Respondent did not refer the patient to another physician who could have prescribed pharmaceuticals as part of the patient's treatment plan.

40. In his treatment of Patient 3, Respondent provided a certificate of medical incapacity without adequate clinical justification. Within this patient's limited, documented history, there is nothing suggesting the patient had high-risk back pain, such as fracture, infection, or cancer. The physical examination was consistent with musculoskeletal back and neck pain. There was also not enough information documented to justify taking the patient off work for mental health symptoms. Respondent did not order any imaging or any specialty consultations, further suggesting that he was not concerned about a serious underlying diagnosis that would justify a three-month-long period of total incapacity. Respondent did not consider taking the patient off work for a shorter period of time, such as until his next evaluation of the patient. He also stated, when interviewed, that he did not consider modified duty as an option. Severe pain, not improving within the expected period of time, should have an appropriate treatment plan of additional workup and care to rule out serious causes. Respondent did not refer this patient when the symptoms were refractory. The choice of 90 days off work was excessive for the clinical presentation.

41. In his treatment of Patient 3, Respondent failed to maintain complete, accurate, and timely medical records for this patient. Respondent's medical records reflect a pattern of minimal documentation related to the progress of the patient's conditions. Accordingly, physicians providing subsequent care would not be able to form any reasonable narrative of the patient's course based on those records.

42. In his treatment of Patient 3, Respondent demonstrated a lack of knowledge regarding the use of even low-risk medications in the treatment of musculoskeletal pain.

Patient 4

43. Patient 4 was a 33-year-old male when first seen by Respondent on August 25, 2016, complaining of back pain and stress. Patient 4 admitted to using tobacco, alcohol, and caffeine in unstated quantities on the intake form, and provided no other history.

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44. Respondent documented stressed-excessive, low back pain 10/10, complications in all environments, social, domestic, work, not getting adequate rest at night. The Objective Section includes a blood pressure of 142/98 with otherwise normal vital signs. Patient 4 was documented as being hyper-vigilant, agitated, pressured speech, spatial (combat-like fatigue). He had paraspinal hypertonicity with decreased [range of motion], flexion 20%, extension 10% and rotation <5%, patellar reflex 4+/4, clonus (psychosomatic vasoconstriction compromised tissue perfusion). The Assessment Section notes structural, psychological, and dorsum circled. Under Definitive:, "stress reaction lumbar strain (acute)" is noted. The Plan documented was: stress management--crisis intervention. No lift, bend, pull, push, reach, stoop, kneel, squat, stretch, sit/stand > 2 minutes, climb.

45. On August 25, 2016, Respondent provided a letter stating that Patient 4's condition warrants "disability extension effective to November 25, 2016."

46. On September 22, 2016, Respondent saw Patient 4 and documented: anxiety -- highly all day & night and back pain 9/10. There was no other history recorded. Blood pressure was 139/86, and the patient was described as hyper-vigilant, spatial, agitated, angry. The rest of the documentation of the Physical Exam, Assessment, and Plan sections were identical to the note on August 25, 2016.

47. On October 14, 2016, Respondent saw Patient 4 again. His notes state that the patient was "severely frustrated [about] all the things around back spasms, trying to get out of bed, pain 9/10." Blood pressure was documented as 148/96, and the patient was described as "apprehensive, spatial" with similar comments as above. The documented assessment was subacute lumbar strain, intractable stress reaction, no skeletal pathology, and compromised tissue perfusion secondary psychosomatic reaction. The plan was for physical therapy and stress management, as well as no public vehicle operations, anxiolytics, or muscle relaxers. After signing his name, Respondent included that he was a Vietnam vet PTSD survivor (coaching combat-like-fatigue).

48. On November 23, 2016, Respondent wrote a disability extension letter for Patient 4, extending the disability period by three months, to February 25, 2017.

49. On December 16, 2016, Respondent documented that Patient 4 stated that he "didn't want to be around anyone, can't sleep, wake-up in frantic state, back spasms more when extremely upset." He had a blood pressure of 147/93. He was noted as extreme hyper-vigilant, suspicious, flight fight phenomenon autonomic reaction, and compromised tissue perfusion (combat-like fatigue). Respondent diagnosed Patient 4 with subacute PTSD, lumbar strain and (combat fatigue - Zenith). The plan was activity restrictions as noted previously, with "no public vehicle operation or productive exposure of any form (stress management - reality focus). Refrain from any form of job contact. Walk on beach."

50. On January 10, 2017, Respondent again saw Patient 4, who, on this occasion, stated that he was "tired/not feeling good inside, low back pain 8/10." The Respondent documented a blood pressure of 140/87. Respondent wrote identical notes in the Objective section, including that the flight/fight phenomenon (persist). The definitive diagnosis was stress reaction, lumbar strain, and no skeletal pathophysiology. Physical therapy was recommended, activity modifications of no lift, bend, push, pull, reach, kneel, stoop, squat, twist, stretch, sit/stand >2 minutes climb or crawl as he had documented previously and (Vietnam vet), stress management, focus-minimizing (offensive nature).

51. On February 24, 2017, Respondent saw Patient 4 again. On this visit, Respondent documented, stress, 9/10; low back pain 7/10 (not as much spasm); had a blood pressure of 139/93; and similar physical exam comments as in prior entries. The assessments were stress reaction, lumbar strain, and psychosomatic etiology for compromised tissue perfusion. Activity modifications continued as noted in the January 10, 2017 visit, with stress management processing and cognition-preparation return to work (handling PTSD).

52. On February 25, 2017, Respondent wrote a disability extension letter for Patient 4, extending the period of disability by three months, to May 25, 2017.

53. On March 23, 2017, Respondent documented: not as much stress (4-5 days out of the week), low back pain 7/10, very little spasms now when get out of bed. Blood pressure was 143/89, and the patient was described as "combative suspicious . . . little reactive today flight/fight more focus for control." Assessments were stress reaction, lumbar strain and combat-

1 like fatigue. Physical therapy was recommended along with the same activity modifications and
2 "stress management (education of limbic system)."

3 54. On April 28, 2017, Respondent documented, "mind doesn't feel as heavy as it once
4 did can focus a little bit more still feel little nervous when around lots of people low back pain
5 6-7/10, able to exercise more." The physical exam noted as blood pressure of 141/83, paraspinal
6 hypertonicity, decreased range of motion, flexion 30-40%, extension 20%, rotation 15% patellar
7 reflex 2-3+/4 minimal clonus, flight fright less combat-like fatigue (more control of feelings).
8 Respondent recommended physical therapy, activity modifications as above, and "stress
9 management identification of exogenous stress offensive."

10 55. On May 24, 2017, Respondent saw Patient 4. Respondent noted stress-mild back pain
11 6/10, without any other history. The notes in the Objective section included the comment "jovial
12 more focus." Blood pressure was 117/74, and there was 40-50% flexion, 40% extension, rotation
13 10%, and 1+/4 patellar reflex 0 clonus. Flight-fight minimal, able to tolerate shopping at mall
14 more. Assessments were stress reaction and lumbar strain, and the plan was activity modification
15 and "minimizing flight/fight phenomenon."

16 56. On May 24, 2017, Respondent wrote a disability extension letter for Patient 4,
17 extending the period of disability by three months, to August 25, 2017.

18 57. In his treatment of Patient 4, Respondent failed to recognize and address numerous
19 elevated blood pressure readings. The patient was not assessed for any symptoms that may be
20 related to hypertension. These elevated blood pressure readings were not acknowledged by
21 Respondent in his progress notes, were not included in the assessments, nor were any appropriate
22 treatments or follow-up recommendations rendered. When interviewed, Respondent stated that
23 he assumed that other physicians were treating Patient 4's elevated blood pressure.

24 58. Respondent provided a certificate of medical incapacity to Patient 4 without adequate
25 clinical justification. Within this patient's limited documentary history, there is nothing that
26 suggests that the patient had high-risk back pain, due to a fracture, infection, or cancer. The
27 physical examination was consistent with musculoskeletal back and neck pain. There were
28 symptoms concerning for more severe psychiatric diagnoses, such as hypervigilance, anger,

PTSD symptoms, and anxiety, which debilitated this patient. However, Respondent failed to refer Patient 4 for a specialty consultation when the symptoms persisted, and even when the patient had improved, Respondent continued to extend the patient's time off work three months at a time. Furthermore, Respondent explicitly stated his patient had no significant physical pathophysiology and yet still did not recommend mental health consultation. Respondent did not order any imaging or any specialty consultations, further suggesting he was not concerned about a serious underlying diagnosis that would justify multiple, consecutive three-month-long periods of total incapacity.

59. Respondent failed to fully evaluate and treat Patient 4's anxiety. Respondent described Patient 4 as frantic, hypervigilant, pressured speech, spatial, not feeling good inside, and with anxiety day and night. These are potentially serious mental health symptoms that deserve further attention. There was no comprehensive psychiatric evaluation either done by or recommended by Respondent. There was no assessment of depression with validated clinical instruments such as PHQ-2 or PHQ-9 (these are patient health questionnaires consisting respectively of two and nine questions to aid in depression diagnosis). The risk of suicide was never documented in the progress notes for this patient. There was no documented psychiatric history or psychotropic medication history. Respondent made the diagnosis of an intractable stress reaction but never justified this diagnosis by documenting any cause or exacerbating factor for Patient 4's stress. Respondent diagnosed this patient with post-traumatic stress disorder and "combat-like fatigue" but never documented whether or not this patient was a combat veteran or had been exposed to traumatic stress. Respondent's treatment was to have no exposure to a productive work environment and to walk on the beach, and this demonstrates a level of care below standards for the medical community. In his interview with the Board's investigators, Respondent expressed significant doubts that effective, evidence-based medications are useful in the treatment of mood disorders such as PTSD, and he did not offer medications for this patient who may have benefited from them.

60. In his treatment of Patient 4, Respondent failed to maintain complete, accurate, and timely medical records for this patient. Respondent's medical records reflect a pattern of minimal

documentation related to the progress of the patient's conditions. As a result, physicians providing subsequent care would not be able to form any reasonable narrative of the patient's course based on the records. In addition, Respondent's allusions to psychological treatments and documentation of his medical conclusions are unclear.

61. In his treatment of Patient 4, Respondent demonstrated a lack of knowledge in general about mental health diagnosis and treatment.

Patient 5

62. On January 21, 2020, an undercover law enforcement operation was conducted at Respondent's medical office. A Health Quality Investigations Unit Investigator, using the fictitious name "S.C.," paid $125 and underwent a consultation with Respondent to receive an off-work order. Her interactions with Respondent were audio and video recorded.

63. Patient 5 entered Respondent's clinic waiting room and completed intake forms. When she was called to the back office, she had her vital signs taken by a medical assistant. When the medical assistant asked Patient 5 her height and weight, she recorded them in the chart without measurement. The medical assistant then asked Patient 5 why she was in the office. Patient 5 indicated that she just was not feeling well and needed an off-work note. The medical assistant stated that there needed to be something wrong in the chart to justify an off-work note, so she wrote "stress" and then crossed it out when Patient 5 indicated she was not stressed. Patient 5 was then instructed to wait in an exam room. Soon after, Respondent entered the room and escorted Patient 5 to another office nearby. Patient 5 explained to Respondent that there was nothing wrong, but she needed a note so she could go to her sister's wedding in Louisiana. Respondent stated, "so you need a medical excuse?" He then proceeded to type out a letter of medical impairment for the requested dates of Patient 5's wedding trip. There was no physical exam done.

64. The note Respondent provided to Patient 5 stated, "Please be advised that the above patient was evaluated in this office as of January 28, 2020, for urgent medical condition requiring medical management. The patient will have intensive management effective through February 4,

2020, precluding all gainful activate/employment for this period." Respondent typed and signed this note.

65. Patient 5 was unambiguous that there was nothing physically or psychologically wrong with her. She explicitly reported she had no symptoms. She came into the office articulating a singular purpose to obtain a fraudulent certificate of medical impairment so she could get off work to visit family in Louisiana. Respondent obliged her without hesitation, falsely stating that she was completely unable to work over the coming days.

66. The medical record for this patient contains no accurate documentation of the real reason for the patient's visit and, in fact, the issue of the patient experiencing stress was fabricated by the medical assistant and acknowledged as such later by Respondent in an investigative interview.

67. In his treatment of Patient 5, Respondent issued a fraudulent certificate of medical incapacity based upon a request from a completely healthy patient.

68. In his treatment of Patient 5, Respondent, with fraudulent intent, fabricated a medical record to justify issuing a fraudulent certification of medical incapacity based upon a request from a completely healthy patient.

69. In his treatment of Patient 5, Respondent failed to keep accurate and adequate medical records.

Patient 6

70. Patient 6 was a 65-year-old female when first seen by Respondent on approximately May 29, 2017 or May 30, 2017, and second time on June 29, 2017. She complained of injuries resulting from a slip and fall on or about May 26, 2017.

71. On July 3, 2017, Respondent signed a disability form for Colonial Life and Accident Insurance Company, stating that Respondent treated Patient 6 for a slip and fall that occurred on May 26, 2017. Respondent stated the date of treatment was May 30, 2017, and that Patient 6 was suffering from lower hip pain and leg burning.

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72. On December 22, 2017, Respondent provided a letter to Colonial's claim department correcting the date of treatment to May 29, 2017.

73. On September 17, 2020, Respondent was interviewed by the California Department of Consumer Affairs Division of Investigation, Health Quality Investigation Unit in the San Bernardino office. Present at the interview was the Investigator and the District Medical Consultant. At the interview, Respondent admitted that he had treated Patient 6 and had misplaced her records, as follows:

Investigator: Q: *"do you have medical records for "Patient 6" right now?"*

Respondent: A: *"Not my personal records that I had when I first – first saw her, no. I don't."*

Investigator Q: *"Okay. Uh – how come?"*

Respondent A: *"As I said, they – uh – they've been misplaced."*

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

74. Respondent, Tyron Cleon Reece, M.D. is subject to disciplinary action under section 2234, subdivision (b) of the Code in that he committed gross negligence in the care and treatment of five patients.

75. The allegations of paragraphs 11 through 73 are incorporated herein by reference.

Patient 1

76. Respondent's providing a certificate of medical incapacity for Patient 1, without adequate clinical justification, was a distinct extreme departure from the standard of care.

Patient 2

77. Respondent's providing a certificate of medical incapacity for Patient 2, without adequate clinical justification, was a distinct extreme departure from the standard of care.

78. Respondent's manner of keeping medical records of his care and treatment of Patient 2 was a distinct extreme departure from the standard of care.

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Patient 3

79. Respondent's providing a certificate of medical incapacity for Patient 3, without adequate clinical justification, was a distinct extreme departure from the standard of care.

80. Respondent's failure to recognize and address numerous elevated blood pressure readings in his care and treatment of Patient 3, including his failure to assess Patient 3 for any symptoms related to hypertension and Respondent's failure to acknowledge elevated blood pressure in Patient 3's medical record, and his failure to treat or to refer Patient 3 for treatment of hypertension was a distinct extreme departure from the standard of care.

81. Respondent's failure to fully evaluate and treat or refer Patient 3 for treatment of his worsening back pain was a distinct extreme departure from the standard of care.

Patient 4.

82. Respondent's providing a certificate of medical incapacity for Patient 4, without adequate clinical justification, was a distinct extreme departure from the standard of care.

83. Respondent's failure to recognize and address numerous elevated blood pressure readings in his care and treatment of Patient 4, including his failure to assess Patient 4 for any symptoms related to hypertension and Respondent's failure to acknowledge elevated blood pressure in Patient 3's medical record, and his failure to treat to or refer Patient 4 for treatment of hypertension was a distinct extreme departure from the standard of care.

84. Respondent's failure to fully evaluate and treat or to refer Patient 4 for treatment of anxiety was a distinct extreme departure from the standard of care.

Patient 5

85. Respondent's providing a fraudulent certificate of medical incapacity for Patient 5, was a distinct extreme departure from the standard of care.

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SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

86. Respondent, Tyron Cleon Reece, M.D. is subject to disciplinary action under section 2234, subdivision (c) of the Code in that he committed repeated negligent acts in the care and treatment of five patients.

87. The allegations of paragraphs 11 through 73 are incorporated herein by reference.

Patient 1

88. Respondent's providing a certificate of medical incapacity for Patient 1, without adequate clinical justification, was a departure from the standard of care.

89. Respondent's manner of keeping medical records of his care and treatment of Patient 1 was a departure from the standard of care.

Patient 2

90. Respondent's providing a certificate of medical incapacity for Patient 2, without adequate clinical justification, was a departure from the standard of care.

91. Respondent's manner of keeping medical records of his care and treatment of Patient 2 was a departure from the standard of care.

92. Respondent's failure to recognize and address the elevated blood pressure readings during his care and treatment of Patient 2 was a departure from the standard of care.

Patient 3

93. Respondent's providing a certificate of medical incapacity for Patient 3, without adequate clinical justification, was a departure from the standard of care.

94. Respondent's failure to recognize and address numerous elevated blood pressure readings in his care and treatment of Patient 3, including his failure to assess Patient 3 for any symptoms related to hypertension and Respondent's failure to acknowledge elevated blood pressure in Patient 3's medical record, and his failure to treat or to refer Patient 3 for treatment of hypertension was a departure from the standard of care.

95. Respondent's failure to fully evaluate and treat or refer Patient 3 for treatment of his worsening back pain was a departure from the standard of care.

96. Respondent's manner of keeping medical records of his care and treatment of Patient 3 was a departure from the standard of care.

Patient 4

97. Respondent's providing a certificate of medical incapacity for Patient 4, without adequate clinical justification, was a departure from the standard of care.

98. Respondent's failure to recognize and address numerous elevated blood pressure readings in his care and treatment of Patient 4, including his failure to assess Patient 4 for any symptoms related to hypertension and Respondent's failure to acknowledge elevated blood pressure in Patient 3's medical record, and his failure to treat to or refer Patient 4 for treatment of hypertension was a departure from the standard of care.

99. Respondent's failure to fully evaluate and treat or to refer Patient 4 for treatment of anxiety was a departure from the standard of care.

100. Respondent's manner of keeping medical records of his care and treatment of Patient 4 was a departure from the standard of care.

Patient 5

101. Respondent's providing a fraudulent certificate of medical incapacity for Patient 5, was a departure from the standard of care.

102. Respondent's manner of keeping medical records of his care and treatment of Patient 5 was a departure from the standard of care.

THIRD CAUSE FOR DISCIPLINE

(Incompetence)

103. Respondent, Tyron Cleon Reece, M.D. is subject to disciplinary action under section 2234, subdivision (d) of the Code in that he demonstrated incompetence in his care and treatment of two patients. The circumstances are as follows:

104. The allegations of paragraphs 11 through 73 are incorporated herein by reference.

Patient 3

105. In his treatment of Patient 3, Respondent demonstrated a lack of knowledge or ability regarding the use of even low-risk medications in the treatment of musculoskeletal pain.

Patient 4

106. In his treatment of Patient 4, Respondent demonstrated a lack of knowledge or ability with regard to mental health diagnosis and treatment.

FOURTH CAUSE FOR DISCIPLINE

(Dishonest or Corrupt Acts)

107. Respondent, Tyron Cleon Reece, M.D. is subject to disciplinary action under section 2234, subdivision (e) of the Code in that he engaged in acts of dishonesty or corruption in his care and treatment of Patient 5. The circumstances are as follows:

108. The allegations of paragraphs 62 through 69 are incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Knowingly Making or Signing a False Medical Document)

109. Respondent, Tyron Cleon Reece, M.D. is subject to disciplinary action under section 2261 of the Code, in that he knowingly made and /or signed a document which falsely represented the existence or nonexistence of a state of facts with regard to his care and treatment of Patient 5. The circumstances are as follows:

110. The allegations of paragraphs 62 through 69 are incorporated herein by reference.

SIXTH CAUSE FOR DISCIPLINE

(Creation of a False Medical Record)

111. Respondent, Tyron Cleon Reece, M.D. is subject to disciplinary action under section 2262 of the Code, in that he created a false medical record of his care and treatment of Patient 5. The circumstances are as follows:

112. The allegations of paragraphs 62 through 69 are incorporated herein by reference.

SEVENTH CAUSE FOR DISCIPLINE

(Inadequate and Inaccurate Medical Record Keeping)

113. By reason of the facts set forth above in the First through Sixth Causes for Discipline, Respondent is subject to disciplinary action under section 2266 of the Code for inadequate and inaccurate medical record-keeping of Patients One through Six as fully set forth above. Paragraphs 11 through 73 are incorporated herein by reference as though fully set forth.

CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

114. At all times after the December 24, 2014, the effective date of Respondent's Disciplinary Order in Case 11-2010-211926, Condition 12 of his probation required as follows:

"**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."

115. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 12, referenced above. The facts and circumstances regarding this violation are as follows:

A. The facts and circumstances alleged in the First through Sixth Causes for Discipline are incorporated herein as if fully set forth.

B. Based on the facts and circumstances set forth in the First through Seventh Causes for Discipline, Respondent violated Business and Professions Code section 2234, subdivisions (b), (c), (d) and (e), as well as Business and Professions Code sections 2261, 2262 and 2266, thereby violating Probation Condition 12 referenced above.

DISCIPLINARY CONSIDERATIONS

116. To determine the degree of discipline, if any, to be imposed, Complainant alleges that on or about November 24, 2014, in a prior disciplinary action titled *In the Matter of the Accusation Against Tyron Cleon Reece, M.D.* before the Medical Board of California, in Case Number 11-2010-211926, Respondent's license was revoked, but the revocation was stayed, and Respondent was placed on probation for seven years based upon a conviction of a substantially related crime [conspiracy to distribute controlled substances in violation of federal law], the commission of acts involving dishonesty or corruption, excessive prescribing, rebates for patient referrals, violation of drug statutes, and general unprofessional conduct. Probation terms and conditions included the requirement to complete an actual suspension of 90 days, community service, an education course, a prescribing practices course, a professionalism [ethics] program, a psychiatric evaluation, medical evaluation, and treatment, to have practice and billing monitors, a

prohibition prohibiting him from prescribing any controlled substances, a requirement to obey all laws, to notify patients of prohibited practice, to pay for psychiatric evaluation, and to pay probation monitoring costs, among other terms. That Decision is now final and is incorporated by reference as if fully set forth herein.

117. To determine the degree of discipline, if any, to be imposed on Respondent Tyron Cleon Reece, M.D., Complainant alleges that on or about November 3, 2017, in a prior disciplinary action entitled *In the Matter of the Petition to Revoke Probation Against Tyron Cleon Reece, M.D.* before the Medical Board of California, Case Number 800-2016-023827, Respondent's probation, above referenced, was extended for two (2) years for violating six terms of probation including failure to take an education course, failure to take a professionalism program [ethics] course, failure to pay the cost of the psychiatric evaluation, failure to pay the cost of the medical evaluation, failure to pay the cost of probation monitoring, and failure to notify patients of prohibited practice. Probation terms and conditions included a 30-day suspension, or alternatively to pay $10,392.50 as reimbursement for the cost of the above described psychiatric, medical, and probation monitoring costs. In addition, Respondent was to provide proof to the Board that he is actively enrolled in the PEP program at PACE as required by Condition 8 of the Decision and Order, effective December 24, 2014. That Decision is now final and is incorporated by reference as if fully set forth herein.

118. To determine the degree of discipline, if any, to be imposed on Respondent Tyron Cleon Reece, M.D., Complainant alleges that on or about September 19, 2013, in the United States District Court, Southern District of California, Respondent was convicted of Count 1 of an indictment in a case entitled, *United States vs. Tyron Reece, et al.*, case number 11CR3588-AJB, to wit, conspiracy to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1).

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 A 31509, issued to Tyron Cleon Reece, M.D.;

2. Revoking the probation of Surgeon's Certificate Number A 31509, issued to Tyron Cleon Reece, M.D.;

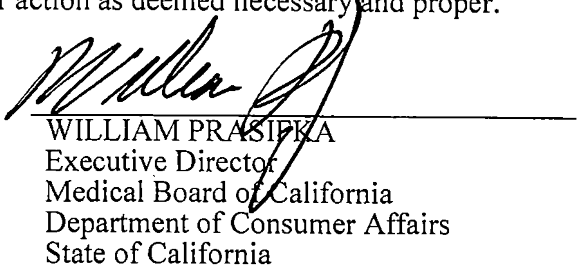
2. Revoking, suspending, or denying approval of Tyron Cleon Reece, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Imposing a civil penalty on Tyron Cleon Reece, M.D. in the amount of $500 for violation of Business and Professions Code section 2262;

4. If placed on probation, ordering Tyron Cleon Reece, M.D. to pay the Board the costs of probation monitoring; and

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

DATED: JUL 28 2021



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

Complainant

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Exhibit A

11-2010-211926

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

In the Matter of the Accusation Against:	)	
	)	
TYRON CLEON REECE, M.D.	)	Case No. 11-2010-211926
	)	
Physician's and Surgeon's Certificate No. A 31509	)	
	)	
Respondent	)	
	)	

DECISION AND ORDER

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 December 24, 2014.

IT IS SO ORDERED: November 24, 2014.

MEDICAL BOARD OF CALIFORNIA

By: Dev Gnanadev MD

Dev Gnanadev, M.D., Chair
Panel B

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Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against:	Case No. 11-2010-211926
TYRON C. REECE, M.D. **321 E. Hillcrest Blvd.** **Inglewood, CA 90301**	OAH No. 2014020139
Physician's and Surgeon's Certificate No. A 31509 Respondent.	**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Medical Board of California of the Department of Consumer Affairs (Board), the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Board. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Chris Leong, Deputy Attorney General.

2. Respondent TYRON C. REECE, M.D. ("Respondent") is represented in this proceeding by attorney Duane R. Folke, Esq., whose address is: 3450 Wilshire Boulevard, Suite 108-17, Los Angeles, CA 90010-2208.

3. On or about September 1, 1977, the Board issued Physician's and Surgeon's Certificate No. A 31509 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 11-2010-211926 and will expire on October 31, 2015, unless renewed.

JURISDICTION

4. Accusation No. 11-2010-211926 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 14, 2013. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 11-2010-211926 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 11-2010-211926. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in the First Cause for Discipline in Accusation No. 11-2010-211926.

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

11. Respondent agrees that if he ever petitions for early termination of probation or modification of probation, or if the board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 11-2010-211926 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

CONTINGENCY

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

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

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 31509 issued to Respondent TYRON C. REECE, M.D. (Respondent) is revoked. However, the revocation is

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

1. ACTUAL SUSPENSION. As part of probation, Respondent is suspended from the practice of medicine for ninety (90 days) beginning the sixteenth (16th) day after the effective date of this decision.

2. COMMUNITY SERVICE - FREE SERVICES. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval a community service plan in which Respondent shall within the first 2 years of probation, provide 100 hours of free services (e.g., medical or nonmedical) to a community or non-profit organization. If the term of probation is designated for 2 years or less, the community service hours must be completed not later than 6 months prior to the completion of probation.

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

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

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 equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (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 Title 16, California Code of Regulations (CCR) section 1358. 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 (6) 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 (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in

addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

7. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee. Respondent shall provide the evaluating physician any information and documentation that the evaluating physician may deem pertinent.

Following the evaluation, Respondent shall comply with all restrictions or conditions

recommended by the evaluating physician within 15 calendar days after being notified by the Board or its designee. If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval the name and qualifications of a California licensed treating physician of Respondent's choice. Upon approval of the treating physician, Respondent shall within 15 calendar days undertake medical treatment and shall continue such treatment until further notice from the Board or its designee.

The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit quarterly reports to the Board or its designee indicating whether or not the Respondent is capable of practicing medicine safely. Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment, the Board or its designee deems necessary.

If, prior to the completion of probation, Respondent is found to be physically incapable of resuming the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is physically capable of resuming the practice of medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

8. MONITORING - PRACTICE/BILLING. Within 30 calendar days of the effective date of this Decision, Respondent shall participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, 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.

9. PROHIBITED PRACTICE. During probation, Respondent is prohibited from prescribing any controlled substances. After the effective date of this Decision, all patients being treated by the Respondent shall be notified that the Respondent is prohibited from prescribing any

1 controlled substances. Any new patients must be provided this notification at the time of their
2 initial appointment.

3 Respondent shall maintain a log of all patients to whom the required oral notification was
4 made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's
5 medical record number, if available; 3) the full name of the person making the notification; 4) the
6 date the notification was made; and 5) a description of the notification given. Respondent shall
7 keep this log in a separate file or ledger, in chronological order, shall make the log available for
8 immediate inspection and copying on the premises at all times during business hours by the Board
9 or its designee, and shall retain the log for the entire term of probation.

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

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

19 11. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
20 prohibited from supervising physician assistants.

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

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

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

14. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

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

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(b).

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

15. 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.

16. 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 in California 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. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. 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 a clinical training 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 (2) years.

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

Periods of non-practice 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; and General Probation Requirements.

17. 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.

18. 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.

19. 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 or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

20. 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.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Duane R. Folke, Esq. 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: October 7, 2014

TYRON C. REECE, M.D.
Respondent

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

DATED: October 7th, 2014
DUANE R. FOLKE, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: October 7, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

CHRIS LEONG
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 11-2010-211926

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO November 14, 2013
BY [illegible] ANALYST

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

In the Matter of the Accusation Against:	Case No. 11-2010-211926
TYRON C. REECE, M.D. 321 E. Hillcrest Blvd., Inglewood, California 90301	ACCUSATION
Physician's and Surgeon's Certificate No. A 31509	
Respondent.	

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Director of the Medical Board of California (Board).

2. On or about September 1, 1977, the Board issued Physician's and Surgeon's Certificate Number A 31509 to TYRON C. REECE, 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, 2015, 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 2234 of the Code, states:

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

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

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

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

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview scheduled by the mutual agreement of the certificate holder and the

board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

5. 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 or her license revoked upon order of the board.

"(2) Have his or her 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 com-plete 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."

6. Section 2236 of the Code states:

A(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

1 A(b) The district attorney, city attorney, or other prosecuting agency shall notify the
2 Division of Medical Quality of the pendency of an action against a licensee charging a felony or
3 misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice
4 shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting
5 agency shall also notify the clerk of the court in which the action is pending that the defendant is a
6 licensee, and the clerk shall record prominently in the file that the defendant holds a license as a
7 physician and surgeon.

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

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

16 7. Section 2238 of the Code states:

17 AA violation of any federal statute or federal regulation or any of the statutes or regulations
18 of this state regulating dangerous drugs or controlled substances constitutes unprofessional
19 conduct.@

20 8. Section 725 of the Code states:

21 "(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering
22 of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated
23 acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of
24 the community of licensees is unprofessional conduct for a physician and surgeon, dentist,
25 podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist,
26 or audiologist.

27 "(b) Any person who engages in repeated acts of clearly excessive prescribing or
28 administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of

not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

"(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

"(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5."

9. Section 650 of the Code states:

"(a) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division or the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful.

"(b) The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer.

" (c) The offer, delivery, receipt, or acceptance of any consideration between a federally qualified health center, as defined in Section 1396d(l)(2)(B) of Title 42 of the United States Code, and any individual or entity providing goods, items, services, donations, loans, or a combination thereof to the health center entity pursuant to a contract, lease, grant, loan, or other agreement, if that agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population

served by the health center, shall be permitted only to the extent sanctioned or permitted by federal law.

"(d) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility, provided, however, that the licensee's return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

"(e) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful to provide nonmonetary remuneration, in the form of hardware, software, or information technology and training services, as described in subsections (x) and (y) of Section 1001.952 of Title 42 of the Code of Federal Regulations, as amended October 4, 2007, as published in the Federal Register (72 Fed. Reg. 56632 and 56644), and subsequently amended versions.

"(f) "Health care facility" means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Public Health under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

" (g) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by that imprisonment and a fine of fifty thousand dollars ($50,000)."

INTRODUCTION

10. This Accusation involves prescriptions for medications regulated by the Comprehensive Drug Abuse Prevention and Control Act, passed into law in 1970. Title II of this law, the Controlled Substances Act, is the legal foundation of narcotics enforcement in the United States. The Controlled Substances Act regulates the manufacture, possession, movement, and distribution of drugs in our country. The Controlled Substances Act places all drugs into one of five schedules, or classifications, and is controlled by the Department of Justice and the Department of Health and Human Services, including the Federal Drug Administration. In 1972, California followed the federal lead by adopting the Uniform Controlled Substance Act. (Government Code §11153 et seq.).

11. The following delineates the five schedules with examples of drugs, medications, and information about each.

12. **Schedule I Drugs**

These drugs have NO safe, accepted medical use in the United States. This schedule includes drugs such as heroin, ecstasy, LSD, and crack cocaine. Schedule I drugs have a high tendency for abuse and have no accepted medical use. Pharmacies do not sell Schedule I drugs, and they are not available with a prescription by physician.

13. **Schedule II Drugs**

Schedule II drugs have a high tendency for abuse, may have an accepted medical use, and can produce dependency or addiction with chronic use. Of all legal prescription medications, Schedule II controlled substances have the highest abuse potential. These drugs can cause severe psychological or physical dependence.. Schedule II drugs include certain narcotic, stimulant, and depressant drugs. Examples of Schedule II drugs include cocaine, opium, morphine, fentanyl, amphetamines, and methamphetamines.

Schedule II drugs may be available with a prescription by a physician, but not all pharmacies may carry them. These drugs require more stringent records and storage procedures than drugs in Schedules III and IV.

1 14. **Schedule III Drugs**

2 Schedule III drugs have less potential for abuse or addiction than drugs in the first two
3 schedules and have a currently accepted medical use. The abuse of Schedule III drugs may lead to
4 moderate to high psychological dependence.

5 Examples of Schedule III drugs include codeine, hydrocodone with acetaminophen, or
6 anabolic steroids. Schedule III drugs may be available with a prescription, but not all pharmacies
7 may carry them.

8 15. **Schedule IV Drugs**

9 Schedule IV drugs have a low potential for abuse that leads only to limited physical
10 dependence or psychological dependence relative to drugs in Schedule III. Schedule IV drugs
11 have a currently accepted medical use and have limited addictive properties. Schedule IV drugs
12 have the same restrictions as Schedule III drugs.

13 Examples of Schedule IV drugs include xanax, valium, phenobarbital, and rohypnol
14 (commonly known as the "date rape" drug). These drugs may be available with a prescription, but
15 not all pharmacies may carry them.

16 16. **Schedule V Drugs**

17 Schedule V drugs have a lower chance of abuse than Schedule IV drugs, have a currently
18 accepted medical use in the United States, and lesser chance of dependence compared to Schedule
19 IV drugs. This schedule includes such drugs as cough suppressants with codeine.

20 CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

21 17. **Xanax** is a dangerous drug pursuant to Code section 4022. It is a Schedule IV
22 Controlled Substance as designated by Health and Safety Code section 11057, subdivision (d)(1).
23 Its generic name is Alprazolam and is used to relieve anxiety.

24 18. **Hydrocodone** (as designated by Health and Safety Code section 11056,
25 subdivision (e)(4))/APAP is an analgesic combination of a narcotic, Hydrocodone, and
26 Acetaminophen. Acetaminophen, often abbreviated as APAP, is a peripherally acting analgesic
27 agent found in many combination products and also available by itself. This combination product
28 is used to treat moderate to moderately severe pain. In the U.S., formulations containing more

than 15 mg hydrocodone per dosage unit are considered Schedule II drugs. Those containing less than or equal to 15 mg per dosage unit in combination with acetaminophen or another non-controlled drug are called hydrocodone compounds and are considered Schedule III drugs. Hydrocodone (as designated by Health and Safety Code section 11055, subdivision (b)(1))(I)) is not available in pure form in the United States due to a separate regulation. Hydrocodone is always sold combined with another drug. Hydrocodone is a dangerous drug within the meaning of code section 4022.

19. **Promethazine with codeine** is a dangerous drug pursuant to section 4022 of the Code. It is a Schedule IV controlled substance, as designated by Health and Safety Code section 11057, subdivision (f)(4).

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crimes)

20. Respondent is subject to disciplinary action under section 2236 of the Code in that he has been convicted of crimes which are substantially related to the qualifications, functions, or duties of a physician and surgeon. The circumstances are as follows:

21. Since in or around 2006, Respondent has been writing prescriptions for controlled substances for money without seeing the patient. At various times, Respondent would receive a list containing, among other information, names of patients from about five individuals. Respondent would write prescriptions for controlled substances for the named patients. The prescriptions were taken to a pharmacy where they were filled for individuals, other than the named patients. Respondent received approximately $60.00 for each prescription as more specifically set forth in paragraph 22 below.

22. On August 12, 2011, in the United States District Court, Southern District of California, Respondent was charged in count 1 of an indictment in a case entitled *United States vs. Tyron Reece, et al.*, case number 11CR3588-AJB, with conspiracy to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1). The indictment plead in part as follows:

1 "CONSPIRACY TO DISTRIBUTE CONTROLLED SUBSTANCES

2 "2. Beginning on a date unknown to the grand jury and continuing up to and
3 including August 10, 2011, within the Southern District of California, and elsewhere,
4 defendants ANTHONY WRIGHT, aka "Sam," CHARLES DABNEY, TYRON
5 REESE, MOSES BLACKMON, KIM MARTIN, and GLENN REYNALDO, did
6 knowingly and intentionally conspire and agree with Milton Farmer, charged
7 elsewhere, and each other and with others known and unknown to the grand jury, to
8 distribute controlled substances all in violation of Title 21, United States Code,
9 Section 841(a)(1).

10 "MANNER AND MEANS

11 "ROLES OF THE DEFENDANTS

12 "3. Defendant ANTHONY WRIGHT paid defendants MOSES BLACKMON and
13 GLENN REYNALDO cash for fraudulent medical prescriptions issued by TYRON
14 REECE which were used to illegally acquire Scheduled pharmaceutical drugs from co-
15 conspirators working at Dabney Pharmacy.

16 "4. Defendant CHARLES DABNEY, who was the manager of Dabney Pharmacy
17 since 1989, in exchange for cash, processed and filled defendant ANTHONY
18 WRIGHT's fraudulent medical prescriptions at the rate of approximately 90
19 prescriptions a week.

20 "5. Defendant TYRON REECE, a medical doctor licensed to practice medicine in
21 California, sold fraudulent medical prescriptions for 100 tablets of hydrocodone
22 (Schedule III), 100 tablets alprazolam (Schedule IV) and 1 pint of promethazine with
23 codeine (Schedule V) to defendants MOSES BLACKMON and GLENN REYNALDO
24 in exchange for $60.00 cash on multiple occasions.

25 "6. Defendant KIM MARTIN, a receptionist/clerk at Dabney Pharmacy, received
26 and processed defendant ANTHONY WRIGHT's fraudulent prescriptions in exchange
27 for cash payments from defendant ANTHONY WRIGHT.

28

1 "OVERT ACTS

2 "7. In furtherance of said conspiracy, and to effect the objects thereof, the following
3 overt acts, among others, were committed within the Southern District of California,
4 and elsewhere:

5 "a) On or about March 21, 2010, in Los Angeles, California, during a
6 telephone conversation, defendant KIM MARTIN informed defendant
7 ANTHONY WRIGHT that she had given fraudulent medical prescriptions to
8 defendant CHARLES DABNEY for processing.

9 "b) "On about August 12, 2010, in Los Angeles, California, defendant
10 TYRON REECE issued medical prescriptions to an individual for 100 tablets
11 of hydrocodone (Schedule III), 100 tablets alprazolam (Schedule IV) and 1 pint
12 of promethazine with codeine (Schedule V), without conducting a medical
13 examination.

14 "c) On or about August 25, 2010, in San Diego, California, during a
15 telephone conversation, defendant ANTHONY WRIGHT offered to sell
16 tablets of oxycodone to a confidential source for $25.00 a tablet.

17 "d) On or about November 29, 2010, in Los Angeles, California, during a
18 telephone conversation, defendant MOSES BLACKMON informed defendant
19 ANTHONY WRIGHT that she had fifteen prescriptions available for
20 immediate delivery to ANTHONY WRIGHT.

21 "e) On or about March 14, 2011, in Los Angeles, California, during a
22 telephone conversation, defendants CHARLES DABNEY and ANTHONY
23 WRIGHT discussed how DABNEY maintained list of names for defendant
24 ANTHONY WRIGHT to use to acquire fraudulent medical prescriptions.

25 "f) On or about March 28, 2011, in Los Angeles, California, during a
26 telephone conversation, defendant GLENN REYNALDO informed
27 ANTHONY WRIGHT that he would facilitate the delivery of fraudulent
28 medical prescriptions to defendant KIM MARTIN at Dabney Pharmacy."

1 23. On August 12, 2011, a Warrant for the Arrest of Respondent was filed in the United
2 States District Court. On August 16, 2011, Respondent was arrested by the U.S. Marshall.
3 24. On November 1, 2012, in the United States District Court, Southern District of
4 California, Respondent entered a plea of guilty to count 1 of the indictment.
5 25. On November 1, 2012, a Findings and Recommendation of the Magistrate Judge
6 Upon a Plea of Guilty, was signed by Hon. Jan M. Adler, United States Magistrate Judge.
7 26. On November 19, 2012, an Order Accepting Guilty Plea, was signed by Hon.
8 Anthony J. Battaglia, U.S. District Court Judge.
9 27. On September 19, 2013, the United States District Court Judge signed a Joint Motion
10 Continuing the Sentencing of Respondent.

11 SECOND CAUSE FOR DISCIPLINE

12 (Commission of Acts Involving Dishonesty or Corruption)

13 28. By reason of the allegations set forth above, in paragraphs 21 through 27, which are
14 incorporated herein as if fully set forth, Respondent is subject to disciplinary action under section
15 2234, subdivision (e), of the Code in that he has committed acts involving dishonesty or
16 corruption which are substantially related to the qualifications, functions, or duties of a physician
17 and surgeon.

18 THIRD CAUSE FOR DISCIPLINE

19 (Excessive Prescribing)

20 29. By reason of the allegations set forth above, in paragraphs 21 through 27, which are
21 incorporated herein as if fully set forth, Respondent is subject to disciplinary action for excessive
22 prescribing, in violation of section 725 of the Code.

23 FOURTH CAUSE FOR DISCIPLINE

24 (Rebates for Patient Referrals)

25 30. By reason of the allegations set forth above, in paragraphs 21 through 27, which are
26 incorporated herein as if fully set forth, Respondent is subject to disciplinary action for receiving
27 rebates for patient referrals in violation of section 650 of the Code. More specifically,
28 Respondent, in effect, referred patients to the pharmacy, by writing prescriptions which were

1 delivered to the pharmacy, in exchange for cash payments.

2 FIFTH CAUSE FOR DISCIPLINE

3 (Violation of Drug Statutes)

4 31. By reason of the allegations set forth above, in paragraphs 21 through 27, Respondent
5 is subject to disciplinary action for unprofessional conduct under section 2238 of the Code.

6 SIXTH CAUSE FOR DISCIPLINE

7 (General Unprofessional Conduct)

8 32. By reason of the allegations set forth above, in paragraphs 21 through 31, Respondent
9 is subject to disciplinary action for unprofessional conduct under section 2234 of the Code.

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

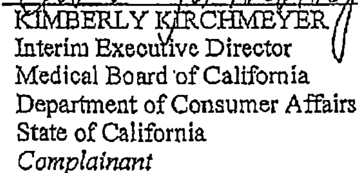
12 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 31509,
13 issued to Tyron C. Reece, M.D.;

14 2. Revoking, suspending or denying approval of Tyron C. Reece, M.D.'s authority to
15 supervise physician assistants, pursuant to section 3527 of the Code;

16 3. Ordering Tyron C. Reece, M.D. to pay the Medical Board of California, if placed on
17 probation, the costs of probation monitoring; and

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

19

20 DATED: November 14, 2013 

21 KIMBERLY KIRCHMEYER
Interim Executive Director
22 Medical Board of California
Department of Consumer Affairs
23 State of California
Complainant

24

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Exhibit B

800-2016-023827

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

In the Matter of the Petition to Revoke Probation Against:	)	
Tyron Cleon Reece, M.D.	)	Case No. 800-2016-023827
Physician's and Surgeon's Certificate No. A 31509	)	
Respondent	)	

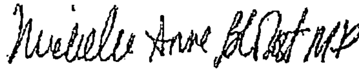
DECISION

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 November 3, 2017.

IT IS SO ORDERED: October 6, 2017.

MEDICAL BOARD OF CALIFORNIA



Michelle Anne Bholat, M.D., Chair
Panel B

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

In the Matter of the Petition to Revoke Probation Against: TYRON CLEON REECE, M.D. Physician's and Surgeon's Certificate No. A31509, Respondent.	Case No. 8002016023827 OAH No. 2017021015

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on July 27, 2017, at Los Angeles, California.

Chris Leong, Deputy Attorney General, appeared and represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

Respondent Tyron Cleon Reece, M.D., appeared and represented himself.

After presenting oral and documentary evidence, the parties submitted the matter for decision on July 27, 2017.

FACTUAL FINDINGS

Jurisdictional Facts

1. Complainant brought the Petition to Revoke Probation (Petition) in her official capacity.

2. Respondent timely submitted a Notice of Defense.

Disciplinary History and Terms of Probation

3. On September 1, 1977, the Board issued Physician's and Surgeon's Certificate number A31509 to respondent. Respondent's certificate is valid and is scheduled to expire on October 31, 2017.

4. On November 14, 2013, complainant brought an Accusation against respondent, pleading causes for discipline based on the conviction of a substantially related crime, the commission of acts involving dishonesty or corruption, the excessive prescription of controlled substances, the receipt of rebates for patient referrals, the violation of drug statutes, and general unprofessional conduct. Specifically, the Accusation alleged that respondent wrote prescriptions for controlled substances for money without seeing patients, and that he was convicted in the United States District Court, Southern District of California, for conspiring to distribute controlled substances in violation of Title 21, United States Code section 841(e).

5. On October 7, 2014, respondent and his attorney executed a Stipulated Settlement and Disciplinary Order (Stipulated Order), prepared by complainant's attorney, whereby respondent admitted the truth of the allegations of the Accusation and waived his right to a hearing on the charges and allegations in the Accusation.

6. Effective December 24, 2014, the Board adopted the Stipulated Order and revoked respondent's Physician's and Surgeon's Certificate by its Decision and Order dated November 24, 2014 (Decision and Order). The revocation was stayed, respondent's license was suspended for 90 days, and respondent was placed on probation for seven years on terms and conditions, including the following pertinent orders:

(A) Condition 3 of the Decision and Order required respondent to submit to the Board for its prior approval educational programs or courses of no less than 40 hours per year for each year of probation. The educational programs or courses were required to be at respondent's expense and were to be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Respondent was required to provide proof of 65 hours of CME attendance, of which 40 hours were to be in satisfaction of Condition 3.

(B) Condition 6 of the Decision and Order required respondent to undergo and complete a psychiatric evaluation by a Board-appointed psychiatrist. Respondent was ordered "[to] pay the cost of all psychiatric evaluations and psychological testing." (Ex. 5.)

(C) Condition 7 of the Decision and Order required respondent to undergo a medical evaluation by a Board-appointed physician. Respondent was ordered "[to] pay the cost of the medical evaluation(s) and treatment." (Ex. 5.)

(D) Condition 8 of the Decision and Order is entitled "MONITORING – PRACTICE/BILLING" and required respondent to participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education program at the University of California, San Diego School of Medicine (PACE), including,

at minimum, quarterly chart review, semiannual practice assessment, and semiannual review of professional growth and education.[1] Respondent was ordered to participate in the professional enhancement program at his own expense during the term of probation.

(E) Condition 9 of the Decision and Order prohibited respondent from prescribing any controlled substances and required respondent to notify all patients of the prohibition. Condition 9 expressly provided, "Respondent shall maintain a log of all patients to whom the required oral notification was made… and keep this log in a separate file or ledger, in chronological order, [and] shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain log for the entire term of probation."

(F) Condition 11 of the Decision and Order prohibited respondent from supervising physician assistants during the term of probation.

(G) Condition 20 of the Decision and Order required respondent to pay the costs associated with probation monitoring each and every year of probation by January 31 of each calendar year.

7. Condition 17 of Decision and Order expressly states: "Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation." (Ex. 5, attachment 2.) Respondent's estimated completion date of probation is December 24, 2021. Therefore, respondent must comply with all financial obligations not later than August 26, 2021.

8. Condition 18 of Decision and Order expressly states: "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." (Ex. 5, attachment 2.)

Compliance with the Terms of Probation

9. On January 20, 2015, respondent completed the psychiatric evaluation required by Condition 6 of the Decision and Order. In a letter dated February 27, 2015, respondent was informed that the evaluator found him safe to practice medicine, subject to a further neuropsychological evaluation, psychotherapy, and treatment with a Board internist or family practitioner. The cost of the evaluation was $2,400.

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[1] The Board has published a Manual of Model Disciplinary Orders and Disciplinary Guidelines, 12th Edition, 2016 (Board Guidelines), which provide model terms for MONITORING – PRACTICE/BILLING. The model terms include lengthy provisions for the designation of a practice monitor. As an alternative, the model terms provide for participation in a professional enhancement program at the election of the licensee. The Decision and Order omits these elective provisions, mandating enrollment in a professional enhancement program, without any explanation for the deviation from the model terms.

10. On February 29, 2015, after completing the medical evaluation required by Condition 7 of the Decision and Order, respondent was notified that the evaluator found him medically safe to practice medicine, subject to designating a primary care physician for periodic monitoring of hypertension, immunizations, cancer screening, and prescribing medication. Respondent designated Dr. Steven Clark as his primary care physician. The cost of the evaluation was $949.

11. On October 27, 2015, after completing the neuropsychological evaluation recommended by the psychiatric evaluator, respondent was informed that the evaluator found him safe to practice medicine, subject to ongoing psychotherapy. The cost of the neuropsychological evaluation was $2,937.50.

12. To comply with Condition 8 of the Decision and Order, respondent timely enrolled in the Physician Enhancement Program (PEP) at PACE. On July 1, 2015, PACE sent respondent an invoice in the amount of $2,125 for the July 2015 quarterly period.

13. By the date of the hearing, respondent was in compliance with all educational course requirements imposed by Condition 3 of the Decision and Order. By recently completing over 40 hours of continuing education courses, respondent now has a total of 191 credits. He otherwise satisfied Condition 4 of the Decision and Order by attending a prescribing practices course on October 26-28, 2015.

14. Respondent has not prescribed controlled substances, in compliance with Condition 9 of the Decision and Order. Respondent informed his probation monitor that "he did not obtain a DEA certificate, and that his office turns away any potential patient inquiring about controlled substances." (Ex 5, attachment K, p. 3.)

15. Respondent has regularly met with his probation monitor as directed. The cost of probation monitoring was $4,106 in 2015 and $3,667 in 2016.

Allegations of Noncompliance with the Terms of Probation

16. The evidence shows that respondent's current financial obligation to the Board is $14,059.50, including reimbursement for the costs of the above-described psychiatric, medical, and neuropsychological evaluations, and for probation monitoring costs. (Factual Findings 9-11 and 15.) Respondent has not yet paid any of these costs.

17. Conditions 6 and 7 of the Decision and Order require respondent to pay the costs of the ordered evaluations, but do not specify when the financial obligations are due and payable. Condition 17 provides that "all financial obligations" must be satisfied on or before August 26, 2021. (Factual Finding 7.) Complainant has failed to establish by a

preponderance of the evidence that respondent's failure to pay these costs by the date of the hearing constitutes a violation of probation.[2]

18. Respondent failed to pay the costs of probation monitoring by January 31 of each calendar year as required by Condition 20 of the Decision and Order. Although Condition 17 specifically refers to probation costs in setting a general deadline for satisfaction of all financial obligations, Condition 20 is more specific. Moreover, on March 29, 2017, respondent executed an agreement to pay the 2016 probation monitoring costs in two quarterly payments on August 1, 2017 and November 1, 2017. (Ex. A.) By stipulating to an extension of the 2016 probation monitoring costs, respondent implicitly conceded that probation costs are due by January 31 of each year. Accordingly, complainant has proven by a preponderance of the evidence that the failure to pay the 2015 probation monitoring costs is a violation of probation.

19. On September 14, 2015, PACE suspended respondent from PEP because he failed to pay the amount due for the July 2015 quarterly period. In November 2016, respondent paid PACE $3,875. He was reinstated by PACE only to be suspended again. The suspensions have caused respondent to violate Condition 8 of the Decision and Order because he has been unable to participate in a professional enhancement program with quarterly chart review, semiannual practice assessment, and semiannual review of professional growth and education.

20. Respondent has inserted the following notice in the file of all of his patients: "ATTENTION ALL PATIENTS: THIS OFFICE DOES NOT PRESCRIBE ANY SCHEDULED MEDICATION. SO PLEASE DO NOT REQUEST FOR THESE KINDS OF MEDICATIONS." (Ex. E.) Respondent explained to the Board, "Any potential patient is informed prior to signing in that we do not prescribe any Scheduled (narcotic) medication. We therefore have no need for log of patients requesting these kinds of medications." (Ex. 5, attachment M.) However, Condition 9 requires notification to "all patients being treated" by respondent, regardless of a patient's demand or need for controlled substances. The implied purpose of the log is to document when and to whom the notification was given, regardless of the administration of controlled substances to the patients who receive the notification. By failing to establish and keep a log with the information described at Condition 9 of the Decision and Order, respondent has violated the terms of probation. (Ex. 5.)

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[2] Complainant has the burden of proving that probation revocation is warranted by a preponderance of the evidence. "While the board is required to prove the allegations in an accusation by clear and convincing evidence, it is only required to prove the allegations in a petition to revoke probation by a preponderance of the evidence." (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441; see also Evid. Code, § 115.)

Respondent's Evidence of Financial Hardship

21. Respondent is a veteran of the Vietnam War, and was recognized for having an "honorable" character of service and released from active duty on September 7, 1969. (Ex. G.) Since then, he has suffered from Post-Traumatic Stress Disorder (PTSD), as documented by the Chief of PTSD Services at the West Los Angeles Veterans Administration Medical Center. In 1991, following the dissolution of a "short and stormy marriage" and the onset of Operation Desert Storm, respondent suffered "a deep, recurring depression which . . . left him unable to work, homeless and mentally shattered." (Ex. G.) By 1993, respondent had reinstated his license and, in 1995, he resumed working as a sole practitioner in South Central Los Angeles. In 2000, a fire in his building destroyed all of his records and equipment. Respondent lost his clientele and struggled to rebuild his practice. He began prescribing excessive medication "because [he] was really struggling to keep . . . afloat." (Ex. G.) He was subsequently arrested, indicted, and convicted of the substantially related crime described at Factual Finding 4.

22. Respondent's daughter entered medical school at the time his license was suspended. In addition, respondent's elderly mother was in declining health during the first two years of respondent's probation, imposing further financial demands on respondent. In February 2017, respondent's mother died. As a result, respondent stands to receive funds from the sale of her house and to gain financial relief from the expenses relating to cross-country travel to oversee her care needs.

23. Respondent is in the process of paying the arrearage on the PACE program. Respondent testified that he anticipates being able to cure all financial obligations to the Board in 60 days.

24. Respondent has experienced financial hardship in paying the costs imposed by the Decision and Order. He currently performs disability evaluations, with gross monthly earnings of approximately $12,000. His office expenses are approximately $5,500 per month. He currently lives in a motel room, costing $400 per week. The bank statement that respondent presented as proof of payment to PACE in November 2016 reflects a closing balance of $626.33. (Ex. D.)

LEGAL CONCLUSIONS

1. The Medical Practice Act governs the rights and responsibilities of the holder of a physician's and surgeon's certificate. (Bus. & Prof. Code, §§ 2000 et seq.) The state's obligation and power to regulate the professional conduct of its health practitioners is well settled. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564; *Fuller v. Board of Medical Examiners* (1936) 14 Cal.App.2d 732.) The purpose of a disciplinary action is not to punish, but to protect the public. (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1416.) Protection of the public is the highest priority for the Board in exercising its

disciplinary authority and is paramount over other interests in conflict with that objective. (Bus. & Prof. Code, § 2001.1.)

2. A licensee who has been found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the cost of probation monitoring, or such other action taken in relation to discipline as the Board or administrative law judge deems proper. (Bus. & Prof. Code, § 2227.)

3. An administrative law judge of the Medical Quality Hearing Panel is mandated, wherever possible, to take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence. (Bus. & Prof. Code, § 2229, subd. (b).)

4. Respondent previously admitted that cause was established to revoke his license, and stipulated to reasonable terms and conditions of probation. The Decision and Order expressly provided that, if respondent violated the conditions of probation, the Board may set aside the stay order and impose the stayed discipline of respondent's license.

5. In spite of the opportunity to retain his license, respondent failed to participate in a professional enhancement program as required by Condition 8 of the Decision and Order, he failed to maintain a log as required by Condition 9 of the Decision and Order, and he failed to pay the 2015 probation monitoring costs as required by Condition 20 of the Decision and Order.

6. Accordingly, cause exists to grant the Petition and revoke probation. However, under the circumstances, it is possible to take action that is calculated to aid in respondent's rehabilitation. Specifically, in light of the change in circumstance resulting from the death of his mother and his efforts to cure the arrearages owed to PACE, allowing respondent additional time to restore his enrollment status at PACE will aid in his rehabilitation. Moreover, the Decision and Order omitted for unstated reasons other acceptable provisions in the Board Guidelines that may have been less financially burdensome. Respondent has credibly demonstrated that his failure to pay the costs of enrollment is based on a bona fide financial hardship, not on an unwillingness to comply with the Decision and Order. Also, respondent's documented medical condition of PTSD warrants reasonable accommodation by the grant of additional time.

7. In spite of having regularly met with his probation monitor, respondent credibly testified that he believed in good faith that a log was not required if he rejected any patient requesting controlled substances. The log is an administrative mechanism to facilitate the Board's oversight and verification that notification was given to patients, but public protection is primarily achieved by the actual notification to patients, which respondent has done. Allowing respondent additional time to establish a notification log will aid in his continuing rehabilitation.

8. Pursuant to the Board Guidelines, the minimum penalty for violations of probation is a 30 day suspension, and the maximum penalty is revocation. Respondent has not engaged in repeated similar offenses and his violations do not reveal a cavalier or recalcitrant attitude. On the contrary, respondent has demonstrated compliance in substantive respects, completing required educational courses and undergoing psychological and medical evaluations to assess his fitness to practice. To revoke respondent's license based on administrative deficiencies and financial obstacles would be unduly punitive under the circumstances. If respondent is able to promptly correct all probation violations and satisfy outstanding financial obligations to the Board, even the minimum penalty may be excessive. Accordingly, respondent's certificate will be suspended for 30 days, unless he demonstrates compliance with Conditions 8 and 9, and pays the Board the sum of $10,392.50,[3] within 60 days of the effective date of this Decision.

9. Although not technically a violation of probation in this case, respondent's financial difficulty in promptly paying or reimbursing the Board is nonetheless cause for concern. Respondent's financial instability in 2006 influenced his active participation in a crime substantially related to his duties and responsibilities as a physician and surgeon. Accordingly, his financial struggles during the first two years of probation give rise to a risk of recurrence. Extending the term of respondent's probation for an additional two years is warranted to enable the Board to oversee respondent's continuing rehabilitation and to protect the public.

10. Except as otherwise ordered by this Decision, the Decision and Order will remain in full force and effect.

ORDER

1. The Petition is granted. Physician's and Surgeon's Certificate number A31509 issued to respondent Tyron Cleon Reece is suspended for 30 days, to commence 60 days after the effective date of this Decision.

2. Alternatively, in lieu of license suspension, respondent may elect to satisfy the following conditions within 60 days of the effective date of this Decision:

(A) Pay the Board the sum of $10,392.50 as reimbursement for the costs of the above-described psychiatric, medical, and neuropsychological evaluations, and in payment of the costs of probation monitoring for 2015;

(B) Provide proof to the Board that respondent is actively enrolled in PEP at PACE as required by Condition 8 of the Decision and Order;

[3] Because respondent and the Board have agreed to payment of the 2016 probation monitoring costs in quarterly installments, the sum of $3,667 is excluded from this amount.

(C) Provide proof to the Board that respondent has established a log containing the data required by Condition 9 of the Decision and Order.

3. The term of probation is extended for two years and is now scheduled to expire on December 24, 2023.

4. Except as otherwise ordered by this Decision, the stay order and all probationary terms and conditions of the Decision and Order shall remain in full force and effect.

DATED: August 22, 2017

DocuSigned by:
Matthew Goldsby

MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Oct 24 20 16
BY D. Richards ANALYST

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7 *Attorneys for Complainant*

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

11 In the Matter of the Petition to Revoke Probation Against: 12 TYRONE CLEON REECE, M.D. 13 1550 N. D Street, Ste. D 14 San Bernardino, California 92405-4720 15 Physician's and Surgeon's Certificate A 31509, 16 Respondent.	Case No. 8002016023827 **PETITION TO REVOKE PROBATION**

17

18 Complainant alleges:

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) brings this Petition to Revoke Probation solely
21 in her official capacity as the Executive Director of the Medical Board of California (Board).

22 2. On September 1, 1977, the Board issued Physician's and Surgeon's Certificate
23 number A 31509 to Tyrone Cleon Reece, M.D. (Respondent). That license was in effect at all
24 times relevant to the charges brought herein and will expire on October 31, 2017, unless renewed.

25 3. On November 24, 2014, in a disciplinary action entitled *In the Matter of Accusation*
26 *Against Tyrone Cleon Reece, M.D.*, Medical Board Case No. 11-2010-211926, the Board issued
27 a Decision effective December 24, 2014, in which Respondent's Physician and Surgeon's
28

Certificate was revoked. However, the revocation was stayed and Respondent's Certificate was placed on probation for a period of seven (7) years with certain terms and conditions. A copy of that Decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Petition to Revoke Probation is brought before the Board under the authority of the following provisions of the California Business and Professions Code (Code) unless otherwise indicated.

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

6. Section 822 of the Code provides:

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

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

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

"(c) Placing the licentiate on probation.

"(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper. The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated."

7. Section 824 of the Code provides:

"The licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections."

///

FIRST CAUSE TO REVOKE PROBATION

(Education Course)

8. Condition 3 of the Board's Decision and Order *In the Matter of Accusation Against Tyron Cleon Reece, M.D.,*" Case No. 11-2010-211926, which became effective on December 24, 2014, states:

> "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."

9. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 3, referenced above, in that he failed to successfully complete the education courses. The facts and circumstances regarding this violation are as follows: he failed to provide sixty-five (65) Continuing Medical Education (CME) hours to the Board by December 24, 2015. He provided forty-six (46) . Also on November 3, 2015, the Board sent Respondent a letter informing him that at that time he needed to provide thirty-eight (38) CME hours to comply with this condition.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Participate in a Professional Enhancement Program).

10. Condition 8 of the Board's Decision and Order *In the Matter of Accusation Against Tyron Cleon Reece, M.D.,*" Case No. 11-2010-211926, which became effective on December 24, 2014, states:

"MONITORING - PRACTICE/BILLING. Within 30 calendar days of the effective date of this Decision, Respondent shall participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, 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."

11. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 8, referenced above, in that he failed to successfully complete the Professional Enhancement Program (PEP). The facts and circumstances regarding this violation are as follows: On September 14, 2015, the Board received an e-mail from N.F.,[1] Director at Physician Assessment and Clinical Education Program (PACE). In this email was an attached letter stating that Respondent had been suspended from participation in the PEP program until payment of $2,125 for the month of July 2015 Quarterly Period was paid in full. As of today, Respondent has failed to provide proof of this payment.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Notify Patients of Prohibited Practice)

12. Condition 9 of the Board's Decision and Order *In the Matter of Accusation Against Tyron Cleon Reece, M.D.*," Case No. 11-2010-211926, which became effective on December 24, 2014, states:

"PROHIBITED PRACTICE. During probation, Respondent is prohibited from prescribing any controlled substances. After the effective date of this Decision, all patients being treated by the Respondent shall be notified that the Respondent is prohibited from prescribing any controlled substances. Any new patients must be provided this notification at the time of their initial appointment.

Respondent shall maintain a log of all patients to whom the required oral notification was

[1] The names are redacted to initials for privacy.

made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation."

13. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 9, referenced above, in that he failed to notify his patients of his practice restrictions. The facts and circumstances regarding this violation are as follows. In Probation Quarterly Report Quarter 2, April 2016 – June 2016, page 3 of 4 states:

"I inquired with [Respondent] pursuant to Condition #9 – Prohibited Practice, that he [was] prohibited from prescribing any controlled substances, and that he [was] required to notify all treating patients that he is prohibited from prescribing any controlled substances, and any new patients must provide this notification at the time of their initial appointment. [Respondent] stated that he did not obtain a DEA certificate, and that his office turns away any potential patient inquiring about controlled substances. Therefore no log is kept. [The Board] requested [that] [Respondent] provide ... something in writing..."

Respondent sent a letter dated April 8, 2016, stating that he has no log because he does not prescribe controlled substances. However, as of today, Respondent has failed to provide proof of this notification to all treating patients, that he is prohibited from prescribing any controlled substances, and any new patients must be provided this notification at the time of their initial appointment.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Pay the Cost of Psychiatric Evaluation)

14. Condition 6 of the Board's Decision and Order *In the Matter of Accusation Against Tyron Cleon Reece, M.D.*," Case No. 11-2010-211926, which became effective on December 24, 2014, states:

1 "PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of this
2 Decision, and on whatever periodic basis thereafter may be required by the Board or its
3 designee, Respondent shall undergo and complete a psychiatric evaluation (and
4 psychological testing, if deemed necessary) by a Board-appointed board certified
5 psychiatrist, who shall consider any information provided by the Board or designee and any
6 other information the psychiatrist deems relevant, and shall furnish a written evaluation
7 report to the Board or its designee. Psychiatric evaluations conducted prior to the effective
8 date of the Decision shall not be accepted towards the fulfillment of this requirement.
9 Respondent shall pay the cost of all psychiatric evaluations and psychological testing.
10 Respondent shall comply with all restrictions or conditions recommended by the evaluating
11 psychiatrist within 15 calendar days after being notified by the Board or its designee."

12 15. Respondent's probation is subject to revocation because he failed to comply with
13 Probation Condition 6, referenced above, in that he failed to pay the cost of the medical
14 evaluation. The facts and circumstances regarding this violation are as follows.

15 A. In Probation Quarterly Report Quarter April 2016 – June 2016 page 3 of 4
16 states: " [Respondent] was also informed of his outstanding cost of the following: ...Medical
17 evaluation $2,400.00." To date, Respondent has not paid this cost for the psychiatric evaluation.

18 B. On November 3, 2015, the Board sent a letter to Respondent that stated as
19 follows:

20 "The Medical Board of California has received the results from the Neuropsychological
21 Evaluation you participated in as required by the Board's Decision. The evaluator has
22 found that you are safe to practice medicine with the following recommendations:...
23 In addition, the Board's decision requires that the cost of this evaluation are to be paid by
24 you. The fee for the Neuropsychological Evaluation is $2,937.50." To date, Respondent
25 has not paid this cost for the neuropsychiatric evaluation.

26 FIFTH CAUSE TO REVOKE PROBATION

27 (Failure to Pay Cost of Medical Evaluation)

28 16. Condition 7 of the Board's Decision and Order *In the Matter of Accusation Against*

Tyron Cleon Reece, M.D.," Case No. 11-2010-211926, which became effective on December 24, 2014, states:

"MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee. Respondent shall provide the evaluating physician any information and documentation that the evaluating physician may deem pertinent.

Following the evaluation, Respondent shall comply with all restrictions or conditions recommended by the evaluating physician within 15 calendar days after being notified by the Board or its designee. If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval the name and qualifications of a California licensed treating physician of Respondent's choice. Upon approval of the treating physician, Respondent shall within 15 calendar days undertake medical treatment and shall continue such treatment until further notice from the Board or its designee.

The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit quarterly reports to the Board or its designee indicating whether or not the Respondent is capable of practicing medicine safely. Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment, the Board or its designee deems necessary.

If, prior to the completion of probation, Respondent is found to be physically incapable of resuming the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is physically capable of resuming the

practice of medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment."

17. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 7, referenced above, in that he failed to pay the cost of the medical evaluation. The facts and circumstances regarding this violation are as follows. In Probation Quarterly Report Quarter April 2016 – June 2016 page 3 of 4 states: " [Respondent] was also informed of his outstanding cost of the following: ...Medical evaluation $949.00." To date, Respondent has not paid this cost for the medical evaluation.

SIXTH CAUSE TO REVOKE PROBATION

(Failure to Pay Probation Monetary Cost)

18. Condition 20 of the Board's Decision and Order *In the Matter of Accusation Against Tyron Cleon Reece, M.D.*," Case No. 11-2010-211926, which became effective on December 24, 2014, states:

"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."

19. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 20, referenced above, in that he failed to pay probation monitoring costs. The facts and circumstances regarding this violation are as follows. In Probation Quarterly Report Quarter April 2016 – June 2016 page 3 of 4 states: " I informed [Respondent] of his 2015 probation monitoring cost of $4,106.00, which were due January 31, 2016..." To date, Respondent has not paid this cost for the probation monitoring.

DISCIPLINE CONSIDERATIONS

20. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that effective on or about December 24, 2014, in a prior disciplinary action entitled *In the Matter of the Accusation Against Tyron Cleon Reece, M.D.* before the Medical

Board of California," in Case No. 11-2010-211926, Respondent's license was revoked, the revocation was stayed and Respondent was place on seven (7) years probation with terms and conditions for conviction of a crime, commission of acts involving dishonesty or corruption, excessive prescribing, rebates for patient referrals, violation of drug statutes, and general unprofessional conduct. That decision is now final and is incorporated by reference as if fully set forth.

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 the probation that was granted by the Medical Board of California in Case No. 11-2010-211926 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. A 31509 issued to Tyron Cleon Reece, M.D.;

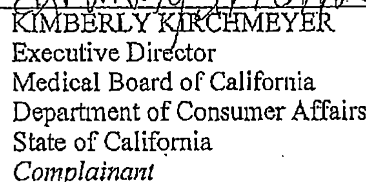
2. Revoking or suspending Physician's and Surgeon's Certificate No. A 31509 issued to Tyron Cleon Reece, M.D.;

3. Revoking, suspending or denying approval of his authority to supervise physician assistants, pursuant to section 3527 of the Code;

4. If placed on probation, ordering him to pay the Medical Board of California the costs of probation monitoring; and

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

DATED: October 24, 2016



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

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EXHIBIT A

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

In the Matter of the Accusation Against: TYRON CLEON REECE, M.D. Physician's and Surgeon's Certificate No. A 31509 Respondent	Case No. 11-2010-211926

DECISION AND ORDER

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 December 24, 2014.

IT IS SO ORDERED: November 24, 2014.

MEDICAL BOARD OF CALIFORNIA

By: Dev Gnanadev MD

Dev Gnanadev, M.D., Chair
Panel B

1 KAMALA D. HARRIS
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8

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

11 In the Matter of the Accusation Against:	Case No. 11-2010-211926
12 **TYRON C. REECE, M.D.** **321 E. Hillcrest Blvd.** 13 **Inglewood, CA 90301**	OAH No. 2014020139
14 **Physician's and Surgeon's Certificate No.** **A 31509**	STIPULATED SETTLEMENT AND DISCIPLINARY ORDER
15 Respondent.	
16	

17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and the responsibility of the Medical Board of California of the Department of Consumer
19 Affairs (Board), the parties hereby agree to the following Stipulated Settlement and Disciplinary
20 Order which will be submitted to the Board for approval and adoption as the final disposition of
21 the Accusation.

22 PARTIES

23 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Board. She
24 brought this action solely in her official capacity and is represented in this matter by Kamala D.
25 Harris, Attorney General of the State of California, by Chris Leong, Deputy Attorney General.
26 2. Respondent TYRON C. REECE, M.D. ("Respondent") is represented in this
27 proceeding by attorney Duane R. Folke, Esq., whose address is: 3450 Wilshire Boulevard, Suite
28 108-17, Los Angeles, CA 90010-2208.

1 3. On or about September 1, 1977, the Board issued Physician's and Surgeon's
2 Certificate No. A 31509 to Respondent. The Physician's and Surgeon's Certificate was in full
3 force and effect at all times relevant to the charges brought in Accusation No. 11-2010-211926
4 and will expire on October 31, 2015, unless renewed.

5 JURISDICTION

6 4. Accusation No. 11-2010-211926 was filed before the Board and is currently pending
7 against Respondent. The Accusation and all other statutorily required documents were properly
8 served on Respondent on November 14, 2013. Respondent timely filed his Notice of Defense
9 contesting the Accusation.

10 5. A copy of Accusation No. 11-2010-211926 is attached as Exhibit A and is
11 incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 6. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 11-2010-211926. Respondent has also carefully read,
15 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
16 Disciplinary Order.

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

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

26 CULPABILITY

27 9. Respondent admits the truth of each and every charge and allegation in the First
28 Cause for Discipline in Accusation No. 11-2010-211926.

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

4 11. Respondent agrees that if he ever petitions for early termination of probation or
5 modification of probation, or if the board ever petitions for revocation of probation, all of the
6 charges and allegations contained in Accusation No. 11-2010-211926 shall be deemed true,
7 correct and fully admitted by Respondent for purposes of that proceeding or any other licensing
8 proceeding involving Respondent in the State of California.

9 CONTINGENCY

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

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

23 14. In consideration of the foregoing admissions and stipulations, the parties agree that
24 the Board may, without further notice or formal proceeding, issue and enter the following
25 Disciplinary Order:

26 DISCIPLINARY ORDER

27 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 31509 issued
28 to Respondent TYRON C. REECE, M.D. (Respondent) is revoked. However, the revocation is

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

1. ACTUAL SUSPENSION. As part of probation, Respondent is suspended from the practice of medicine for ninety (90 days) beginning the sixteenth (16th) day after the effective date of this decision.

2. COMMUNITY SERVICE - FREE SERVICES. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval a community service plan in which Respondent shall within the first 2 years of probation, provide 100 hours of free services (e.g., medical or nonmedical) to a community or non-profit organization. If the term of probation is designated for 2 years or less, the community service hours must be completed not later than 6 months prior to the completion of probation.

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

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

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. <u>PRESCRIBING PRACTICES COURSE</u>. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (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. <u>PROFESSIONALISM PROGRAM (ETHICS COURSE)</u>. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. 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 (6) 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 (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in

addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

7. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee. Respondent shall provide the evaluating physician any information and documentation that the evaluating physician may deem pertinent.

Following the evaluation, Respondent shall comply with all restrictions or conditions

recommended by the evaluating physician within 15 calendar days after being notified by the Board or its designee. If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval the name and qualifications of a California licensed treating physician of Respondent's choice. Upon approval of the treating physician, Respondent shall within 15 calendar days undertake medical treatment and shall continue such treatment until further notice from the Board or its designee.

The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit quarterly reports to the Board or its designee indicating whether or not the Respondent is capable of practicing medicine safely. Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment, the Board or its designee deems necessary.

If, prior to the completion of probation, Respondent is found to be physically incapable of resuming the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is physically capable of resuming the practice of medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

8. MONITORING - PRACTICE/BILLING. Within 30 calendar days of the effective date of this Decision, Respondent shall participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, 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.

9. PROHIBITED PRACTICE. During probation, Respondent is prohibited from prescribing any controlled substances. After the effective date of this Decision, all patients being treated by the Respondent shall be notified that the Respondent is prohibited from prescribing any

controlled substances. Any new patients must be provided this notification at the time of their initial appointment.

Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

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

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

11. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is prohibited from supervising physician assistants.

12. 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.

13. 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.

14. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

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

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(b).

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

15. 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.

16. 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 in California 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. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. 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 a clinical training 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 (2) years.

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

Periods of non-practice 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; and General Probation Requirements.

17. 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.

18. 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

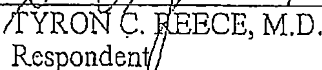
continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

19. 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 or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

20. 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.

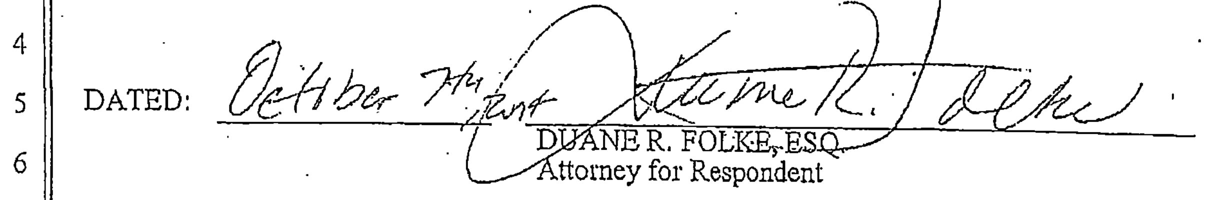
ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Duane R. Folke, Esq. 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: 

TYRON C. REECE, M.D.
Respondent

1 I have read and fully discussed with Respondent TYRON C. REECE, M.D. the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.
4
5 DATED: October 7th 2014



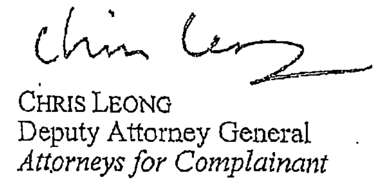
DUANE R. FOLKE, ESQ.
6 Attorney for Respondent

7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Medical Board of California.
10
11 Dated: October 7, 2014

Respectfully submitted,

12 KAMALA D. HARRIS
Attorney General of California
13 E. A. JONES III
Supervising Deputy Attorney General
14



15 CHRIS LEONG
16 Deputy Attorney General
Attorneys for Complainant
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Exhibit A

Accusation No. 11-2010-211926

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO November 14, 2013
BY [illegible] ANALYST

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

In the Matter of the Accusation Against:	Case No. 11-2010-211926
TYRON C. REECE, M.D. 321 E. Hillcrest Blvd., Inglewood, California 90301	ACCUSATION
Physician's and Surgeon's Certificate No. A 31509	
Respondent.	

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Director of the Medical Board of California (Board).

2. On or about September 1, 1977, the Board issued Physician's and Surgeon's Certificate Number A 31509 to TYRON C. REECE, 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, 2015, 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 2234 of the Code, states:

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

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

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

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

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview scheduled by the mutual agreement of the certificate holder and the

board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

5. 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 or her license revoked upon order of the board.

"(2) Have his or her 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 com-plete 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."

6. Section 2236 of the Code states:

A(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

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

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

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

7. Section 2238 of the Code states:

AA violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.@

8. Section 725 of the Code states:

"(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

"(b) Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of

not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

"(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

"(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5."

9. Section 650 of the Code states:

"(a) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division or the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful.

"(b) The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer.

" (c) The offer, delivery, receipt, or acceptance of any consideration between a federally qualified health center, as defined in Section 1396d(l)(2)(B) of Title 42 of the United States Code, and any individual or entity providing goods, items, services, donations, loans, or a combination thereof to the health center entity pursuant to a contract, lease, grant, loan, or other agreement, if that agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population

1 served by the health center, shall be permitted only to the extent sanctioned or permitted by
2 federal law.

3 "(d) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of
4 the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful
5 for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic
6 (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety
7 Code), or health care facility solely because the licensee has a proprietary interest or coownership
8 in the laboratory, pharmacy, clinic, or health care facility, provided, however, that the licensee's
9 return on investment for that proprietary interest or coownership shall be based upon the amount
10 of the capital investment or proportional ownership of the licensee which ownership interest is not
11 based on the number or value of any patients referred. Any referral excepted under this section
12 shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

13 "(e) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of
14 the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful
15 to provide nonmonetary remuneration, in the form of hardware, software, or information
16 technology and training services, as described in subsections (x) and (y) of Section 1001.952 of
17 Title 42 of the Code of Federal Regulations, as amended October 4, 2007, as published in the
18 Federal Register (72 Fed. Reg. 56632 and 56644), and subsequently amended versions.

19 "(f) "Health care facility" means a general acute care hospital, acute psychiatric hospital,
20 skilled nursing facility, intermediate care facility, and any other health facility licensed by the
21 State Department of Public Health under Chapter 2 (commencing with Section 1250) of Division
22 2 of the Health and Safety Code.

23 " (g) A violation of this section is a public offense and is punishable upon a first conviction
24 by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to
25 subdivision (h) of Section 1170 of the Penal Code, or by a fine not exceeding fifty thousand
26 dollars ($50,000), or by both that imprisonment and fine. A second or subsequent conviction is
27 punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by
28 that imprisonment and a fine of fifty thousand dollars ($50,000)."

INTRODUCTION

10. This Accusation involves prescriptions for medications regulated by the Comprehensive Drug Abuse Prevention and Control Act, passed into law in 1970. Title II of this law, the Controlled Substances Act, is the legal foundation of narcotics enforcement in the United States. The Controlled Substances Act regulates the manufacture, possession, movement, and distribution of drugs in our country. The Controlled Substances Act places all drugs into one of five schedules, or classifications, and is controlled by the Department of Justice and the Department of Health and Human Services, including the Federal Drug Administration. In 1972, California followed the federal lead by adopting the Uniform Controlled Substance Act. (Government Code §11153 et seq.).

11. The following delineates the five schedules with examples of drugs, medications, and information about each.

12. Schedule I Drugs

These drugs have NO safe, accepted medical use in the United States. This schedule includes drugs such as heroin, ecstasy, LSD, and crack cocaine. Schedule I drugs have a high tendency for abuse and have no accepted medical use. Pharmacies do not sell Schedule I drugs, and they are not available with a prescription by physician.

13. Schedule II Drugs

Schedule II drugs have a high tendency for abuse, may have an accepted medical use, and can produce dependency or addiction with chronic use. Of all legal prescription medications, Schedule II controlled substances have the highest abuse potential. These drugs can cause severe psychological or physical dependence.. Schedule II drugs include certain narcotic, stimulant, and depressant drugs. Examples of Schedule II drugs include cocaine, opium, morphine, fentanyl, amphetamines, and methamphetamines.

Schedule II drugs may be available with a prescription by a physician, but not all pharmacies may carry them. These drugs require more stringent records and storage procedures than drugs in Schedules III and IV.

14. Schedule III Drugs

Schedule III drugs have less potential for abuse or addiction than drugs in the first two schedules and have a currently accepted medical use. The abuse of Schedule III drugs may lead to moderate to high psychological dependence.

Examples of Schedule III drugs include codeine, hydrocodone with acetaminophen, or anabolic steroids. Schedule III drugs may be available with a prescription, but not all pharmacies may carry them.

15. Schedule IV Drugs

Schedule IV drugs have a low potential for abuse that leads only to limited physical dependence or psychological dependence relative to drugs in Schedule III. Schedule IV drugs have a currently accepted medical use and have limited addictive properties. Schedule IV drugs have the same restrictions as Schedule III drugs.

Examples of Schedule IV drugs include xanax, valium, phenobarbital, and rohypnol (commonly known as the "date rape" drug). These drugs may be available with a prescription, but not all pharmacies may carry them.

16. Schedule V Drugs

Schedule V drugs have a lower chance of abuse than Schedule IV drugs, have a currently accepted medical use in the United States, and lesser chance of dependence compared to Schedule IV drugs. This schedule includes such drugs as cough suppressants with codeine.

CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

17. Xanax is a dangerous drug pursuant to Code section 4022. It is a Schedule IV Controlled Substance as designated by Health and Safety Code section 11057, subdivision (d)(1). Its generic name is Alprazolam and is used to relieve anxiety.

18. Hydrocodone (as designated by Health and Safety Code section 11056, subdivision (e)(4))/APAP is an analgesic combination of a narcotic, Hydrocodone, and Acetaminophen. Acetaminophen, often abbreviated as APAP, is a peripherally acting analgesic agent found in many combination products and also available by itself. This combination product is used to treat moderate to moderately severe pain. In the U.S., formulations containing more

than 15 mg hydrocodone per dosage unit are considered Schedule II drugs. Those containing less than or equal to 15 mg per dosage unit in combination with acetaminophen or another non-controlled drug are called hydrocodone compounds and are considered Schedule III drugs. Hydrocodone (as designated by Health and Safety Code section 11055, subdivision (b)(1))(I)) is not available in pure form in the United States due to a separate regulation. Hydrocodone is always sold combined with another drug. Hydrocodone is a dangerous drug within the meaning of code section 4022.

19. Promethazine with codeine is a dangerous drug pursuant to section 4022 of the Code. It is a Schedule IV controlled substance, as designated by Health and Safety Code section 11057, subdivision (f)(4).

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crimes)

20. Respondent is subject to disciplinary action under section 2236 of the Code in that he has been convicted of crimes which are substantially related to the qualifications, functions, or duties of a physician and surgeon. The circumstances are as follows:

21. Since in or around 2006, Respondent has been writing prescriptions for controlled substances for money without seeing the patient. At various times, Respondent would receive a list containing, among other information, names of patients from about five individuals. Respondent would write prescriptions for controlled substances for the named patients. The prescriptions were taken to a pharmacy where they were filled for individuals, other than the named patients. Respondent received approximately $60.00 for each prescription as more specifically set forth in paragraph 22 below.

22. On August 12, 2011, in the United States District Court, Southern District of California, Respondent was charged in count 1 of an indictment in a case entitled *United States vs. Tyron Reece, et al.*, case number 11CR3588-AJB, with conspiracy to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1). The indictment plead in part as follows:

"CONSPIRACY TO DISTRIBUTE CONTROLLED SUBSTANCES

"2. Beginning on a date unknown to the grand jury and continuing up to and including August 10, 2011, within the Southern District of California, and elsewhere, defendants ANTHONY WRIGHT, aka "Sam," CHARLES DABNEY, TYRON REESE, MOSES BLACKMON, KIM MARTIN, and GLENN REYNALDO, did knowingly and intentionally conspire and agree with Milton Farmer, charged elsewhere, and each other and with others known and unknown to the grand jury, to distribute controlled substances all in violation of Title 21, United States Code, Section 841(a)(1).

"MANNER AND MEANS

"ROLES OF THE DEFENDANTS

"3. Defendant ANTHONY WRIGHT paid defendants MOSES BLACKMON and GLENN REYNALDO cash for fraudulent medical prescriptions issued by TYRON REECE which were used to illegally acquire Scheduled pharmaceutical drugs from co-conspirators working at Dabney Pharmacy.

"4. Defendant CHARLES DABNEY, who was the manager of Dabney Pharmacy since 1989, in exchange for cash, processed and filled defendant ANTHONY WRIGHT's fraudulent medical prescriptions at the rate of approximately 90 prescriptions a week.

"5. Defendant TYRON REECE, a medical doctor licensed to practice medicine in California, sold fraudulent medical prescriptions for 100 tablets of hydrocodone (Schedule III), 100 tablets alprazolam (Schedule IV) and 1 pint of promethazine with codeine (Schedule V) to defendants MOSES BLACKMON and GLENN REYNALDO in exchange for $60.00 cash on multiple occasions.

"6. Defendant KIM MARTIN, a receptionist/clerk at Dabney Pharmacy, received and processed defendant ANTHONY WRIGHT's fraudulent prescriptions in exchange for cash payments from defendant ANTHONY WRIGHT.

1 "OVERT ACTS

2 "7. In furtherance of said conspiracy, and to effect the objects thereof, the following
3 overt acts, among others, were committed within the Southern District of California,
4 and elsewhere:

5 "a) On or about March 21, 2010, in Los Angeles, California, during a
6 telephone conversation, defendant KIM MARTIN informed defendant
7 ANTHONY WRIGHT that she had given fraudulent medical prescriptions to
8 defendant CHARLES DABNEY for processing.

9 "b) "On about August 12, 2010, in Los Angeles, California, defendant
10 TYRON REECE issued medical prescriptions to an individual for 100 tablets
11 of hydrocodone (Schedule III), 100 tablets alprazolam (Schedule IV) and 1 pint
12 of promethazine with codeine (Schedule V), without conducting a medical
13 examination.

14 "c) On or about August 25, 2010, in San Diego, California, during a
15 telephone conversation, defendant ANTHONY WRIGHT offered to sell
16 tablets of oxycodone to a confidential source for $25.00 a tablet.

17 "d) On or about November 29, 2010, in Los Angeles, California, during a
18 telephone conversation, defendant MOSES BLACKMON informed defendant
19 ANTHONY WRIGHT that she had fifteen prescriptions available for
20 immediate delivery to ANTHONY WRIGHT.

21 "e) On or about March 14, 2011, in Los Angeles, California, during a
22 telephone conversation, defendants CHARLES DABNEY and ANTHONY
23 WRIGHT discussed how DABNEY maintained list of names for defendant
24 ANTHONY WRIGHT to use to acquire fraudulent medical prescriptions.

25 "f) On or about March 28, 2011, in Los Angeles, California, during a
26 telephone conversation, defendant GLENN REYNALDO informed
27 ANTHONY WRIGHT that he would facilitate the delivery of fraudulent
28 medical prescriptions to defendant KIM MARTIN at Dabney Pharmacy."

1 23. On August 12, 2011, a Warrant for the Arrest of Respondent was filed in the United
2 States District Court. On August 16, 2011, Respondent was arrested by the U.S. Marshall.
3 24. On November 1, 2012, in the United States District Court, Southern District of
4 California, Respondent entered a plea of guilty to count 1 of the indictment.
5 25. On November 1, 2012, a Findings and Recommendation of the Magistrate Judge
6 Upon a Plea of Guilty, was signed by Hon. Jan M. Adler, United States Magistrate Judge.
7 26. On November 19, 2012, an Order Accepting Guilty Plea, was signed by Hon.
8 Anthony J. Battaglia, U.S. District Court Judge.
9 27. On September 19, 2013, the United States District Court Judge signed a Joint Motion
10 Continuing the Sentencing of Respondent.

11 SECOND CAUSE FOR DISCIPLINE

12 (Commission of Acts Involving Dishonesty or Corruption)

13 28. By reason of the allegations set forth above, in paragraphs 21 through 27, which are
14 incorporated herein as if fully set forth, Respondent is subject to disciplinary action under section
15 2234, subdivision (e), of the Code in that he has committed acts involving dishonesty or
16 corruption which are substantially related to the qualifications, functions, or duties of a physician
17 and surgeon.

18 THIRD CAUSE FOR DISCIPLINE

19 (Excessive Prescribing)

20 29. By reason of the allegations set forth above, in paragraphs 21 through 27, which are
21 incorporated herein as if fully set forth, Respondent is subject to disciplinary action for excessive
22 prescribing, in violation of section 725 of the Code.

23 FOURTH CAUSE FOR DISCIPLINE

24 (Rebates for Patient Referrals)

25 30. By reason of the allegations set forth above, in paragraphs 21 through 27, which are
26 incorporated herein as if fully set forth, Respondent is subject to disciplinary action for receiving
27 rebates for patient referrals in violation of section 650 of the Code. More specifically,
28 Respondent, in effect, referred patients to the pharmacy, by writing prescriptions which were

delivered to the pharmacy, in exchange for cash payments.

FIFTH CAUSE FOR DISCIPLINE

(Violation of Drug Statutes)

31. By reason of the allegations set forth above, in paragraphs 21 through 27, Respondent is subject to disciplinary action for unprofessional conduct under section 2238 of the Code.

SIXTH CAUSE FOR DISCIPLINE

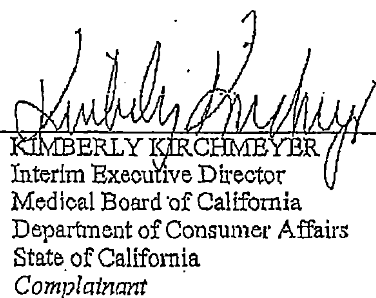
(General Unprofessional Conduct)

32. By reason of the allegations set forth above, in paragraphs 21 through 31, Respondent is subject to disciplinary action for unprofessional conduct under section 2234 of the Code.

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 A 31509, issued to Tyron C. Reece, M.D.;
2. Revoking, suspending or denying approval of Tyron C. Reece, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering Tyron C. Reece, M.D. to pay the Medical Board of California, if placed on probation, the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: November 14, 2013



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

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