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

In the Matter of the First Amended Accusation

Against: WASHINGTON G.B. BRYAN, II, M.D.

Physician's and Surgeon's Certificate No. A 61799

Respondent.

Agency Case No. 19-2012-225266

OAH No. 2019100492

DECISION AFTER NON-ADOPTION

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

Claudia Morehead, Deputy Attorney General (DAG), represented Complainant William Prasifka, Executive Director, Medical Board of California (Board), Department of Consumer Affairs (Department).

Peter R. Osinoff, Esq., Bonne, Bridges, Mueller, O'Keefe & Nichols, represented Respondent Washington G.B. Bryan, II, M.D. (Respondent).

The parties presented witness testimony and documentary evidence. In a post-hearing order dated December 23, 2021, the administrative law judge also admitted excerpts of a video interview of Respondent that the parties designated during and after the hearing. On January 12, 2022, the administrative law judge reopened the

record for briefing on three legal issues. The parties' briefs were marked for identification as exhibits 53 (Complainant's brief), FF (Respondent's brief), and 54 (Complainant's reply brief).

The record was closed, and the matter was submitted for decision on February 7, 2022. A proposed decision was issued on March 10, 2022. On June 1, 2022, Panel A of the Board issued an Order of Non-Adoption of Proposed Decision. Oral argument on the matter was heard by Panel A via WebEx on August 24, 2022, with ALJ Coren Wong presiding. DAG Claudia Morehead appeared on behalf of the Complainant. Respondent was present and represented himself. Panel A, having read and considered the entire record, including the transcript and the exhibits, and having considered the written and oral argument, hereby enters this Decision After Non-Adoption.

SUMMARY

Complainant requests that the Board revoke Respondent's physician's and surgeon's certificate due to his felony criminal conviction in 2016 for the crime of structuring about $478,000 in bank deposits from October 2011 to January 2013. A person "structures" a financial transaction if that person, acting alone or with others, conducts one or more currency transactions at one or more domestic financial institutions for the purpose of evading an institution's requirement to report currency transactions of over $10,000 to federal regulators. (31 U.S.C. § 5324(a)(3).) Respondent was sentenced to 33 months in prison and three years of supervised release on the criminal conviction. His physician's and surgeon's certificate was automatically suspended while he was imprisoned, but the suspension was dissolved upon his release in 2019, and he has resumed practicing medicine.

Complainant argues Respondent's criminal conviction is grounds for disciplinary action because it is substantially related to the qualifications, functions, or duties of a physician and surgeon. According to Complainant, Respondent's criminal conduct involved large sums of cash from Respondent's pain management clinic, and Respondent allegedly structured the cash deposits to conceal his operation of a "pill mill" in which he wrote excessive prescriptions to patients for opioids and other drugs.

Further, Respondent was already on probation with the Board for alleged excessive prescribing and other unprofessional conduct when he structured the deposits. Complainant argues Respondent's structuring was a dishonest and corrupt course of conduct substantially related to his medical practice.

Respondent denies he ran a pill mill and argues that his criminal conviction is not grounds for disciplinary action because it is not substantially related to the qualifications, functions, or duties of a physician and surgeon. According to Respondent, the crime of structuring is merely a regulatory offense, and he did not even know it was a crime until after he was arrested in 2016. Respondent states that he acted appropriately in prescribing opiates and other drugs to patients of his pain clinic, and most of the cash was not from that clinic. Even if the crime was substantially related to his qualifications, functions, or duties, Respondent asserts that no discipline is warranted because he is rehabilitated and has already served a lengthy license suspension while he was incarcerated. Respondent also argues Complainant's charge of dishonest and corrupt acts is barred by the statute of limitations.

Considering the circumstances of Respondent's crime, the criminal conviction is substantially related to the qualifications, functions, and duties of a physician and surgeon. Respondent's criminal conduct involved large amounts of cash from Respondent's pain management practice, and he committed that conduct while he was on already on probation with the Board. While Complainant did not prove the allegation that Respondent was running a pill mill by clear and convincing evidence, Respondent's crime nonetheless arose from his medical practice. The evidence proves Respondent structured the deposits to avoid raising suspicions about his medical practice and why it generated so much cash, which is a "red flag" of possible fraud, waste, and abuse. This dishonest course of conduct and the resulting criminal conviction are grounds for disciplinary action. Moreover, Respondent engaged in this criminal contact while on probation with the Board.

Complainant argues that outright revocation is the only appropriate disciplinary action given the nature, gravity, and circumstances of Respondent's crime. The

Board agrees. Consequently, Respondent's license is revoked.

FACTUAL FINDINGS

Background

1. On March 14, 1997, the Board issued Respondent physician's and surgeon's certificate number A 61799. The certificate is renewed and current with an expiration date of March 31, 2023.

2. Respondent received his bachelor's degree in 1990 from Dillard University in Louisiana and his medical degree in 1994 from Louisiana State University. He completed an anesthesiology residency in 2000 at the Charles Drew/Martin Luther King Medical Center in Los Angeles, California. He also completed a pain management fellowship in 2001 at the University of California, Irvine.

3. From 2001 until early 2017, Respondent was in solo private practice as a pain management and palliative care physician in Los Angeles, California. Respondent also practiced obesity medicine and acupuncture during some of that time. He was board certified in anesthesiology, pain management, and addiction medicine, and he also had additional certifications in obesity medicine, integrative and holistic medicine, and HIV medicine.

4. From early 2011 until early 2014, Respondent was on probation with the Board due to a prior disciplinary action against him. In a decision effective February 4, 2011, the Board adopted a stipulated settlement and disciplinary order that revoked Respondent's physician's and surgeon's certificate, stayed the revocation, and placed Respondent on three years' probation on certain terms and conditions, including taking courses in prescribing practices, medical record-keeping, and ethics; maintaining a practice and billing monitor or participating in a professional enhancement program; and complying with standard terms and conditions. (*In the Matter of the Second Amended Accusation Against Washington Bryan, M.D.*, Case No. 17-2005-165967.)

5. The Board's disciplinary decision resolved an accusation that included charges of gross negligence, repeated negligent acts, excessive prescribing, violation of drug laws, unprofessional conduct, dishonest or corrupt acts, failure to maintain medical records, and failure to maintain adequate and accurate medical records. The charges arose from Respondent's care for nine patients in his pain management practice, eight of whom Respondent saw over the course of one to two years from about 2004 through 2006. Respondent also allegedly created false medical records indicating patient treatment and prescriptions during a period when a patient was incarcerated and thus not seen by Respondent. For purposes of settlement, Respondent did not contest that the Board could establish a prima facie case for the charges and allegations.

6. In an earlier decision effective October 29, 2007, the Board also ordered Respondent to pay a $25,000 monetary penalty to the Board under Business and Professions Code section 2225.5, subdivision (a), for failing to produce medical records of five patients to a Board investigator despite Respondent's receipt of signed authorizations for release of the records. (*In the Matter of the Notification of Violation and Imposition of Civil Penalty Against Washington Bryan II, M.D.*, Case No. 17-2007- 181786.) Respondent stipulated to payment of the monetary penalty without admitting the violations. The monetary penalty is not considered a disciplinary action of the Board.

Investigation and Criminal Conviction

7. In July 2012, the Board's Enforcement Program received a request from the federal Drug Enforcement Agency (DEA) Tactical Diversion Squad for assistance in investigating Respondent's alleged involvement in an illegal prescribing scheme concerning Medicare patients. Respondent had been on probation with the Board for about 18 months at the time. The Enforcement Program agreed to assist federal investigators and initiated a new investigative case internally, identifying the possible state law violations as illegal kickbacks/referrals (Bus. & Prof. Code, § 650 [undesignated statutory references are to this code]), illegal prescribing (§ 725), and dishonesty (§ 2234).

8. The federal investigation continued until 2016 and eventually included scrutiny of Respondent's finances and bank deposits. In February 2014, Respondent completed his three-year term of probation with the Board, and the Board fully restored his physician's and surgeon's certificate to renewed and current status. The Board did not initiate new disciplinary charges against Respondent during the federal investigation.

9. On May 6, 2016, a federal grand jury indicted Respondent on 29 felony counts of structuring currency transactions between October 17, 2011, and January 16, 2013, in violation of United States Code, Title 31, section 5324(a)(3). (*United States of America v. Washington Bryan II,* United States District Court, Central District of California, Case No. 2:16-cr-00320-RGK.) The grand jury charged Respondent with structuring a total of about $478,000 in cash deposits to four separate bank accounts in amounts that were just below the $10,000 threshold that would have required the banks to report the deposits to federal regulators. The indictment did not include charges of illegal prescribing to Medicare patients, which was the original focus of the federal investigation.

10. On November 17, 2016, a jury convicted Respondent of all 29 counts of the indictment. On March 8, 2017, the court sentenced Respondent to 33 months in prison plus three years of supervised release. The court also ordered Respondent to pay a fine of $7,500 and a special assessment of $2,900.

11. Respondent began his prison term immediately after the court sentenced him. He appealed the judgment of conviction, but the Ninth Circuit Court of Appeals affirmed it on April 17, 2018. After serving about 28 months of his 33-month prison sentence, Respondent was released on July 19, 2019, and placed on supervised release until July 2022. While on supervised release, Respondent was required to refrain from the unlawful use of controlled substances; submit to periodic drug tests not to exceed eight tests per month; truthfully and timely file and pay all taxes owed; and cooperate in the collection of a DNA sample.

Procedural History

12. On November 18, 2016, the Office of the Attorney General notified the Board of Respondent's federal indictment and criminal conviction. The Board's Enforcement Program initiated a new investigative case and consolidated it with the Board's investigative case from July 2012. On December 20, 2016, Kimberly Kirchmeyer, Complainant's predecessor as Executive Director of the Board, petitioned ex parte for an order of interim suspension of Respondent's physician's and surgeon's certificate. An ALJ denied ex parte relief and set the petition for a noticed hearing. Respondent opposed the petition for interim suspension, and the same ALJ denied it on March 6, 2017.

13. On March 3, 2017, Kirchmeyer filed an Accusation in her official capacity charging Respondent with (1) sustaining a felony conviction that is substantially related to the qualifications, functions, or duties of a physician and surgeon; (2) excessive prescribing; (3) committing acts involving dishonesty and corruption that are substantially related to the qualifications, functions, or duties of a physician and surgeon; (4) failing to report to the Board the felony criminal indictment issued against him; and (5) engaging in general unprofessional conduct by virtue of the foregoing acts or omissions. Respondent filed a Notice of Defense dated March 24, 2017.

14. On April 13, 2017, the Board notified Respondent that his physician's and surgeon's certificate was automatically suspended by operation of law due to his incarceration after conviction of a felony. (§ 2236.1, subd. (a) ["A physician and surgeon's certificate shall be suspended automatically during any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed.....]") The suspension remained in effect until September 4, 2019, when the Board dissolved it due to Respondent's release from federal custody.

15. On October 14, 2021, Respondent moved to dismiss the excessive prescribing cause for discipline and to strike all factual allegations of excessive prescribing from the Accusation. In response to the motion, Complainant filed a First Amended Accusation that deleted the excessive prescribing cause for discipline but

retained the factual allegations of excessive prescribing. The administrative law judge denied the motion to strike the factual allegations, ruling that evidence concerning the allegations was relevant to whether the criminal conviction was substantially related to the qualifications, functions, or duties of a physician and surgeon.

Hearing

COMPLAINANT'S CASE

16. Complainant presented evidence of Respondent's criminal conviction and called six witnesses, three of whom also testified at Respondent's criminal trial.

Michele Thatcher

17. Michelle Thatcher is a pharmacist licensed in Michigan (active) and Iowa (inactive). She works for Qlarent (formerly Health Integrity, LLC), a private contractor for the Center for Medicare and Medicaid Services (CMS). Before 2018, Thatcher worked in investigations and audits to detect fraud, waste, and abuse by physicians and others with respect to Medicare and Medicaid Programs. Since 2018, she has worked in Qlarant's Plan Program Integrity unit in a non-investigative role. Thatcher testified as an expert witness at Respondent's criminal trial.

18. Testifying in this case, Thatcher explained she reviewed Medicare data from CMS's Integrated Data Repository (IDR) in response to allegations that Respondent was overprescribing pain medications to patients. Based on available data from October 2011 through January 2013, Thatcher opined that there were multiple "red flags" suggestive of fraud, waste, and abuse in Respondent's prescribing during that period. The red flags included a pattern of prescribing opioids in typically the highest available dose, the highest available strength, and in the exact same regimen for most patients. The volume of HIV medications that Respondent prescribed was also not consistent with normal practice patterns of a provider in a pain management setting. Furthermore, a query of Prescription Drug Event records related to Respondent between October 2011 and January 2013 revealed that he wrote almost 10,000 prescriptions that were filled by pharmacies and paid for by

Medicare Part D (which covers prescription drugs), while a query for data involving Medicare Part B (which covers outpatient services, supplies, and durable medical equipment) revealed no claims for services existed during the same period.

19. Thatcher opined it is unusual for pain medicine physicians to have no Medicare Part B claims on file for services provided in connection with the prescribing of pain medications that were paid for under Medicare Part D. This is because pain medicine patients are typically followed frequently to make sure that their pain is being assessed and that their therapies are tolerated. One would expect beneficiaries to use Medicare Part B to pay for frequent medical services because they would not have to pay out of pocket for the services. In addition, 95 percent of the patients who received the prescriptions from Respondent received a low-income subsidy from Medicare that helped them pay for their prescriptions. It would be odd for low-income patients to pay cash to Respondent for medical services that Medicare Part B would cover. The data suggested Respondent's patients were either paying cash for medical services or not receiving medical services from Respondent at all in connection with the prescriptions. Furthermore, the DEA has identified cash-only physician practice as a potential red flag for a fraud scheme involving a pill mill, and low-income patients are a common target in that type of scheme.

20. Thatcher also testified that while the data patterns and trends were suggestive of pill mill activity, the data alone cannot prove Respondent was operating a pill mill. Thatcher did not review any medical records of patients of Respondent. Typically, there are very few medical records in a pill mill scheme.

Bryan Glover

21. Bryan Glover is a Supervising Special Agent for the Internal Revenue Service. He has worked as a supervisor since September 2020, and he worked as a Special Agent for the Internal Revenue Service before that. Respondent was one of Glover's investigative subjects from 2012 through 2016. Glover was a witness at Respondent's criminal trial.

22. Glover testified his investigation revealed Respondent deposited about $1.2 million in cash in multiple bank accounts between October 2011 and January 2013. None of the individual deposits was over $10,000, so none of them triggered a currency transaction report from the banks. Some of the deposits were within minutes of each other at different banks.

23. Glover interviewed Respondent after Respondent's arrest in 2016, and Respondent stated he did not handle large sums of cash in his business. When asked later in the interview about particular cash deposits, Respondent stated he was unsure where the cash came from. At another point in the interview, Respondent told Glover the funds came from Respondent's medical practice and from rental income. Complainant presented video excerpts of the interview in support of Glover's testimony.

Vanessa Salvacion

24. Vanessa Salvacion has been licensed as a nurse since 2018. She is Respondent's niece and worked in Respondent's pain management clinic as an office assistant and vocational nurse between 2011 and 2016. She became a licensed vocational nurse in 2011 after starting work there. Salvacion was a witness in Respondent's criminal trial under a grant of immunity.

25. Salvacion testified Respondent provided pain management treatment for end-of-life patients and patients with HIV, renal failure, and cancer. Respondent charged patients $600 for their first visit and $500 for subsequent visits. Patients had to fill out a lengthy medical questionnaire on their first visit.

26. Patients paid by cash, credit card, or money order, and Salvacion would place the cash or receipt or money order in envelopes with post-it notes indicating the patient's name. Salvacion's mother also worked in Respondent's office and would do the same. Salvacion and her mother would write receipts for payments from patients, but not every patient cared to take one. Respondent would count the cash in the envelopes each day, either by hand or with a cash counter.

27. Salvacion testified that all of Respondent's patients received prescriptions for opioids. Patients sometimes came in when Respondent was not there and picked up their prescriptions at their appointment times. Respondent would write prescriptions in advance if he was going to be gone. In addition, caregivers sometimes brought patients to their appointments, and most caregivers paid cash. Salvacion recalls one caregiver, W.D., who brought in 20 to 25 patients at a time. (W.D. is identified by his initials because other evidence suggests he was also Respondent's patient.) W.D. also had family members help him bring in patients. Usually, W.D.'s group of patients would take up the whole day.

28. Salvacion did not handle any claims to Medicare, and Respondent did not have a medical biller. While Respondent said he had other practices in obesity medicine and acupuncture, Salvacion never worked in those practices and no one else staffed them. Some patients in the pain clinic wanted to socialize with Salvacion, and some were vocal about their lives to the point that Salvacion wondered how sick they actually were.

29. Respondent fired Salvacion's mother from the office in 2016 for allegedly stealing money from Respondent. Salvacion is not currently on speaking terms with Respondent.

Albert Leung, M.D.

30. Albert Leung, M.D. is a Professor of Anesthesiology at the University of California, San Diego School of Medicine (UCSD). He also works as a physician in the Veterans' Administration San Diego Health System. He is board certified in anesthesiology with a sub-specialty certification in in pain management.

31. Dr. Leung testified he monitored Respondent's performance in the Physician Enhancement Program (PEP) during Respondent's probation with the Board from 2011 through 2014. PEP is a program offered through UCSD, and Respondent enrolled in PEP as an alternative to having a practice and billing monitor.

32. Dr. Leung testified he provided chart comments and feedback to Respondent on selected medical charts from Respondent's pain management practice about once a month on average during the probation period. At the beginning, Dr. Leung noticed the majority of Respondent's patients were on opioids, some in what appeared to be excessive doses. Dr. Leung brought this to Respondent's attention immediately. Respondent's charting for patients also needed improvement.

33. By the end of Respondent's probation, Dr. Leung observed that Respondent "improved significantly in his clinical skill and documentation ability for managing the most difficult chronic pain patients since the beginning of his participation in the PEP program." (Exhibit 41D, p. A4833.) Dr. Leung also "applaud[ed] his tremendous effort in improving his medical practice and ensuring patient safety." (*Id.* at p. A4834.)

34. Despite Respondent's improvement, Dr. Leung never signed off on Respondent exiting PEP. Dr. Leung believed Respondent was not ready to exit the program, mainly because of issues Respondent was having with setting up an X-ray clinic in his practice. Dr. Leung did not observe or conclude that Respondent was running a pill mill. Dr. Leung testified he would not know if Respondent was doing so from the monitoring he performed.

Claudia Lewis

35. Claudia Lewis is the associate director of billing and coding compliance at UCSD. Lewis has extensive experience in medical billing and coding, and she served as Respondent's billing monitor in PEP during his probation with the Board from around October 2011 until the end of December 2013.

36. Lewis testified she reviewed about seven patient records per month from Respondent's medical practice, and his medical coding was "average" with "nothing out of the ordinary." But Lewis received no received no financial information about how Respondent received payment for the services. She also did not review receipts to patients or assess whether he submitted claims for payment for services to Medicare.

Peter Boal

37. Peter Boal is the Associate Director of the Physician Assessment and Clinical Education (PACE) Program at UCSD. He has worked for PACE since February 1998, and he also oversees PEP,

38. Boal testified PEP was created in 2004 at the request of the Board to provide an alternative form of monitoring to physicians on probation. The Board was having difficulty finding monitors for physicians, and the quality of monitors at the time was inconsistent. When Respondent was in PEP, the program required him to submit lists of patients monthly, and then the PEP monitors would select the patient records, usually seven per reporting period, to be forwarded for review. A physician on probation could not self-select the patient records to be reviewed. However, PEP relies on an honor system in the submission of the patient records.

39. Boal also testified Respondent's participation in PEP was suspended at one point due to Respondent's failure to submit required documents for several months. While a significant of proportion of doctors will be late on submitting one or more items at some point in time, to be late for several months as Respondent was is more unusual. Suspension is also uncommon; less than one-third of physicians are suspended from PEP at some point. It was also not typical in PEP to have both practice and billing monitors as Respondent did. But Respondent's suspension from the program was subsequently lifted, and the PEP monitors never identified instances of unsafe care.

Federal Programs and DEA Registration

40. Complainant also presented evidence that effective January 18, 2018, Respondent was excluded from participation in Medicare, Medicaid, and all federal health care programs for 10 years. An administrative law judge for the Department of Health and Human Services ordered the exclusion on summary judgment, finding that the facts related to the criminal conviction showed that the structured cash deposits were derived from the unlawful prescribing, dispensing, or prescription of controlled substances. (*Washington Bryan, II, MD (OI File No. L-12-40664-9) v. Inspector General,*

Department of Health and Human Services (H.H.S. Sept. 19, 2018) Decision No. CR5188, 2018 WL 8368294; see Exhibits 42-43.) The administrative law judge made that finding without a hearing, ruling that none was required because Respondent never specifically denied the unlawful prescribing and distribution in his pleadings. Aggravating factors included that that Respondent's actions were committed over a period of one year or more; the sentence imposed included incarceration; Respondent was excluded from the California Medicaid program; and his license to practice medicine was suspended by the Board related to the conviction and incarceration. (*Ibid.*)

41. In addition, Complainant presented evidence that Respondent surrendered his DEA registration to prescribe controlled substances following his criminal conviction and incarceration. After his release, Respondent applied for registration again, and the DEA issued an order to show cause why it should not deny the application because Respondent was convicted of a felony related to controlled substances (21 U.S.C. § 824(a)(2)), and because he was excluded from participation in Medicare, Medicaid, and all federal health care programs (21 U.S.C. § 824(a)(5)). Respondent did not pursue the application further after receiving the order to show cause.

CURES Report

42. Finally, Complainant presented a Controlled Substance Utilization Review and Evaluation System (CURES) report regarding Respondent's prescribing practices for the period from October 2011 through May 2014. CURES is a database of controlled substance prescriptions dispensed in California that regulatory oversight agencies and law enforcement use to protect public health. The CURES report for Respondent shows what appear to be thousands of opioid prescriptions to patients. However, Complainant did not present any analysis or argument about the CURES report.

RESPONDENT'S CASE

43. Respondent testified on his own behalf and called an expert witness to testify about his prescribing practices.

Standiford Helm, M.D.

44. Standiford Helm, M.D. is a specialist in interventional pain management. He started practicing pain management in the early 1980's, and he became board certified in pain management when that certification first became available. Dr. Helm is a clinical professor in pain management at the University of California, Irvine. He closed his pain management practice, The Helm Center, in July 2021. He has served as a reviewer and expert for the Board in the past.

45. Respondent retained Dr. Helm to opine about the care Respondent provided to patients between October 2011 to January 2013 – the time period in which Respondent structured bank deposits – and to assess whether Respondent was operating a pill mill. Dr. Helm reviewed the Board's investigation file and records related to Respondent's probation and opined he was not. According to Dr. Helm, one cannot determine that a pain management physician is operating a pill mill based solely upon prescribing patterns. Coming to that determination requires an investigation like the Board normally does, which includes analyzing individual patient records. The Board did not do that individualized analysis in this case.

46. Furthermore, Dr. Leung's reports as Respondent's practice monitor in PEP provide no information to support a conclusion that Respondent was running a pill mill. On the contrary, Dr. Leung's reports support a conclusion that Respondent was prescribing for legitimate medical purposes in the usual course of his usual professional practice. Dr. Leung received and reviewed medical records from numerous patients of Respondent and did not identify evidence of a pill mill. Dr. Helm has a hard time believing anything that Dr. Leung was monitoring would be a pill mill.

47. Dr. Helm did not analyze the entire CURES reports that Complainant presented, but he looked closely at the first two weeks of August 2012. He did not see large number of patients coming in for prescriptions during that period, and he also saw older patients, neither of which is consistent with pill mill activity. The CURES report alone is not enough to conclude Respondent was operating a pill mill.

48. According to Dr. Helm, the standards for prescribing opiates have changed "enormously" since 2011. The change was underway in 2011, but it was not fully developed at the time. From 2011 through 2013, there was no recommendation of the maximum dosage of opioids from the Centers for Disease Control. Even when those maximum dosages came out, they did not apply to pain management physicians.

49. Dr. Helm acknowledged that prescribing the same regimen of opioids to most patients would be a basis for further investigation of possible pill mill activity. Large numbers of cash payments for prescriptions would also warrant further investigation, and patients coming in groups to Respondent's office with caregivers could be a red flag. But in Dr. Helm's view, those facts alone do not prove Respondent was operating a pill mill, and the evidence that Dr. Helm reviewed indicated Respondent was not.

Washington G.B. Bryan, II, M.D.

50. Respondent testified he operated a pain management clinic, an obesity medicine (weight loss) clinic, and an acupuncture clinic before his criminal conviction. He consolidated all three practices at one location in 2011. He did not use controlled substances in his obesity medicine practice, and he does not know if he reported the weight loss clinic to the Board during Respondent's probation. Respondent started his acupuncture practice after discussing acupuncture with Dr. Leung. Respondent operated his acupuncture clinic from 2011 through 2013.

51. Respondent was not enrolled in Medicare, and he never billed Medicare for his services. He accepted cash, checks, and credit cards in his three practices. Glover's testimony that Respondent structured about $1.2 million in deposits between October 2011 and January 2013 "sounds about right" to Respondent, although the criminal conviction concerns only about $478,000 in deposits. Respondent testified he did not have a cash counting machine during the period in which he structured the cash deposits. The cash counting machine was purchased later.

52. According to Respondent, each of Respondent's three practices had an account at a different bank, and Respondent had different employees for the different practices. The cash deposits that were the subject of the criminal conviction included amounts from all patients, not just pain clinic patients. Usually, Respondent's obesity medicine practice brought in the most money of the three practices. Furthermore, the majority of the cash in the deposits came from rental income on a parking lot.

53. Respondent testified he knew banks would report cash deposits in excess of $10,000, and he intended to keep his deposits below that amount. However, he did not know that was illegal. He did not want to draw any more attention to himself, as he had been through several tax audits. Deposits above $10,000 in cash also end up "being a longer procedure." Respondent does not like lot of attention from the government in general, and he was on already on probation with the Board at the time. Respondent acknowledges it was wrong for him to structure the deposits, and he accepts the jury verdict in his criminal case. But he testified he was not doing it to conceal a pill mill. He was not operating a pill mill, and he also did not intend to evade paying taxes on the amounts to the state or federal government. He testified he paid all his taxes for the years in question.

54. While on probation with the Board, Respondent's recordkeeping improved "tremendously" because of his participation in PEP. Respondent did not hand pick the patients' charts he provided; he had no choice about which charts the PEP monitors selected for review.

55. With respect to Respondent's prescribing, Respondent testified he treated patients who had been diagnosed with cancer, and a combination of HIV or AIDS and cancer. Usually, when patients are referred to pain management, they have already tried the lower doses of medication. Respondent also provided treatment for HIV patients, as well as prophylactic treatment for partners of HIV patients. "One hundred percent" of Respondent's pain management patients were referrals from other physicians.

56. Respondent's pain practice included opioids, Soma (another pain medication), and HIV medications. He typically charged $600 for an initial visit and

$500 for follow-up visits for patients "out of network." Drug toxicology screens were included in the fees, which were in the 75th percentile of a national fee schedule.

57. Respondent denied he ever dealt with patient caretakers in the manner that Salvacion described in her testimony. Respondent never heard of W.D., and W.D. was not a patient. There were times when person/caretaker had to help patient into the room, but usually Respondent's patients were not too weak to come in themselves. Respondent saw six to 12 pain patients per day on average, and he never saw over 25 patients in a day.

58. Respondent testified he always saw the patient on or shortly before the date prescribing a controlled drug to the patient. He cannot recall an instance when he was away from practice for more than a day. He would occasionally leave a prescription with office staff to give to patient at the right time, but he would write "Do Not Fill" until the next date.

59. While incarcerated, Respondent "ran" the food service at Taft Federal Prison Camp for over 2,100 inmates. Respondent was released in April 2019 to a halfway facility in El Monte, California. He left the halfway facility in July 2019, and he resumed practicing medicine after the automatic suspension of physician's and surgeon's certificate was lifted. His currently offers online consultation services to other physicians about their patients with difficult chronic pain. Respondent is currently doing that on a voluntary basis as a service to the community, but he hopes he can charge for the consultations later. He testified he has also completed Continuing Medical Education in a variety of subjects, and he presented certificates of completion to supplement that testimony.

60. Respondent also testified he surrendered his DEA registration and stopped prescribing controlled substances to patients before his incarceration. He applied for registration again in about 2019, but he did not pursue the application after the DEA issued the order to show cause as to why it should not deny it. Respondent stated he has no plan to reapply or to prescribe controlled substances ever again.

Analysis of Evidence

61. The evidence establishes a connection between Respondent's crime of structuring bank deposits and his pain management practice. Salvacion's testimony about Respondent's operation of a cash-based practice during the period in which Respondent structured the deposits was detailed and believable. Respondent's testimony that most of the cash in the deposits came from other sources was uncorroborated and unlikely given the evidence presented by Complainant. Respondent's pain clinic generated large amounts of cash and was highly likely to be a major source of the cash in the structured deposits.

62. Complainant contends Respondent structured the deposits in order to conceal his operation of a pill mill. There is considerable evidence that this may have been the case. Thatcher's opinions about the red flags of pill mill activity that she observed in the Medicare data for the structuring period was detailed and believable. Salvacion's first-person account of Respondent's pain management clinic during the structuring period also depicts a practice with known hallmarks of a pill mill. After his arrest, Respondent also falsely denied to Glover that Respondent's practice involved large amounts of cash.

63. While not mentioned by Complainant, the CURES report also raises questions about Respondent's denial that he knew or treated W.D., the "caregiver" whom Salvacion testified brought in large groups of patients. The CURES report includes a record of an opioid prescription to W.D. and records of many more opioid prescriptions to a patient identified as D.D. with the same last name and almost the same first name. This supports Salvacion's testimony and undermines Respondent's denial that W.D. was a caregiver or a patient.

64. But overall, Complainant's evidence that Respondent may have been operating a pill mill, while considerable, stopped short of proving that Respondent did so. Complainant's criminal conviction was for structuring bank deposits, not for illegal prescribing. Thatcher's analysis identified red flags of possible fraud, waste, and abuse in Respondent's prescribing, but Thatcher herself testified the analysis alone did not prove Respondent operated a pill mill. Complainant did not present

any patient- specific examples of excessive prescribing or any analysis of the CURES report. Furthermore, Dr. Leung, Respondent's practice monitor from 2011 through early 2014, reviewed a substantial number of patient records from Respondent over several years, none of which caused Dr. Leung to conclude that Respondent was operating a pill mill. Dr. Helm also opined that the same patient charts and the other evidence he reviewed did not evidence a pill mill. Complainant did not present expert evidence to counter Dr. Helm's opinion, which cannot be discounted out of hand.

65. The Department of Health and Human Services' order excluding Respondent from all federal health care programs includes a finding that the structured deposits were derived from the unlawful prescribing, dispensing, or prescription of controlled substances, which supports Complainant's position. But the administrative law judge in that case made the finding without a hearing, ruling that none was required because Respondent never specifically denied the unlawful distribution and prescribing in his pleadings. In this case, Respondent has denied unlawful distribution and prescribing and proceeded to a hearing on that issue. Furthermore, the standard of proof in the Department of Health and Human Services case was proof by a preponderance of the evidence, which is a lower standard of proof than required in this case.

66. Considering the entire record, Complainant did not prove by clear and convincing evidence that Respondent was operating a pill mill.

67. Notwithstanding the above, the evidence establishes a high probability that Respondent structured the cash deposits to try to avoid raising suspicions about his pain management clinic. During the structuring period, Respondent was already on probation with the Board after being charged with excessive prescribing and other unprofessional conduct. Given this context, Respondent would have known that receiving large amounts of cash from his pain clinic could – and eventually did – raise new suspicions about the clinic and his prescribing practices. When those suspicious led to an investigation and his arrest, Respondent then lied to Glover about accepting large sums of cash in his business.

68. These facts make it unlikely that Respondent structured the deposits simply due to a general aversion to government involvement in his affairs, as Respondent testified. Rather, it is highly probable he was attempting to avoid raising suspicions about his pain management clinic and why it generated so much cash, which is a red flag of possible fraud, waste, and abuse in his practice. Structuring the deposits for that reason was a dishonest course of conduct that related directly and substantially to Respondent's pain management practice.

LEGAL CONCLUSIONS

Legal Standards

1. "The board shall take action against any licensee who is charged with unprofessional conduct." (§ 2234.) With regard to criminal offenses of a licensee, "[t]he conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct..... " (§ 2236, subd. (a); see also § 490, subd. (a).) The record of conviction shall be conclusive evidence of the fact that the conviction occurred. Unprofessional conduct also "includes, but is not limited to," "[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).)

2. A verdict of guilty is deemed to be a conviction within the meaning of section 2236. (§ 2236, subd. (d); see also § 490.) A crime, professional misconduct, or act is considered substantially related to the qualifications, functions, or duties of a licensee "if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare." (Cal. Code Regs., tit. 16, § 1360, subd (a).)) "Such crimes, professional misconduct, or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of state or federal law governing the applicant's or licensee's professional practice." (*Ibid.*) "In making the substantial relationship determination required under subdivision (a) for a

crime, the board shall consider the following criteria: [¶] (1) The nature and gravity of the crime; [¶] (2) The number of years elapsed since the date of the crime; and [¶] (3) The nature and duties of the profession." (Cal. Code Regs., tit. 16, § 1360, subd. (b); see also § 493, subd. (b)(1).)

3. "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).)

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.)

Analysis

CAUSES FOR DISCIPLINE

First Cause for Discipline – Felony Conviction

5. In the first cause for discipline, Complainant alleges Respondent is subject to disciplinary action because he was convicted of a felony substantially related to the qualifications, functions, or duties of a physician and surgeon.

6. Complainant proved this cause for discipline. Respondent's criminal conviction is substantially related to the qualifications, functions, or duties of a physician and surgeon considering the nature and gravity of the crime, the time elapsed since its commission, and the nature and duties of the profession. (Cal. Code Regs., tit. 16, § 1360, subd. (b).) The nature of Respondent's crime was the structuring of about $478,000 in cash deposits. There is a high probability Respondent's pain management clinic was a major source of the cash. In addition, it is highly probable Respondent structured the deposits to avoid raising suspicions about his pain management clinic and why it generated so much cash.

7. With respect to the gravity of Respondent's crime, it was a serious felony that resulted in a 33-month prison sentence and three years of supervised release. The crime is a felony because the maximum term of imprisonment is up to five years. (31 U.S.C. § 5324(d)(1); 18 U.S.C. § 3559(a)(5).) Respondent committed the crime between nine and 11 years ago during the period from October 2011 through January 2013. While considerable time has elapsed since then, Respondent was not indicted and convicted of the crime until 2016. Complainant also could not proceed with disciplinary charges based on the criminal conviction until it was affirmed on appeal in 2018. (§ 490, subd. (c).) Under these circumstances, the lapse of time since Respondent committed the crime does not preclude disciplinary action for the criminal conviction.

8. The nature and duties of the profession also support the conclusion that Respondent's criminal conviction is substantially related to the qualifications, functions, or duties of a physician and surgeon. The doctor-patient relationship "is based on utmost trust and confidence in the doctor's honesty and integrity." (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470.) "Although referring to a real estate license, the following quotation applies with even greater force to a medical license: '[T]here is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice.' [Citation.]" (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.) Respondent's criminal conviction demonstrates a lack of integrity, honesty, sound judgment, self-discipline, and willingness to abide by the law.

9. Respondent argues his crime of structuring was merely "a regulatory offense" and not a crime of dishonesty. The elements of the crime are: (1) the defendant structured a currency transaction (2) that involved a financial institution; (3) the defendant did so with knowledge that the institution was legally obligated to report currency transactions in excess of $10,000; and (4) the defendant acted with the intent to evade the reporting requirement. (See *United States v. Pang* (9th Cir. 2004) 362 F.3d 1187, 1193-94.) Dishonesty is not an essential element of the crime, and the court in *Goldeshtein v. I.N.S.* (9th Cir. 1993) 8 F.3d 645, 647-48 (*Goldeshtein)*, also held that structuring is not crime of moral turpitude within the meaning of the Immigration and Nationality Act. Therefore, in Respondent's view, the criminal conviction proves only that he had the intent to evade the reporting requirement, and Complainant proved nothing more.

10. But there is no requirement that a crime involve moral turpitude for it to form a basis for disciplinary action. (§ 2236, subd. (a); Cal. Code Regs., tit. 16, § 1360.) Even if there were, *Goldeshtein* holds only that structuring is a crime that does not necessarily involve moral turpitude. (*Goldeshtein*, *supra*, 8 F.3d at p. 647.) Similarly, the elements of the crime mean only that structuring does not necessarily involve dishonesty. But the circumstances of the crime may nonetheless involve dishonesty, and the Board "may inquire into the circumstances surrounding the commission of a crime in order . . . to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon." (§ 2236, subd. (a).) In this case, it is highly probable Respondent structured the deposits in an attempt to avoid raising suspicions about his pain management clinic and why it generated so much cash, which is a red flag of possible fraud, waste, and abuse in his practice. Structuring the deposits for that reason was a dishonest course of conduct.

Second Cause for Discipline – Dishonest and Corrupt Acts

11. In the second cause for discipline, Complainant charges Respondent with committing acts involving dishonesty and corruption that are substantially related to the qualifications, functions or duties of a physician and surgeon. The alleged acts involving dishonesty and corruption are Respondent's acts of structuring and his

claimed pill mill activity.

12. Complainant proved this cause for disciplinary as to Respondent's structuring of bank deposits. As stated previously, it is highly probable Respondent structured the deposits to avoid raising suspicions about a red flag of possible fraud, waste, and abuse in his pain management practice. This was a dishonest course of conduct that related directly and substantially to Respondent's qualifications, functions, and duties as a physician and surgeon.

13. Respondent argues the second cause for discipline is barred by the statute of limitations in section 2230.5. Subject to exceptions not applicable here, "any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first." (§ 2230.5, subd. (a).) "The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation." (§ 2230.5, subd. (e).) "For purposes of Section 2230.5 of the code, the word "discovers" means, with respect to each act or omission alleged as the ground for disciplinary action: [¶] (1) the date the board received a complaint or report describing the act or omission. [¶] (2) the date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the ground for disciplinary action against the same individual." (Cal. Code Regs., tit. 16, § 1356.2, subd. (a).)

14. The Board's Enforcement Program opened an investigation into Respondent's alleged illegal prescribing in July 2012, more than three years before the filing of the original Accusation. Furthermore, Complainant did not prove the pill mill allegations by clear and convincing evidence. But as to Respondent's structuring of deposits, no evidence suggests the Board discovered that activity until Respondent was indicted in 2016 in the federal criminal case. Complainant's predecessor filed the

original Accusation in March 2017, less than one year later. Therefore, Respondent's structuring crime may form the basis for the second cause for discipline, as it is not time-barred.

Third Cause for Discipline – Failure to Report Indictment

15. In the third cause for discipline, Complainant charges Respondent with failure to report the federal indictment to the Board. But Complainant did not pursue this cause for discipline at the hearing, and it is therefore deemed abandoned.

Fourth Cause for Discipline – Unprofessional Conduct

16. In the fourth cause for discipline, Complainant charges Respondent with general unprofessional conduct based on the same allegations as in the first and second causes for discipline.

17. Complainant proved Respondent committed specific forms of unprofessional conduct as charged in the first and second causes for discipline under sections 2234 and 2236. That proof of unprofessional conduct also proves the charge of general unprofessional conduct in the fourth cause for discipline to the same extent.

DISCIPLINARY ACTION

18. 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.*)

19. If a physician's criminal conviction or dishonest act is substantially related to the qualifications, functions, or duties of a physician and surgeon and arises from or occurs during patient care, treatment, management, or billing, the Guidelines recommend a minimum disciplinary action of stayed revocation, a one-year suspension, and at least seven years' probation. For a felony criminal conviction arising from or occurring during patient care, treatment, management, or billing., the Guidelines recommend a minimum disciplinary action of stayed revocation and at least seven years' probation without a suspension. If the dishonest act does not arise from or occur during patient care, treatment, management, or billing, the Guidelines recommend a minimum disciplinary action of stayed revocation and five years' probation. The maximum disciplinary action for all of these forms of unprofessional conduct is license revocation. (Guidelines, pp. 24-25.)

20. Complainant argues Respondent's criminal conviction arose from patient care, treatment, management, or billing, while Respondent argues it did not. The Guidelines do not define what "arising from" means in this context, but the parties agree the term should be given its commonsense meaning. The common definition of "arise" is "1 a: to begin to occur or to exist: to come into being or to attention; [¶] b: to originate from a source." (Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/arise, accessed February 8, 2022.) Here, Respondent's crime of structuring originated from a desire to avoid raising suspicions about his cash-based pain clinic and a red flag of possible pill mill activity. Therefore, it arose from patient care, treatment, management, or billing within the meaning of the Guidelines

21. In assessing the disciplinary action, the Board must also consider whether Respondent made a showing of rehabilitation. "When considering the suspension or revocation of a license under Section 490 of the code on the ground that a person holding a license has been convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation," by applying criteria that differ depending on whether "the licensee completed the criminal sentence at issue without a violation of parole or probation." (Cal. Code Regs., tit. 16, § 1360.1.) The First

Amended Accusation does not reference section 490, but the charge of unprofessional conduct under section 2236 based on a criminal conviction is analogous to a disciplinary charge under section 490.

22. The Board finds that Respondent has not made a showing of rehabilitation, and thus, the Board must apply the rehabilitation criteria in California Code of Regulations, title 16, section 1360.1, subdivision (b). The evidence about those criteria is as follows:

(1) The nature and gravity of the act(s), professional misconduct, or crime(s). The nature of Respondent's crime was the structuring of about $478,000 in cash deposits. It was a serious felony that resulted in a 33-month prison sentence and three years of supervised release.

(2) The total criminal record, or record of professional misconduct. Respondent has no other criminal record. He has a record of one prior disciplinary action with the Board in 2011 for alleged unprofessional conduct between 2004 and 2006. Respondent committed the crime of structuring while he was on probation with the Board, which is an aggravating factor.

(3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s). Respondent committed the crime of structuring between nine and 11 years ago. He was convicted of the crime in 2016, and the judgment of conviction was affirmed on appeal in 2018.

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person. Complainant did not contend or prove Respondent violated any terms of that release. However, as noted above, Respondent committed the crime of structuring while he was on probation with the Board.

(5) The criteria in subdivisions (a)(1)-(5), as applicable. Subdivision (a)(1) of the regulation concerns the nature and gravity of the crime, which is addressed above. Subdivisions (a)(2)-(5) concern parole or probation and any modification of

terms. There was no showing of any modification of the terms of Respondent's supervised release.

(6) If applicable, evidence of dismissal proceedings pursuant to Section 1203.4 of the Penal Code. This criterion is inapplicable since Respondent's federal criminal conviction is not subject to dismissal under Penal Code section 1203.4.

(7) Evidence, if any, of rehabilitation submitted by the licensee. Respondent presented very limited evidence of rehabilitation. He testified he accepted the jury verdict, and he has been providing online consultations to other physicians without charge. He has also completed continuing medical education in various subjects since his release from custody.

23. The evidence presented about these criteria does not show Respondent is rehabilitated. Respondent committed the crime years ago, but it was serious and evidenced dishonesty related to his medical practice. Respondent argues that his suspension while incarcerated was a sufficient disciplinary action, but that suspension is not an indicator of rehabilitation. In fact, there are very few indicia of rehabilitation apart from the passage of time.

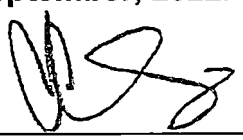
24. Considering the entire record and public protection, significant disciplinary action is warranted. Complainant argues that outright revocation is the only appropriate disciplinary action given the nature, gravity, and circumstances of Respondent's crime. Complainant's evidence stopped short of proving that Respondent was operating a pill mill. Nonetheless, Complainant proved that Respondent was convicted of a felony substantially related to the qualifications, functions, or duties of a physician and surgeon, that he committed dishonest and corrupt acts, and general unprofessional conduct. He committed these acts while on probation with the Board, while being monitored. In light of the above, Respondent has demonstrated that probation is insufficient to protect the public, and his license must be revoked.

ORDER

Physician's and Surgeon's Certificate No. A 61799 issued to Respondent Washington G.B. Bryan, II, M.D. is hereby revoked.

The Decision shall become effective at 5:00 p.m. on **October 17, 2022.**

IT IS SO ORDERED this **15th** day of **September, 2022**.



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

In the Matter of the First Amended Accusation Against: **WASHINGTON G.B. BRYAN, II, M.D.** **P.O. Box 241741** **Los Angeles, California 90024-9997** Physician's and Surgeon's Certificate No. A 61799, Respondent.	Case No. 19-2012-225266 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. William Prasifka ("Complainant") brings this First Amended Accusation solely in his official capacity as the Executive Director of the Medical Board of California ("Board").

2. On March 14, 1997, the Board issued Physician's and Surgeon's Certificate Number A 61799 to Respondent. That license was in full force and effect at all times relevant to the facts alleged herein and will expire on March 31, 2023, unless renewed.

JURISDICTION

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

4. Section 2227 of the Code 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.

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

//

6. Section 2241.5 of the Code states:

(a) A physician and surgeon may prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription-controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

(b) No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription-controlled substances in accordance with this section.

(c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:

(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.

(2) Violates Section 2241 regarding treatment of an addict.

(3) Violates Section 2242 or 2525.3 regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs or recommending medical cannabis.

(4) Violates Section 2242.1 regarding prescribing on the Internet.

(5) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these controlled substances or dangerous drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall otherwise comply with all state recordkeeping requirements for controlled substances.

(6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

(e) Nothing in this section shall prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and 809.5.

7. Section 2236 of the Code states:

(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. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board 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.

(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.

(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.

8. California Code of Regulations, title 16, section 1360, states:

For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.

9. 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.

10. Section 802.1 of the Code states:

(a)(1) A physician and surgeon, osteopathic physician and surgeon, a doctor of podiatric medicine, and a physician assistant shall report either of the following to the entity that issued his or her license:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or information or of the conviction.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars ($5,000).

11. Title 31 United States Code section 5324 states:

(a) Domestic coin and currency transactions involving financial institutions.--No person shall, for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508--

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by an order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508;

(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by any order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in

structuring, any transaction with one or more domestic financial institutions.

. . .

(d) Criminal penalty.--

(1) In general. --Whoever violates this section shall be fined in accordance with title 18, United States Code, imprisoned for not more than 5 years, or both.

(2) Enhanced penalty for aggravated cases.--Whoever violates this section while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

12. Title 18 United States Code section 3559 states:

(a) Classification.--An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is--

(1) life imprisonment, or if the maximum penalty is death, as a Class A felony;

(2) twenty-five years or more, as a Class B felony;

(3) less than twenty-five years but ten or more years, as a Class C felony;

(4) less than ten years but five or more years, as a Class D felony;

(5) less than five years but more than one year, as a Class E felony;

(6) one year or less but more than six months, as a Class A misdemeanor;

(7) six months or less but more than thirty days, as a Class B misdemeanor;

(8) thirty days or less but more than five days, as a Class C misdemeanor; or

(9) five days or less, or if no imprisonment is authorized, as an infraction.

(b) Effect of classification.--Except as provided in subsection (c), an offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the law describing the offense.

. . . .

PERTINENT DRUGS

13. The following drugs are classified as follows:

A. **Oxycodone** (OxyContin) is an opioid pain medication. It is a Schedule II controlled

substance as defined by section 1308.12(b)(1)(xiv) of Title 21 of the Code of Federal Regulations and California Health and Safety Code section 11055, subdivision (b)(1)(M). It is a dangerous drug as defined in California Business and Professions Code section 4022.

B. **Oxymorphone** is an opioid pain medication. It is a Schedule II controlled substance as defined by section 1308.12(b)(1)(xv) of Title 21 of the Code of Federal Regulations and California Health and Safety Code section 11055, subdivision (b)(1)(N). It is a dangerous drug as defined in California Business and Professions Code section 4022.

C. **Methadone** is an opioid pain medication. It is a Schedule II controlled substance as defined by section 1308.12(c)(15) of Title 21 of the Code of Federal Regulations and California Health and Safety Code section 11055, subdivision (c)(14). It is a dangerous drug as defined in California Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Felony Conviction)

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

15. On or about May 6, 2016, in *United States of America v. Washington Bryan, II*, United States District Court, Central District, Case No. 1:16-cr-00320-RGK-1, Respondent was indicted on 29 felony counts of structuring currency transactions between October 17, 2011, and January 16, 2013, ("structuring period") in violation of Title 31 United States Code section 5324(a)(3).[1] During the structuring period, Respondent deposited a total of approximately $478,000 in cash in four separate bank accounts that he controlled to avoid triggering the banks' obligations to report the deposits to federal regulators. The deposits were just below the $10,000 threshold that would have required his banks to report his deposit activity to federal regulators.

[1] The elements of structuring are: (1) the defendant structured a currency transaction (2) that involved a financial institution; (3) the defendant did so with knowledge that the institution was legally obligated to report currency transactions in excess of $10,000; and (4) the defendant acted with the intent to evade the reporting requirement. (See *United States v. Pang*, 362 F.3d 1187, 1193-94 (9th Cir. 2004).)

16. On November 17, 2016, a jury convicted Respondent of all 29 counts of structuring in violation of Title 31 United States Code section 5324(a)(3). On March 6, 2017, Respondent was sentenced to thirty-three months for each of Counts 1 through 29 of the Indictment, to be served concurrently in federal prison; ordered to pay a fine of $7,500 and a special assessment of $2,900; and, upon release from prison, placed on supervised release for three years for each of Counts 1 through 29 of the Indictment, to run concurrently and under certain terms and conditions. On April 17, 2018, the United States Court of Appeals, Ninth Circuit, affirmed the judgment of conviction.

17. Respondent acted with the intent to evade the reporting requirements, the fourth element of structuring in violation of Title 31 United States Code section 5324(a)(3). Respondent began the pattern of illegal structuring several months after the Board placed him on medical license probation on February 4, 2011, for allegations of, inter alia, excessive prescribing.

18. While he was on probation and during the structuring period, Respondent prescribed an excessive number of controlled substances, high daily dosages of opioids, and the highest strength available of opioids. Respondent also had a majority of patients on the exact same regiment of opioids even though the standard of care favored an individualized assessment of pain and the lowest possible opioid dosages necessary to treat pain symptoms. Respondent also prescribed a high volume of drugs to treat human immunodeficiency virus ("HIV"), duplicative HIV drugs that resulted in exceeding the recommended dosage of abacavir and lamivudine, and medication combinations that are not used in HIV treatment.

19. Although Medicare had a record of paying for the prescriptions issued by Respondent, Medicare did not have a record of patient visits or laboratory tests associated with the prescriptions. Respondent's failure to bill Medicare for patient visits or laboratory tests is indicative of a cash-pay model in which a patient pays cash rather than submit a claim to his/her insurance company and is consistent with pill mill activity. Respondent's prescribing practices were consistent with a cash-based pill mill that facilitated the diversion of Schedule II narcotics such as OxyContin and Oxycodone. In sum, the evidence adduced at trial showed that Respondent had the motive to conceal his income from thousands of prescriptions he issued for

opioids and HIV medications. It showed he had the motive to hide his overprescribing and pill mill activity, particularly from the Board because he was on probation, by structuring his bank deposits of approximately $478,000 in cash.

20. Respondent's acts and/or omissions as set forth in paragraphs 15 through 19, inclusive above, whether proven individually, jointly, or in any combination thereof, establish that he was convicted of a felony substantially related to the qualifications, functions, or duties of a physician and surgeon in violation of Code section 2236. Therefore, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Dishonest and Corrupt Acts)

21. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code in that he committed acts involving dishonesty and corruption which are substantially related to the qualifications, functions, or duties of a physician and surgeon. The circumstances are as follows:

22. The facts and allegations in paragraphs 15 through 19, above, are incorporated by reference and re-alleged as if fully set forth herein.

23. Respondent's acts and/or omissions as set forth in paragraph 22, inclusive above, whether proven individually, jointly, or in any combination thereof, constitute acts involving dishonesty and corruption which are substantially related to the qualifications, functions, or duties of a physician and surgeon in violation of section 2234, subdivision (e), of the Code. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Failure to Report Indictment to the Board)

24. Respondent is subject to disciplinary action under sections 802.1, subdivision (a)(1)(A), and 2234, subdivision (a), of the Code in that he engaged in unprofessional conduct by failing to report his criminal indictment to the Board. The circumstances are as follows:

25. The facts and allegations in paragraphs 15 through 19, above, are incorporated by reference and re-alleged as if fully set forth herein.

26. Respondent was required to self-report the indictment to the Board pursuant to

section 802.1 of the Code. He failed to do so.

27. Respondent's acts and/or omissions as set forth in paragraphs 25 through 26, inclusive above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct pursuant to sections 802.1, subdivision (a)(1)(A), and 2234, subdivision (a), of the Code. Therefore, cause for discipline exists.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

28. Respondent is subject to disciplinary action under section 2234 of the Code for general unprofessional conduct by engaging in the conduct described above. The circumstances are as follows:

29. The facts and allegations in paragraphs 14 through 27, above, are incorporated by reference and re-alleged as if fully set forth herein.

30. Respondent's acts and/or omissions as set forth in paragraph 29, inclusive above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct in violation of section 2234 of the Code. Therefore, cause for discipline exists.

DISCIPLINARY CONSIDERATIONS

31. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that, on or about September 27, 2007, in a prior disciplinary action entitled *In the Matter of the Notification of Violation and Imposition of Civil Penalty Against Washington Bryan II, M.D.*, Case No. 17-2007-181786, the Board imposed a $25,000 monetary penalty on Respondent, effective October 29, 2007, for failing to deliver patients' medical records to the Board upon request pursuant to Code section 2225.5.

32. Complainant further alleges that, on or about January 5, 2011, in a prior disciplinary action entitled *In the Matter of the Second Amended Accusation Against Washington Bryan, M.D.*, Case No. 17-2005-165967, the Board adopted a Stipulated Settlement and Disciplinary Order as its Decision, effective February 4, 2011, in which Respondent's Physician's and Surgeon's Certificate was revoked, the revocation was stayed, and Respondent was placed on three years' probation subject to certain terms and conditions, including but not limited to: taking

prescribing practices, medical record keeping, and ethics courses and maintaining a practice and billing monitor. The disciplinary action involved allegations of gross negligence, repeated negligent acts, excessive prescribing, violation of drug laws, unprofessional conduct, dishonest or corrupt acts, failure to maintain medical records, and failure to maintain adequate and accurate medical records. The settlement disposed of Board investigation case numbers 17-2005-165967, 17-2006-177661, 17-2007-183351, 17-2008-195534, 17-2008-195536, and 17-2007-185414.

33. Respondent completed his probation in Case No. 17-2005-165967. On or about May 2, 2014, the Board ordered that his Physician's and Surgeon's Certificate was fully restored to renewed/current status and free of probation requirements, effective February 4, 2014.

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 61799, issued to Respondent Washington G.B. Bryan, II, M.D.;

2. Revoking, suspending or denying approval of Respondent Washington G.B. Bryan, II, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. If placed on probation, ordering Respondent Washington G.B. Bryan, II, M.D. to pay the Board the costs of probation monitoring; and

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

DATED: NOV 0 4 2021

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

Complainant

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