

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

In the Matter of the Accusation
Against:

Ryan Matthew Spivak, M.D.

Physician's and Surgeon's
Certificate No. A 113632

Respondent.

Case No.: 800-2019-060028

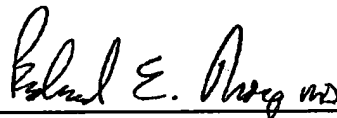
DECISION

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

This Decision shall become effective at 5:00 p.m. on June 9, 2023.

IT IS SO ORDERED: May 11, 2023.

MEDICAL BOARD OF CALIFORNIA



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

1 ROB BONTA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 REBECCA L. SMITH
Deputy Attorney General
4 State Bar No. 179733
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6475
6 Facsimile: (916) 731-2117
Attorneys for Complainant
7

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

12 In the Matter of the First Amended Accusation
Against:

13 RYAN MATTHEW SPIVAK, M.D.
14 27509 Agoura Road, Suite 110
15 Agoura Hills, CA 91301

16 Physician's and Surgeon's Certificate
No. A 113632,

17 Respondent.
18

Case No. 800-2019-060028

OAH No. 2022040932

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER.**

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

21 **PARTIES**

22 1. Reji Varghese (Complainant) is the Interim Executive Director of the Medical Board
23 of California (Board). He brought this action solely in his official capacity and is represented in
24 this matter by Rob Bonta, Attorney General of the State of California, by Rebecca L. Smith,
25 Deputy Attorney General.

26 2. Ryan Matthew Spivak, M.D. (Respondent) is represented in this proceeding by
27 attorney Kevin D. Cauley, whose address is 624 South Grand Avenue, 22nd Floor, Los Angeles,
28 California 90017-3323.

1 professional standards for conducting substance abuse clinical diagnostic evaluations. The
2 evaluator shall not have a current or former financial, personal, or business relationship with
3 Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and
4 independent evaluation. The clinical diagnostic evaluation report shall set forth, in the
5 evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a
6 threat to himself or others, and recommendations for substance abuse treatment, practice
7 restrictions, or other recommendations related to Respondent's rehabilitation and ability to
8 practice safely. If the evaluator determines during the evaluation process that Respondent is a
9 threat to himself or others, the evaluator shall notify the Board within twenty-four (24) hours of
10 such a determination.

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

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

25 The Board shall review the clinical diagnostic evaluation report within five (5) business
26 days of receipt to determine whether Respondent is safe to return to either part-time or full-time
27 practice and what restrictions or recommendations shall be imposed on Respondent based on the
28 recommendations made by the evaluator. Respondent shall not be returned to practice until he

1 has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating
2 that he has not used, consumed, ingested, or administered to himself a prohibited substance, as
3 defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

4 Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall
5 not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic
6 evaluation, including any and all testing deemed necessary by the examiner, the Board or its
7 designee, shall be borne by the licensee.

8 Respondent shall not engage in the practice of medicine until notified by the Board or its
9 designee that he is fit to practice medicine safely. The period of time that Respondent is not
10 practicing medicine shall not be counted toward completion of the term of probation. Respondent
11 shall undergo biological fluid testing as required in this Decision at least two (2) times per week
12 while awaiting the notification from the Board if he is fit to practice medicine safely.

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

16 2. CONTROLLED SUBSTANCES - TOTAL RESTRICTION. Respondent shall not
17 order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in
18 the California Uniform Controlled Substances Act.

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

22 If Respondent forms the medical opinion, after an appropriate prior examination and a
23 medical indication, that a patient's medical condition may benefit from the use of marijuana,
24 Respondent shall so inform the patient and shall refer the patient to another physician who,
25 following an appropriate prior examination and a medical indication, may independently issue a
26 medically appropriate recommendation or approval for the possession or cultivation of marijuana
27 for the personal medical purposes of the patient within the meaning of Health and Safety Code
28 section 11362.5. In addition, Respondent shall inform the patient or the patient's primary

1 caregiver that Respondent is prohibited from issuing a recommendation or approval for the
2 possession or cultivation of marijuana for the personal medical purposes of the patient and that
3 the patient or the patient's primary caregiver may not rely on Respondent's statements to legally
4 possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall
5 fully document in the patient's chart that the patient or the patient's primary caregiver was so
6 informed. Nothing in this condition prohibits Respondent from providing the patient or the
7 patient's primary caregiver information about the possible medical benefits resulting from the use
8 of marijuana.

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

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

19 4. COMMUNITY SERVICE - FREE SERVICES – Condition Satisfied. Within sixty
20 (60) calendar days of the effective date of this Decision, Respondent shall submit to the Board or
21 its designee for prior approval a community service plan in which Respondent shall within the
22 first two (2) years of probation, provide forty (40) hours of free non-medical services to a
23 community or non-profit organization. Prior to engaging in any community service, Respondent
24 shall provide a true copy of the Decision to the chief of staff, director, office manager, program
25 manager, officer, or the chief executive officer at every community or non-profit organization
26 where Respondent provides non-medical community service and shall submit proof of
27 compliance to the Board or its designee within fifteen (15) calendar days. This condition shall
28 also apply to any change(s) in community service.

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

3 5. EDUCATION COURSE. Within sixty (60) calendar days of the effective date of this
4 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee
5 for its prior approval educational program(s) or course(s) which shall not be less than forty (40)
6 hours per year, for each year of probation. The educational program(s) or course(s) shall be
7 aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified.
8 The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition
9 to the Continuing Medical Education (CME) requirements for renewal of licensure. Following
10 the completion of each course, the Board or its designee may administer an examination to test
11 Respondent's knowledge of the course. Respondent shall provide proof of attendance for sixty-
12 five (65) hours of CME of which forty (40) hours were in satisfaction of this condition.

13 6. PRESCRIBING PRACTICES COURSE – Condition Satisfied. Within sixty (60)
14 calendar days of the effective date of this Decision, Respondent shall enroll in a course in
15 prescribing practices approved in advance by the Board or its designee. Respondent shall provide
16 the approved course provider with any information and documents that the approved course
17 provider may deem pertinent. Respondent shall participate in and successfully complete the
18 classroom component of the course not later than six (6) months after Respondent's initial
19 enrollment. Respondent shall successfully complete any other component of the course within
20 one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and
21 shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
22 licensure.

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

28 Respondent shall submit a certification of successful completion to the Board or its

1 designee not later than fifteen (15) calendar days after successfully completing the course, or not
2 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

3 7. MEDICAL RECORD KEEPING COURSE. Within sixty (60) calendar days of the
4 effective date of this Decision, Respondent shall enroll in a course in medical record keeping
5 approved in advance by the Board or its designee. Respondent shall provide the approved course
6 provider with any information and documents that the approved course provider may deem
7 pertinent. Respondent shall participate in and successfully complete the classroom component of
8 the course not later than six (6) months after Respondent's initial enrollment. Respondent shall
9 successfully complete any other component of the course within one (1) year of enrollment. The
10 medical record keeping course shall be at Respondent's expense and shall be in addition to the
11 Continuing Medical Education (CME) requirements for renewal of licensure.

12 A medical record keeping course taken after the acts that gave rise to the charges in the
13 First Amended Accusation, but prior to the effective date of the Decision may, in the sole
14 discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the
15 course would have been approved by the Board or its designee had the course been taken after the
16 effective date of this Decision.

17 Respondent shall submit a certification of successful completion to the Board or its
18 designee not later than fifteen (15) calendar days after successfully completing the course, or not
19 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

20 8. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar
21 days of the effective date of this Decision, Respondent shall enroll in a professionalism program,
22 that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
23 Respondent shall participate in and successfully complete that program. Respondent shall
24 provide any information and documents that the program may deem pertinent. Respondent shall
25 successfully complete the classroom component of the program not later than six (6) months after
26 Respondent's initial enrollment, and the longitudinal component of the program not later than the
27 time specified by the program, but no later than one (1) year after attending the classroom
28 component. The professionalism program shall be at Respondent's expense and shall be in

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

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

7 Respondent shall submit a certification of successful completion to the Board or its
8 designee not later than fifteen (15) calendar days after successfully completing the program or not
9 later than 15 calendar days after the effective date of the Decision, whichever is later.

10 9. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
11 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
12 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
13 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall
14 make daily contact with the Board or its designee to determine whether biological fluid testing is
15 required. Respondent shall be tested on the date of the notification as directed by the Board or its
16 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at
17 any time, including weekends and holidays. Except when testing on a specific date as ordered by
18 the Board or its designee, the scheduling of biological fluid testing shall be done on a random
19 basis. The cost of biological fluid testing shall be borne by Respondent.

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

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

- 1 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry
2 Association or have completed the training required to serve as a collector for the United
3 States Department of Transportation.
- 4 (b) Its specimen collectors conform to the current United States Department of
5 Transportation Specimen Collection Guidelines.
- 6 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published
7 by the United States Department of Transportation without regard to the type of test
8 administered.
- 9 (d) Its specimen collectors observe the collection of testing specimens.
- 10 (e) Its laboratories are certified and accredited by the United States Department of Health
11 and Human Services.
- 12 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day
13 of receipt and all specimens collected shall be handled pursuant to chain of custody
14 procedures. The laboratory shall process and analyze the specimens and provide legally
15 defensible test results to the Board within seven (7) business days of receipt of the
16 specimen. The Board will be notified of non-negative results within one (1) business day
17 and will be notified of negative test results within seven (7) business days.
- 18 (g) Its testing locations possess all the materials, equipment, and technical expertise
19 necessary in order to test Respondent on any day of the week.
- 20 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens
21 for the detection of alcohol and illegal and controlled substances.
- 22 (i) It maintains testing sites located throughout California.
- 23 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line
24 computer database that allows Respondent to check in daily for testing.
- 25 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff
26 access to drug test results and compliance reporting information that is available 24 hours a
27 day.
- 28 (l) It employs or contracts with toxicologists that are licensed physicians and have

1 knowledge of substance abuse disorders and the appropriate medical training to interpret
2 and evaluate laboratory biological fluid test results, medical histories, and any other
3 information relevant to biomedical information.

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

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

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

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

14 If a biological fluid test result indicates Respondent has used, consumed, ingested, or
15 administered to himself or herself a prohibited substance, the Board shall order Respondent to
16 cease practice and instruct Respondent to leave any place of work where Respondent is practicing
17 medicine or providing medical services. The Board shall immediately notify all of Respondent's
18 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or
19 provide medical services while the cease-practice order is in effect.

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

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

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

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

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

10 10. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of
11 the effective date of this Decision, Respondent shall submit to the Board or its designee, for its
12 prior approval, the name of a substance abuse support group which he shall attend for the duration
13 of probation. Respondent shall attend substance abuse support group meetings at least once per
14 week, or as ordered by the Board or its designee.

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

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

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

28 11. PSYCHOTHERAPY. Within sixty (60) calendar days of the effective date of this

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

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

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

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

19 12. MEDICAL EVALUATION AND TREATMENT – Condition satisfied. Within
20 thirty (30) calendar days of the effective date of this Decision, and on a periodic basis thereafter
21 as may be required by the Board or its designee, Respondent shall undergo a medical evaluation
22 by a Board-appointed physician who shall consider any information provided by the Board or
23 designee and any other information the evaluating physician deems relevant and shall furnish a
24 medical report to the Board or its designee. Respondent shall provide the evaluating physician
25 any information and documentation that the evaluating physician may deem pertinent.

26 Following the evaluation, Respondent shall comply with all restrictions or conditions
27 recommended by the evaluating physician within fifteen (15) calendar days after being notified
28 by the Board or its designee. If Respondent is required by the Board or its designee to undergo

1 medical treatment, Respondent shall within thirty (30) calendar days of the requirement notice,
2 submit to the Board or its designee for prior approval the name and qualifications of a California
3 licensed treating physician of Respondent's choice. Upon approval of the treating physician,
4 Respondent shall within fifteen (15) calendar days undertake medical treatment and shall
5 continue such treatment until further notice from the Board or its designee.

6 The treating physician shall consider any information provided by the Board or its designee
7 or any other information the treating physician may deem pertinent prior to commencement of
8 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or
9 its designee indicating whether or not Respondent is capable of practicing medicine safely.

10 Respondent shall provide the Board or its designee with any and all medical records pertaining to
11 treatment, the Board or its designee deems necessary.

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

17 13. MONITORING – PRACTICE. Within thirty (30) calendar days of the effective date
18 of this Decision, Respondent shall submit to the Board or its designee for prior approval as a
19 practice monitor, the name and qualifications of one or more licensed physicians and surgeons
20 whose licenses are valid and in good standing, and who are preferably American Board of
21 Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or
22 personal relationship with Respondent, or other relationship that could reasonably be expected to
23 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
24 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
25 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

26 The Board or its designee shall provide the approved monitor with copies of the Decision
27 and Accusation, and a proposed monitoring plan. Within fifteen (15) calendar days of receipt of
28 the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed

1 statement that the monitor has read the Decision and Accusation, fully understands the role of a
2 monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
3 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
4 signed statement for approval by the Board or its designee.

5 Within sixty (60) calendar days of the effective date of this Decision, and continuing
6 throughout probation, Respondent's practice shall be monitored by the approved monitor.
7 Respondent shall make all records available for immediate inspection and copying on the
8 premises by the monitor at all times during business hours and shall retain the records for the
9 entire term of probation.

10 If Respondent fails to obtain approval of a monitor within sixty (60) calendar days of the
11 effective date of this Decision, Respondent shall receive a notification from the Board or its
12 designee to cease the practice of medicine within three (3) calendar days after being so notified.
13 Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring
14 responsibility.

15 The monitor(s) shall submit a quarterly written report to the Board or its designee which
16 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
17 are within the standards of practice of medicine, and whether Respondent is practicing medicine
18 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
19 quarterly written reports to the Board or its designee within ten (10) calendar days after the end of
20 the preceding quarter.

21 If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar
22 days of such resignation or unavailability, submit to the Board or its designee, for prior approval,
23 the name and qualifications of a replacement monitor who will be assuming that responsibility
24 within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor
25 within sixty (60) calendar days of the resignation or unavailability of the monitor, Respondent
26 shall receive a notification from the Board or its designee to cease the practice of medicine within
27 three (3) calendar days after being so notified Respondent shall cease the practice of medicine
28 until a replacement monitor is approved and assumes monitoring responsibility.

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

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

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

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

22 Respondent shall pay all worksite monitoring costs.

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

27 The worksite monitor shall verbally report any suspected substance abuse to the Board and
28 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected

1 substance abuse does not occur during the Board's normal business hours, the verbal report shall
2 be made to the Board or its designee within one (1) hour of the next business day. A written
3 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
4 any other information deemed important by the worksite monitor shall be submitted to the Board
5 or its designee within 48 hours of the occurrence.

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

16 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)
17 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior
18 approval, the name and qualifications of a replacement monitor who will be assuming that
19 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a
20 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the
21 monitor, Respondent shall receive a notification from the Board or its designee to cease the
22 practice of medicine within three (3) calendar days after being so notified. Respondent shall
23 cease the practice of medicine until a replacement monitor is approved and assumes monitoring
24 responsibility.

25 15. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)
26 days of the effective date of this Decision, Respondent shall provide to the Board the names,
27 physical addresses, mailing addresses, and telephone numbers of any and all employers and
28 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's

1 worksite monitor, and Respondent's employers and supervisors to communicate regarding
2 Respondent's work status, performance, and monitoring.

3 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or
4 Well Being Committee Chair, or equivalent, if applicable, when Respondent has medical staff
5 privileges.

6 16. VIOLETION OF PROBATION CONDITION FOR SUBSTANCE ABUSING
7 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of
8 probation.

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

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

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

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

24 B. If Respondent commits a minor violation of probation as defined by section
25 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
26 one or more of the following actions:

27 (1) Issue a cease-practice order;

28 (2) Order practice limitations;

- 1 (3) Order or increase supervision of Respondent;
2 (4) Order increased documentation;
3 (5) Issue a citation and fine, or a warning letter;
4 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in
5 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
6 Regulations, at Respondent's expense;
7 (7) Take any other action as determined by the Board or its designee.

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

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

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

24 18. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
25 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
26 advanced practice nurses.

27 19. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
28 governing the practice of medicine in California and remain in full compliance with any court

1 ordered criminal probation, payments, and other orders.

2 20. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
3 ordered to reimburse the Board its costs of investigation and enforcement, in the amount of
4 \$17,376.00 (seventeen thousand three hundred seventy-six dollars and no cents). Costs shall be
5 payable to the Medical Board of California. Failure to pay such costs shall be considered a
6 violation of probation.

7 Payment must be made in full within 30 calendar days of the effective date of the Order, or
8 by a payment plan approved by the Medical Board of California. Any and all requests for a
9 payment plan shall be submitted in writing by respondent to the Board. Failure to comply with
10 the payment plan shall be considered a violation of probation.

11 The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to
12 repay investigation and enforcement costs.

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

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

18 22. GENERAL PROBATION REQUIREMENTS.

19 Compliance with Probation Unit

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

21 Address Changes

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

27 Place of Practice

28 Respondent shall not engage in the practice of medicine in Respondent's or patient's place

1 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
2 facility.

3 License Renewal

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

6 Travel or Residence Outside California

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

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

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

16 24. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
17 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
18 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
19 defined as any period of time Respondent is not practicing medicine as defined in Business and
20 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
21 patient care, clinical activity or teaching, or other activity as approved by the Board. If
22 Respondent resides in California and is considered to be in non-practice, Respondent shall
23 comply with all terms and conditions of probation. All time spent in an intensive training
24 program which has been approved by the Board or its designee shall not be considered non-
25 practice and does not relieve Respondent from complying with all the terms and conditions of
26 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
27 on probation with the medical licensing authority of that state or jurisdiction shall not be
28 considered non-practice. A Board-ordered suspension of practice shall not be considered as a

1 period of non-practice.

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

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

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

9 Periods of non-practice for a Respondent residing outside of California will relieve
10 Respondent of the responsibility to comply with the probationary terms and conditions with the
11 exception of this condition and the following terms and conditions of probation: Obey All Laws;
12 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
13 Controlled Substances; and Biological Fluid Testing.

14 25. COMPLETION OF PROBATION. Respondent shall comply with all financial
15 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
16 completion of probation. This term does not include cost recovery, which is due within 30
17 calendar days of the effective date of the Order, or by a payment plan approved by the Medical
18 Board and timely satisfied. Upon successful completion of probation, Respondent's certificate
19 shall be fully restored.

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

27 27. LICENSE SURRENDER. Following the effective date of this Decision, if
28 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy

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

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

14 29. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
15 a new license or certification, or petition for reinstatement of a license, by any other health care
16 licensing action agency in the State of California, all of the charges and allegations contained in
17 First Amended Accusation No. 800-2019-060028 shall be deemed to be true, correct, and
18 admitted by Respondent for the purpose of any Statement of Issues or any other proceeding
19 seeking to deny or restrict license.

20 ACCEPTANCE

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

26
27 DATED: 02/23/2023

28 
RYAN MATTHEW SPIVAK, M.D.

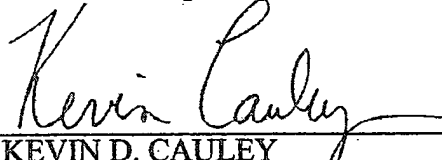
Respondent

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I have read and fully discussed with Respondent Ryan Matthew Spivak, 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: February 24, 2023



KEVIN D. CAULEY
Attorney for Respondent

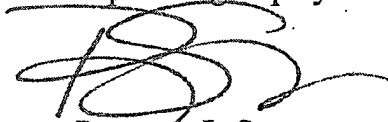
ENDORSEMENT

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

DATED: 2/24/2023

Respectfully submitted,

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General



REBECCA L. SMITH
Deputy Attorney General
Attorneys for Complainant

LA2022600295
65759335.docx

Exhibit A

First Amended Accusation No. 800-2019-060028

1 ROB BONTA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 REBECCA L. SMITH
Deputy Attorney General
4 State Bar No. 179733
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6475
6 Facsimile: (916) 731-2117
Attorneys for Complainant
7

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

12 In the Matter of the First Amended Accusation
Against:

Case No. 800-2019-060028

13 RYAN MATTHEW SPIVAK, M.D.
14 27509 Agoura Road, Suite 110
Agoura Hills, California 91301

FIRST AMENDED ACCUSATION

15 Physician's and Surgeon's Certificate
16 No. A 113632,

17 Respondent.

18
19
20 **PARTIES**

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

24 2. On or about August 11, 2010, the Board issued Physician's and Surgeon's Certificate
25 Number A 113632 to Ryan Matthew Spivak, M.D. (Respondent). The Physician's and Surgeon's
26 Certificate was in full force and effect at all times relevant to the charges brought herein and will
27 expire on August 31, 2024, unless renewed.

28 ///

1 JURISDICTION

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

5 4. Section 2004 of the Code states:

6 The board shall have the responsibility for the following:

7 (a) The enforcement of the disciplinary and criminal provisions of the Medical
8 Practice Act.

9 (b) The administration and hearing of disciplinary actions.

10 (c) Carrying out disciplinary actions appropriate to findings made by a panel or
an administrative law judge.

11 (d) Suspending, revoking, or otherwise limiting certificates after the conclusion
12 of disciplinary actions.

13 (e) Reviewing the quality of medical practice carried out by physician and
surgeon certificate holders under the jurisdiction of the board.

14 (f) Approving undergraduate and graduate medical education programs.

15 (g) Approving clinical clerkship and special programs and hospitals for the
16 programs in subdivision (f).

17 (h) Issuing licenses and certificates under the board's jurisdiction.

18 (i) Administering the board's continuing medical education program.

19 5. Section 2227 of the Code states:

20 (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
21 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
22 provisions of this chapter:

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

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

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

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

///

1 (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.

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

8 6. Section 2234 of the Code, states:

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

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

14 (b) Gross negligence.

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

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

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

27 (d) Incompetence.

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

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

(g) The 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.

7. 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.

///

1 COST RECOVERY

2 8. Section 125.3 of the Code states:

3 (a) Except as otherwise provided by law, in any order issued in resolution of a
4 disciplinary proceeding before any board within the department or before the
5 Osteopathic Medical Board, upon request of the entity bringing the proceeding, the
6 administrative law judge may direct a licensee found to have committed a violation or
7 violations of the licensing act to pay a sum not to exceed the reasonable costs of the
8 investigation and enforcement of the case.

9 (b) In the case of a disciplined licensee that is a corporation or a partnership, the
10 order may be made against the licensed corporate entity or licensed partnership.

11 (c) A certified copy of the actual costs, or a good faith estimate of costs where
12 actual costs are not available, signed by the entity bringing the proceeding or its
13 designated representative shall be prima facie evidence of reasonable costs of
14 investigation and prosecution of the case. The costs shall include the amount of
15 investigative and enforcement costs up to the date of the hearing, including, but not
16 limited to, charges imposed by the Attorney General.

17 (d) The administrative law judge shall make a proposed finding of the amount
18 of reasonable costs of investigation and prosecution of the case when requested
19 pursuant to subdivision (a). The finding of the administrative law judge with regard
20 to costs shall not be reviewable by the board to increase the cost award. The board
21 may reduce or eliminate the cost award, or remand to the administrative law judge if
22 the proposed decision fails to make a finding on costs requested pursuant to
23 subdivision (a).

24 (e) If an order for recovery of costs is made and timely payment is not made as
25 directed in the board's decision, the board may enforce the order for repayment in any
26 appropriate court. This right of enforcement shall be in addition to any other rights
27 the board may have as to any licensee to pay costs.

28 (f) In any action for recovery of costs, proof of the board's decision shall be
conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or
reinstate the license of any licensee who has failed to pay all of the costs ordered
under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion,
conditionally renew or reinstate for a maximum of one year the license of any
licensee who demonstrates financial hardship and who enters into a formal agreement
with the board to reimburse the board within that one-year period for the unpaid
costs.

(h) All costs recovered under this section shall be considered a reimbursement
for costs incurred and shall be deposited in the fund of the board recovering the costs
to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of
the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in

1 that board's licensing act provides for recovery of costs in an administrative
2 disciplinary proceeding.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Repeated Negligent Acts)**

5 9. Respondent is subject to disciplinary action under Code section 2234, subdivision (c),
6 in that he engaged in repeated acts of negligence in the care and treatment of Patients 1, 2 and 3.¹
7 The circumstances are as follows:

8 **Patient 1:**

9 10. Patient 1, a then 47-year-old female, was referred to Respondent, a plastic and
10 reconstructive surgeon, by her primary care physician following massive weight loss with
11 gastrectomy.² Respondent performed a successful staged panniculectomy³ on October 12, 2018
12 and October 17, 2018, at St. Francis Medical Center. Approximately 2 months after the
13 panniculectomy surgeries, Patient 1 returned to Respondent for bilateral brachioplasty.⁴

14 11. On January 8, 2019, Patient 1 presented to Respondent for a pre-operative
15 examination and measurements for compression garments to be applied after the brachioplasty.
16 Patient 1's bilateral arm examination demonstrated bilateral large arm pannuses with extension to
17 the axilla. Her arm circumference was noted to be 30 centimeters. Respondent did not note
18 asymmetry of the arms. Respondent noted that the surgery was to take place on an outpatient
19 basis at St. Francis Medical Center. He further noted that the risks, benefits, alternatives and
20 potential complications of the procedure were discussed with Patient 1.

21 12. On Friday, March 22, 2019, Respondent performed the bilateral brachioplasty at St.
22 Francis Medical Center. Respondent noted that the surgical technique he utilized consisted of
23 closing the surgical wound of each brachioplasty in three stages. Respondent completed the right

24 ¹ For privacy purposes, the patients in this First Amended Accusation are referred to as Patients 1,
25 2, and 3, with the identities of the patients disclosed to Respondent in discovery.

26 ² Gastrectomy is surgery to remove part or all of the stomach.

27 ³ Panniculectomy is a surgery done to remove stretched out, excess fat and overhanging skin from
28 the abdomen.

⁴ Brachioplasty, also known as an arm lift, is a surgery done to remove excess skin and fat from
the area between the armpit and elbow.

1 arm brachioplasty. He then proceeded to the left arm, where he encountered a complication
2 during the middle stage. The mid left arm could not be closed. Respondent noted that there was
3 an approximate 5 x 5 cm. section that could not be closed, secondary to swelling and deficit of
4 skin.

5 13. Respondent documented that he attempted intra-operative techniques to accomplish
6 wound closure, including wrapping the arm for approximately thirty to forty minutes with
7 intraoperative Kerlix and Ace bandage wraps to reduce swelling and completing a superiorly
8 based Z-plasty.⁵ Still unable to directly close the wound, Respondent placed a wound vacuum
9 and planned to perform a split-thickness or full-thickness skin graft to take place on Monday,
10 March 25, 2019.

11 14. The standard of care requires that the surgeon understand the surgical operation being
12 performed and to have a working knowledge of common solutions to address intraoperative
13 complications.

14 15. Once Respondent determined that he was unable to resolve the closure issue after
15 compression wrapping of the arm, surgical maneuvers should have been considered. These
16 include aggressive undermining to mobilize the tissue to facilitate closure, or local flaps,
17 including rotational flaps or transpositional flaps. Z-plasty was an inappropriate choice for
18 closing the wound. Prior to excising the third serial section of the proximal arm, a rotation or
19 transposition flap could have been designed from that excess skin to resolve the skin deficit in
20 the second or middle section. Z-plasty will not (and did not) accomplish this.

21 16. There are also very common delayed closure techniques that involve applying
22 traction to the wound over time. A common method is to use skin staples as anchors and then
23 vessel loops to apply tension that can be increased at the bedside over several days, to close a
24 challenging wound.

25 17. Respondent's failure to consider other surgical maneuvers and delayed closure
26 techniques represents a departure from the standard of care.

27 ⁵ Z-plasty is a plastic surgery technique that is used to improve the function and cosmetic
28 appearance of scars. With this technique, it is possible to redirect a scar into better alignment with a
natural skin fold or the lines of least skin tension. Contracted scars may be lengthened with this technique.

1 18. Patient 1 was admitted as a hospital inpatient following the March 22, 2019
2 procedure. On March 27, 2019, Respondent performed a split thickness skin graft harvested from
3 the patient's left upper thigh to close the left upper arm wound.⁶ Patient 1 was discharged home
4 on March 28, 2019, with a wound vacuum.

5 19. On April 4, 2019, Patient 1 presented to Respondent's clinic for a postoperative visit.
6 The wound vacuum was removed and Respondent noted one hundred percent (100%) skin graft
7 take on the left arm as well as good wound healing of the right arm. Respondent also noted a left
8 arm seroma⁷ at the elbow which was not drained at that time, secondary to the patient's request to
9 wait until her next visit the following week.

10 20. On April 9, 2019, Patient 1 presented to Respondent's clinic for a postoperative visit.
11 Respondent noted that evaluation of the left arm demonstrated the split-thickness skin graft site
12 was starting to dry out a "little bit" and there was a "little bit" of dried skin slough from the split-
13 thickness skin graft site. At the left elbow, the seroma remained present. During this visit,
14 Patient 1 agreed to drainage of the seroma. Respondent performed an incision and drainage to the
15 left elbow seroma, draining 100 ml. of clear serous fluid.

16 21. On April 12, 2019, Patient 1 presented to Respondent's clinic with complaints that
17 the seroma had recurred, the area was no longer draining and it was painful. At that time,
18 Respondent noted a recurrent seroma at the distal left upper extremity, medial side, towards the
19 elbow. He also noted that her split-thickness skin graft site had some dry slough on it, but it
20 appeared healthier than four days ago when it was noted as dried out. Respondent drained
21 approximately 75 ml. of clear serous fluid at the previous incision and drainage site and placed a
22 Penrose drain.⁸ Wound cultures from the drainage were sent to the laboratory for testing.

23 ///

24 _____
25 ⁶ Respondent's Operative Report states that the wound size was increased from 5 x 5 cm. to 8 x 9
26 cm. by circumferential paring of skin edges. This is an extremely large increase in wound burden, more
consistent with debridement of necrotic skin flaps than paring damaged skin edges.

27 ⁷ A seroma is a collection of fluid that builds up under the surface of the skin.

28 ⁸ A Penrose drain is a soft, flexible rubber tube used as a surgical drain, to prevent the buildup of
fluid in a surgical site.

1 22. Patient 1 presented to Respondent's clinic on April 16, 2019 with complaints that the
2 seroma had reoccurred. Respondent recommended taking the patient to surgery for removal of
3 the skin graft to revise the entire brachioplasty as well as drain and address the seroma. The
4 patient declined the surgical procedure. As an alternative, Respondent offered to perform another
5 incision and drainage of the left arm at his clinic with the placement of a Jackson-Pratt (JP)
6 drain.⁹ He noted that the incision and drainage was less certain to completely resolve the seroma.
7 Patient 1 agreed to the repeat incision and drainage with placement of the JP drain. The
8 procedure was noted to have been performed without complication. The wound culture from the
9 previously performed incision and drainage demonstrated growth of *Pseudomonas aeruginosa*.
10 Patient 1 was started on Levaquin, an antibiotic. With respect to the split-thickness skin graft site
11 of the left upper arm, Respondent noted some dry slough with some loss of skin graft at the distal
12 aspect of the skin graft with a skin reaction to the native skin, approximately 4 x 4 ml. He noted
13 that there had been a significant amount of skin stretching to the left upper extremity surrounding
14 the split-skin graft site and that a pinch test showed that the skin graft could be excised and closed
15 directly. He discussed scheduling the surgery in approximately two to three weeks with Patient 1.

16 23. Thereafter, Patient 1 refused further care and treatment by Respondent. On April 24,
17 2019, Patient 1 began treating with another plastic and reconstructive surgeon, Dr. R.R., who
18 noted a seven centimeter wound with necrotic tissue over the wound. Patient 1 was followed by
19 Dr. R. for several months. By October 2019, the wound had still not completely resolved.

20 24. Patient 1 filed a grievance with her health plan, Lakeside Community Healthcare,
21 regarding her care and treatment by Respondent. A quality of care internal review process was
22 initiated wherein the Quality Improvement Committee of Lakeside Community Healthcare
23 requested that Respondent provide a summary and explanation of his care and treatment of
24 Patient 1.

25 ///

26 ///

27

28 ⁹ A Jackson-Pratt drain is a closed-suction medical device that is commonly used as a post-operative drain for collecting bodily fluids from surgical sites.

1 25. In his written summary and explanation of his care and treatment of Patient 1,
2 Respondent characterized the patient's complication as a wound separation/wound dehiscence. In
3 conclusion, Respondent stated: "Throughout the course of this patient's treatment in multiple
4 surgeries, I delivered care at the highest level and always to the standard of care. Unfortunately
5 she experienced an outcome (wound separation/dehiscence) that is a known risk for her
6 procedure and which I had extensively reviewed the risks with her about. From the time of her
7 wound separation I delivered standard of care throughout her postoperative course."

8 26. In medical communications, especially with other health organizations, the standard
9 of care requires that physicians and surgeons accurately describe their patient care and treatment
10 in a factually neutral, clear and honest manner. Respondent's failure to accurately describe his
11 care and treatment of Patient 1 to the Quality Improvement Committee of Lakeside Community
12 Healthcare is a departure from the standard of care.

13 27. Patient 1's wound was not closed during the first surgical procedure performed on
14 March 22, 2019. In a subsequent procedure performed on March 27, 2019, Respondent applied a
15 skin graft to manage the left arm wound. It is inaccurate to describe Patient 1's intraoperative
16 complication as a wound dehiscence. Surgical wound dehiscence is the separation and/or
17 opening of a previously closed wound. The complication from the March 22, 2019 brachioplasty
18 procedure was the inability to close the surgical site on the left arm.

19 **Patient 2:**

20 28. Patient 2, a then 44-year-old patient, presented to Elite Body Sculpture on February
21 21, 2019, for a liposuction and fat transfer consultation. At that time, Patient 2 filled out a
22 medical history form and signed a Notice of Privacy Practices form and Statement of Rights
23 form. Patient 2's chart does not contain a consultation report of February 21, 2019.

24 29. On March 7, 2019, Patient 2 presented for Airsculpt liposuction with fat transfer to be
25 performed by Respondent. That same day, the patient executed consents for the surgical
26 procedure.

27 30. Respondent utilized a standardized Surgery Note form for Patient 2's procedure.
28 With respect to vital signs, the pre-printed form sets forth: "Pulse oximetry should be continuous.

1 Blood pressure every 15 minutes. Continuous EKG monitoring on all patients with cardiac
2 history and all patients in California. Recovery time is from procedure completion until
3 discharge criteria are met and must be a minimum of 15 minutes. Vital signs must be
4 recorded no less than [every] 15 minutes in recovery.” On the same form, Patient 2’s vital
5 signs were recorded preoperatively at 2:25 p.m., at the start of recovery at 7:45 p.m., and at
6 discharge at 8:15 p.m.¹⁰ In addition, a pre-printed Pre-Operative Evaluation section on the
7 same page set forth that the “[p]atient was seen prior to surgery. Medical history was
8 reviewed and updated. Physical exam was completed and documented. Procedure discussed
9 with patient to include expectations, limitations and anticipated postoperative course.
10 Consent reviewed which addresses potential benefits, surgical risks and alternatives in detail.
11 Consent signed after all questions answered.”

12 31. The procedure started at 2:50 p.m., under local anesthesia with minimal sedation, and
13 ended at 7:30 p.m. In the section identified as “Surgeon Narrative,” Respondent documented “no
14 issues.” At the time of discharge, the patient was instructed to return in one week.

15 32. Patient 2 was next seen by Respondent on March 14, 2019, for a follow-up visit.
16 Respondent noted that the patient was unhappy with the result to her waist. The patient was
17 next seen on June 25, 2019, at which time Respondent documented that the patient
18 complained of no improvement in abdomen, waist, and hip shaping and that she had minimal
19 improvement in buttocks grafting. Upon examination, Respondent noted that Patient 2 had
20 minimal shape improvement in waist, hips, and abdomen and some improvement in lateral
21 buttocks with “indents.” Respondent further noted that “no revisional work possible” and
22 “will bump up to the Director of Operations to discuss accommodation.”

23 33. When performing cosmetic procedures, the standard of care requires that the
24 physician document a pre-operative consultation with the patient, including documentation of
25 the discussions with the patient regarding the risks and benefits of the procedure, as well as,

26 ///

27 _____
28 ¹⁰ At the time of Respondent’s interview with the Board on September 8, 2020, Respondent stated
that a blood pressure cuff was on the patient and regularly cycled during the procedure, but admitted
that the patient’s vital signs during the procedure were not documented.

1 alternative options. The physician must also maintain documentation of the procedure,
2 including the patient's intra-operative and post-operative care.

3 34. Respondent failed to document a pre-operative consultation with the patient,
4 including discussions regarding the risks and benefits of the surgical procedure. This is a
5 simple departure from the standard of care.

6 35. When performing cosmetic procedures using oral conscious sedation, the standard
7 of care requires documentation of baseline vital signs as well as intermittent quantitative
8 monitoring and recording of oxygen saturation, heart and respiratory rates, and blood pressure
9 readings. The name, dose and time of administration of all drugs administered during the
10 procedure, including local and inhalation anesthetics, must be documented. The length of the
11 procedure, any complications of oral sedation, and a statement of the patient's condition at the
12 time of discharge must also be documented.

13 36. Patient 2's vital signs were recorded preoperatively at 2:25 p.m., at the start of
14 recovery at 7:45 p.m., and at discharge at 8:15 p.m. Respondent failed to have intermittent
15 vital signs recorded during the procedure. This is a simple departure from the standard of
16 care.

17 **Patient 3:**

18 37. Patient 3, a then 39-year-old male patient, presented to Respondent on February
19 21, 2019 for a liposuction consultation. On the intake form, Patient 3 noted that he was
20 referred by Patient 2, his sister-in-law. Patient 3 initialed a Notice of Privacy Practices form
21 which set forth how medical information about the patient may be used and disclosed. He
22 also signed and dated a Patient Rights & Responsibilities form which set forth that "Patients
23 have the right to personal privacy and to privacy concerning their own medical care: patients
24 expect that all communications, health information, and records pertaining to their care will
25 be treated as confidential."

26 38. On March 15, 2019, Respondent performed a laser assisted tumescent liposuction
27 on Patient 3. Respondent's Surgery Note reflects that "[p]atient was pre-medicated and

28 ///

1 sedated as noted, remaining responsive at all times.” Nitrous oxide¹¹ was used during the
2 procedure. It was also documented that Patient 3 was under “minimal sedation” for the
3 procedure.

4 39. In the operating room, two videos of Patient 3 were taken while he was laying on
5 the operating table prior to the commencement of the procedure, after sedation began.
6 Respondent sent one of the videos of Patient 3 to Patient 2, via text message. Patient 3 stated
7 that the videos were taken without his permission and that he was extremely shocked when
8 he learned that Respondent sent a video to his sister-in-law (Patient 2). During Respondent’s
9 September 20, 2021 interview with the Board, he stated that a video was sent to Patient 2 at
10 Patient 3’s request. There is no documentation in Patient 3’s chart reflecting that Patient 3
11 authorized the taking of the videos prior to the procedure or authorized the transmittal of any
12 videos to his sister-in-law.

13 40. Patients have a right to personal privacy and to privacy concerning their own
14 medical care. The standard of care requires that the physician respect patient privacy rights.
15 Videos were taken of Patient 3 while he was on the operating table and one of the videos was
16 sent by Respondent to another person by text message. While Respondent states that Patient
17 3 requested that he send the video to his sister-in-law, the patient had been given medication
18 which may have impaired his judgment. Respondent should have ignored the request to text
19 message the video to the patient’s sister-in-law, or he should have waited until the patient
20 was no longer experiencing effects of medication and confirm that the patient did in fact
21 want the video to be shared. This was a simple departure from the standard of care.

22 SECOND CAUSE FOR DISCIPLINE

23 (Failure to Maintain Adequate and Accurate Records)

24 41. Respondent is subject to disciplinary action under section 2266 of the Code in that he
25 failed to maintain adequate and accurate records relating to the provision of services to Patients 1,
26 2, and 3. The circumstances are as follows:

27
28 ¹¹ Nitrous oxide, commonly known as laughing gas, is commonly used for sedation and pain relief during tumescent liposuction.

1 and to obey all laws. The revocation was stayed and Respondent was placed on probation for two
2 (2) years to run consecutively from the conclusion of Respondent's probation term in the Board's
3 Decision in Case No. 800-2016-020767, for a total of nine (9) years' probation, together with a
4 total restriction on prescribing controlled substances, as well as the mandatory conditions
5 applying to a substance abusing licensee and other standard terms and conditions. That decision
6 is now final and is incorporated by reference as if fully set forth herein.

7 **PRAYER**

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

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 113632,
11 issued to Respondent Ryan Matthew Spivak, M.D.;
- 12 2. Revoking, suspending or denying approval of Respondent Ryan Matthew Spivak,
13 M.D.'s authority to supervise physician assistants and advanced practice nurses;
- 14 3. Ordering Respondent Ryan Matthew Spivak, M.D., to pay the Board the costs of the
15 investigation and enforcement of this case, and if placed on probation, the costs of probation
16 monitoring; and
- 17 4. Taking such other and further action as deemed necessary and proper.

18
19 DATED: _____

AUG 17 2022



WILLIAM PRASITKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

20
21
22
23
24 LA2022600295
25 65337042.docx
26
27