

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

In the Matter of the Accusation
Against:

Brian C. Payne, M.D.

Physician's and Surgeon's
Certificate No. A 67059

Respondent.

Case No.: 800-2020-065256

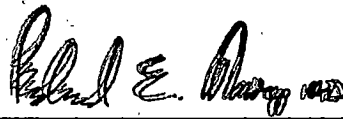
DECISION

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 July 19, 2023.

IT IS SO ORDERED: June 19, 2023.

MEDICAL BOARD OF CALIFORNIA



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

1 ROB BONTA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH
Deputy Attorney General
4 State Bar No. 173955
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5 Los Angeles, California 90013
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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 Accusation Against:

13 BRIAN C. PAYNE, M.D.

14 6617 W 82nd Street

15 Los Angeles, California 90045

16 Physician's and Surgeon's Certificate A 67059,

17 Respondent.
18

Case No. 800-2020-065256

OAH No. 2022090059 (Primary)

19 **STIPULATED SETTLEMENT AND**
20 **DISCIPLINARY ORDER**

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

22 **PARTIES**

23 1. Reji Varghese (Complainant) is the Deputy Director of the Medical Board of
24 California (Board). He is represented in this matter by Rob Bonta, Attorney General of the State
25 of California, by Vladimir Shalkevich, Deputy Attorney General.
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1 CULPABILITY

2 9. Respondent understands and agrees that the charges in Accusation No. 800-2020-
3 065256 constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

4 10. Respondent does not contest that, at an administrative hearing, Complainant could
5 establish a *prima facie* case with respect to the charges and allegations in Accusation No. 800-
6 2020-065256 (a copy of which is attached hereto as Exhibit A), and that he has thereby subjected
7 his Physician's and Surgeon's Certificate No. A 67059 to disciplinary action.

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

11 CONTINGENCY

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

22 13. Respondent agrees that if he petitions for early termination or modification of
23 probation, or if an accusation and/or petition to revoke probation is filed against him before the
24 Board, all of the charges and allegations contained in Accusation No. 800-2020-065256 shall be
25 deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or
26 any other licensing proceeding involving Respondent in the State of California.

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

4 15. In consideration of the preceding admissions and stipulations, the parties agree that
5 the Board may, without further notice or opportunity to be heard by the Respondent, issue and
6 enter the following Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 **IT IS HEREBY ORDERED THAT** Physician's and Surgeon's Certificate No. A 67059
9 issued to Respondent Brian C. Payne, M.D. is revoked. However, the revocation is stayed, and
10 Respondent is placed on probation for five (5) years, contingent upon his strict adherence to the
11 following terms and conditions:

12 1. **COOPERATION WITH PHYSICIAN ASSISTANT BOARD.** The Respondent
13 agrees to cooperate fully with the Complainant and its counsel in connection with the case
14 entitled *In the Matter of the Accusation against Ramon Castellon Gonzalez, PA – C*, Physician
15 Assistant Board Case No. 950-2020-002730. As used here, "cooperation" requires the
16 Respondent: (A) to respond truthfully and completely to all questions, whether in interviews, in
17 correspondence, telephone conversations, at a hearing, or at any trial or other court proceeding;
18 (B) to attend all meetings, trials, and other proceedings at which the Respondent's presence is
19 requested by the Complainant or compelled by subpoena or court order; (C) to produce
20 voluntarily any documents, records, or other tangible evidence related to his interactions with
21 Ramon Castellon Gonzalez that may be requested by the Complainant. If Respondent fails to do
22 so or should any of Respondent's statements or testimony prove to be knowingly false,
23 misleading, or materially incomplete, or if the Respondent otherwise violates the terms of this
24 Stipulation in any material way, it shall be a violation of probation. The determination of whether
25 the Respondent has violated this term shall be at the sole discretion of the Complainant.

26 2. **EDUCATION COURSE.** Within 60 calendar days of the effective date of this
27 Decision, and on an annual basis after that, Respondent shall submit to the Board or its designee
28 for its prior approval educational program(s) or course(s) which shall not be less than 32 hours

1 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at
2 correcting any areas of deficient practice or knowledge, including but not limited to those
3 concerning prohibitions on corporate practice of medicine and appropriate supervision of
4 Physician Assistants and/or Advanced Practice Nurses, and shall be Category I certified. The
5 educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to
6 the Continuing Medical Education (CME) requirements for renewal of licensure. Following the
7 completion of each course, the Board or its designee may administer an examination to test
8 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 57
9 hours of CME of which 32 hours were in satisfaction of this condition.

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

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

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

28 4. MONITORING - PRACTICE/BILLING. Within 30 calendar days of the effective

1 date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a
2 practice monitor(s), the name and qualifications of one or more licensed physicians and surgeons
3 whose licenses are valid and in good standing, and who are preferably American Board of
4 Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or
5 personal relationship with Respondent, or other relationship that could reasonably be expected to
6 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
7 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
8 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

9 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
10 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
11 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
12 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
13 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
14 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
15 signed statement for approval by the Board or its designee.

16 Within 60 calendar days of the effective date of this Decision, and continuing throughout
17 probation, Respondent's practice, except his practice as an emergency room physician at an
18 Emergency Department of a general acute care hospital as defined by Health and Safety Code
19 section 1250, shall be monitored by the approved monitor. Respondent shall make all records
20 available for immediate inspection and copying on the premises by the monitor at all times during
21 business hours and shall retain the records for the entire term of probation.

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

27 The monitor(s) shall submit a quarterly written report to the Board or its designee which
28 includes an evaluation of Respondent's performance, indicating whether Respondent's practices

1 are within the standards of practice of medicine, and whether Respondent is practicing medicine
2 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure
3 that the monitor submits the quarterly written reports to the Board or its designee within 10
4 calendar days after the end of the preceding quarter.

5 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
6 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
7 name and qualifications of a replacement monitor who will be assuming that responsibility within
8 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
9 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
10 notification from the Board or its designee to cease the practice of medicine within three (3)
11 calendar days after being so notified. Respondent shall cease the practice of medicine until a
12 replacement monitor is approved and assumes monitoring responsibility.

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

18 5. LIMITATION ON SERVING AS A MEDICAL DIRECTOR. During probation,
19 Respondent is prohibited from serving as a Medical Director¹ or supervisor of any Physician
20 Assistant, Nurse Practitioner, or any other licensed or unlicensed medical personnel at any clinic
21 or facility, unless at least 20 hours per week he is physically present at that clinic or facility at the
22 same time as the personnel he supervises. After the effective date of this Decision, all patients
23 being treated at any clinic or facility where Respondent is a Medical Director shall be notified
24 that Respondent is required to be physically present at the clinic or facility at least 20 hours per
25 week. Any new patients must be provided this notification at the time of their initial
26 appointment.

27 _____
28 ¹ Respondent is not a Medical Director of any Emergency Department of a general acute
care hospital as defined by Health and Safety Code section 1250.

1 Respondent shall maintain a log of all patients to whom the required oral notification was
2 made. The log shall contain the: (1) patient's name, address and phone number; (2) patient's
3 medical record number, if available; (3) the full name of the person making the notification; (4)
4 the date the notification was made; and (5) a description of the notification given.

5 Respondent shall maintain a calendar log of all of his medical practice times and location,
6 including his emergency department practice. The log shall contain (1) The date Respondent was
7 physically present at any hospital, medical clinic, facility, or premises where he engaged in the
8 practice of medicine, including but not limited to his practice as an Emergency Room physician,
9 office-based physician, or a Medical Director; (2) the name and address of the location where he
10 engaged in the practice of medicine; and (3) the start time and end time during which he was
11 physically present at the location. Respondent shall keep this log in chronological order in a
12 separate file or ledger. He shall make the log available for immediate inspection and copying on
13 the premises at all times during business hours by the Board or its designee and shall retain the
14 log for the entire term of probation.

15 6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
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 7. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
25 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
26 advanced practice nurses unless his is physically present for at least 20 hours per week on the
27 same premises and at the same time as the supervised physician assistants or advanced practice
28 nurses.

1 8. OBEY ALL LAWS. Respondent shall obey all federal, state, and local laws, and all
2 rules governing the practice of medicine in California and remain in full compliance with any
3 court-ordered criminal probation, payments, and other orders.

4 9. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
5 ordered to reimburse the Board its costs of investigation and enforcement in the amount of
6 \$11,530 (eleven thousand five hundred thirty dollars). Costs shall be payable to the Medical
7 Board of California. Failure to pay such costs shall be considered a violation of probation.

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

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

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

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

19 11. GENERAL PROBATION REQUIREMENTS.

20 Compliance with Probation Unit

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

22 Address Changes

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

28

1 License Renewal

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

4 Travel or Residence Outside California

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

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

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

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

28 In the event Respondent's period of non-practice while on probation exceeds 18 calendar

1 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
2 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
3 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
4 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

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

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

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

25 16. LICENSE SURRENDER. Following the effective date of this Decision, if
26 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
27 the terms and conditions of probation, Respondent may request to surrender his or her license.
28 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in

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

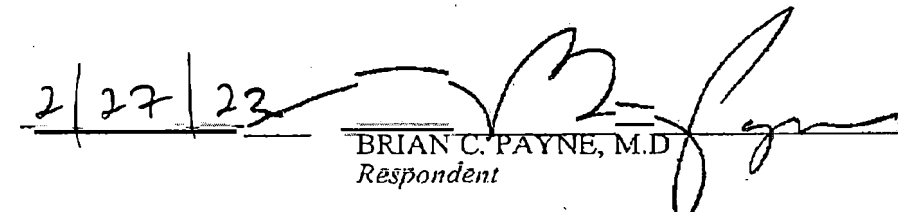
7 17. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
 8 with probation monitoring each and every year of probation, as designated by the Board, which
 9 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
 10 California and delivered to the Board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

12 18. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
 13 a new license or certification, or petition for reinstatement of a license, by any other health care
 14 licensing action agency in the State of California, all of the charges and allegations contained in
 15 Accusation No. 800-2020-065256 shall be deemed to be true, correct, and admitted by
 16 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
 17 restrict license.

18 ACCEPTANCE

19 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
 20 discussed it with my attorney, Jeffrey A. Walker. I understand the Stipulation and the effect it
 21 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
 22 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
 23 Decision and Order of the Medical Board of California.

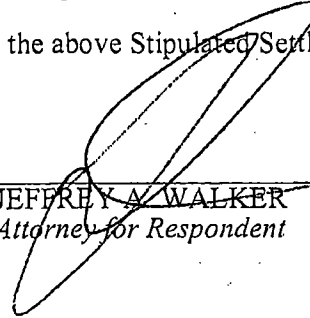
24
 25 DATED: 2/27/23


 26 BRIAN C. PAYNE, M.D.
 27 Respondent
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I have read and fully discussed with Respondent Brian C. Payne, 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: 2/27/23



JEFFREY A. WALKER
Attorney for Respondent

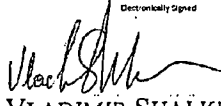
ENDORSEMENT

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

DATED: February 28, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

Electronically Signed

VLADIMIR SHALKEVICH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A
Accusation No. 800-2020-065256

1 ROB BONTA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH
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7

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

12 In the Matter of the Accusation Against:

Case No. 800-2020-065256

13 **BRIAN C. PAYNE, M.D.**
14 **6617 W 82nd Street**
Los Angeles, CA 90045

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. A 67059,**

17 Respondent.

18
19 **PARTIES**

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

23 2. On or about November 26, 1998, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 67059 to Brian C. Payne, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on November 30, 2022, unless renewed.

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1 **JURISDICTION**

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

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

9 **STATUTORY PROVISIONS**

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

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

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

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

19 6. Section 2286 of the Code states:

20 It shall constitute unprofessional conduct for any licensee to violate, to attempt
21 to violate, directly or indirectly, to assist in or abet the violation of, or to conspire to
22 violate any provision or term of Article 18 (commencing with Section 2400), of the
23 Moscone-Knox Professional Corporation Act (Part 4 commencing with Section
24 13400) of Division 3 of Title 1 of the Corporations Code), or of any rules and
25 regulations duly adopted under those laws.

26 7. Section 2285 of the Code provides:

27 The use of any fictitious, false, or assumed name, or any name other than his or her
28 own by a licensee either alone, in conjunction with a partnership or group, or as the name of
a professional corporation, in any public communication, advertisement, sign, or
announcement of his or her practice without a fictitious-name permit obtained pursuant to
Section 2415 constitutes unprofessional conduct. This section shall not apply to the
following:

///

1 (a) Licensees who are employed by a partnership, a group, or a professional
2 corporation that holds a fictitious name permit.

3 (b) Licensees who contract with, are employed by, or are on the staff of, any clinic
4 licensed by the State Department of Health Services under Chapter 1 (commencing
5 with Section 1200) of Division 2 of the Health and Safety Code.

6 (c) An outpatient surgery setting granted a certificate of accreditation from an
7 accreditation agency approved by the medical board.

8 (d) Any medical school approved by the division or a faculty practice plan connected
9 with the medical school.

10 8. Section 2261 of the Code provides:

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

14 9. Section 2052 of the Code provides:

15 (a) Notwithstanding Section 146, any person¹ who practices or attempts to practice, or
16 who advertises or holds himself or herself out as practicing, any system or mode of treating
17 the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any
18 ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or
19 mental condition of any person, without having at the time of so doing a valid, unrevoked,
20 or unsuspended certificate as provided in this chapter or without being authorized to
21 perform the act pursuant to a certificate obtained in accordance with some other provision
22 of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars
23 (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code,
24 by imprisonment in a county jail not exceeding one year, or by both the fine and either
25 imprisonment.

26 (b) Any person who conspires with or aids or abets another to commit any act
27 described in subdivision (a) is guilty of a public offense, subject to the punishment
28 described in that subdivision.

(c) The remedy provided in this section shall not preclude any other remedy provided
by law.

10. Section 2400 of the Code provides, in pertinent part:

///

¹ "Person" means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof, except that only natural persons shall be licensed under this chapter. (Bus. & Prof. Code § 2032.)

1 Corporations and other artificial legal entities shall have no professional rights,
privileges, or powers....

2
3 11. Section 2402 of the Code provides, in pertinent part:

4 The provisions of Section 2400 do not apply to a medical or podiatry corporation
practicing pursuant to the Moscone-Knox Professional Corporation Act...

5
6 12. Corporations Code section 13401.5 provides, in pertinent part:

7 Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the
8 following licensed persons may be shareholders, officers, directors, or professional
9 employees of the professional corporations designated in this section so long as the sum of
10 all shares owned by those licensed persons does not exceed 49 percent of the total number
11 of shares of the professional corporation so designated herein, and so long as the number of
those licensed persons owning shares in the professional corporation so designated herein
does not exceed the number of persons licensed by the governmental agency regulating the
designated professional corporation. ...

12 (a) Medical corporation.

13 ...

14 (3) Registered nurses.

15 ...

16 (7) Licensed physician assistants.

17
18 **COST RECOVERY**

19 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licensee found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
23 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
24 included in a stipulated settlement.

25 **FACTUAL ALLEGATIONS**

26 **MVP, Inc.**

27 14. Starting on or about November 10, 2010 and through the present, Ramon Castellon
28 Gonzalez, P.A. (Ray Gonzalez, P.A. or Gonzalez) registered a Professional Medical Corporation

1 called MVP Family Practice & Sports Medicine, Inc. (MVP, Inc.). MVP, Inc. is a professional
2 medical corporation incorporated in the State of California and located in Downey, California.
3 Corporate information for MVP, Inc., which was filed with the California Secretary of State,
4 indicates that Ray Gonzalez, a Physician Assistant, owns 49% of MVP, Inc. stock, and
5 Respondent, a physician licensed in California, owns 51% of MVP, Inc. stock. Gonzalez applied
6 for a Fictitious Name Permit from the Medical Board of California, attesting that Respondent
7 owns 51% of the MVP, Inc.'s shares. Respondent co-signed the application for a Fictitious Name
8 Permit.

9 15. Respondent's ownership of any corporate stock of MVP, Inc. is fictitious. When
10 questioned by the Board's investigators, Respondent explained that Gonzalez asked Respondent,
11 who was one of Gonzalez's preceptors during physician assistant training, if Respondent "would
12 be interested in being his medical director because he wanted to open up a clinic in Downey."
13 During an interview with Medical Board's investigators, Respondent stated that he owns 51% of
14 MVP, Inc. "by rule." When asked directly whether Gonzalez is the owner of the clinic,
15 Respondent stated: "Ray is the owner of the clinic."

16 16. Gonzalez is listed as MVP, Inc.'s CEO, Secretary, and CFO on the corporate
17 documents filed with the California Secretary of State. According to Respondent, Gonzalez
18 appoints all corporate officers at MVP, Inc. Respondent invested no money in MVP, Inc., had no
19 input into where the clinic was to be located, has no responsibilities in day-to-day operations of
20 MVP, Inc., has no access to MVP, Inc.'s bank accounts, does not know how MVP, Inc.'s
21 employees are paid, has no input into MVP, Inc.'s hiring of staff and does not know the
22 employees' last names. Gonzalez is the holder of the lease for the premises of MVP, Inc.
23 Respondent has no input into how MVP, Inc. is advertised, that also being Gonzalez's
24 responsibility. MVP, Inc.'s Internet advertising, before it was taken down during the
25 investigation, prominently featured Gonzalez but provided no information whatsoever about
26 Respondent. MVP, Inc.'s staff and patients refer to Gonzalez as "Doc" or "Doctor Ray" or
27 "Doctor Gonzalez." Various Internet reviews advertising MVP, Inc., including purported patient
28

1 reviews on Yelp.com, refer to Gonzalez as "Doctor Ray" or "Doctor Gonzalez" with no
2 correction or clarification from Respondent, or from Gonzalez or MVP, Inc.

3 17. Respondent does not see any of MVP, Inc.'s patients, but signs their charts as
4 necessary for insurance purposes, or to comply with the Board's supervision requirements, during
5 a weekly one-hour visit to MVP, Inc. Gonzalez, and not Respondent, refers MVP, Inc.'s patients
6 to specialists, and Respondent has never seen the practice's provider referral list. Respondent did
7 not select any of the laboratories used by MVP, Inc. to render patient care. Respondent has no
8 access to secure medicine and prescription pad storage at MVP, Inc., and is paid a small fixed
9 monthly stipend for acting as Gonzalez's supervisor and MVP, Inc.'s Medical Director.

10 18. When asked by the Medical Board's investigators whether he would expect to receive
11 any proceeds from a potential sale of MVP, Inc., Respondent stated: "I would not get anything
12 out of it...because I haven't invested anything."

13 **Atlantic Family Medical Clinic, Inc.**

14 19. On or about October 21, 2013 and through the present, Stephen Gichuru, a Physician
15 Assistant licensed in the State of California, registered with the California Secretary of State a
16 professional medical corporation called Atlantic Family Medical Clinic, Inc. (AFMC, Inc.), doing
17 business in Bell, California. The purpose of the corporation was and is to engage in the
18 profession of medicine. Stephen Gichuru was designated as the Chief Executive Officer of
19 AFMC, Inc., and Respondent was listed as a director. AFMC, Inc. is engaged in the practice of
20 general family medicine and utilizes Respondent as a Medical Director.

21 20. In his interview with the Board's investigators Respondent stated that he goes to
22 AFMC, Inc. once a week to review patient charts, and "it's a 51/49" with Stephen Gichuru
23 owning 49% of the practice and Respondent owning 51%. Respondent's ownership of any part
24 of AFMC, Inc. is fictitious. Respondent is paid a stipend of \$2000 per month to pretend to be the
25 51 % owner of AFMC, Inc., to serve as its medical director and to supervise Stephen Gichuru. In
26 his interview, Respondent stated: "I don't do anything with billing and I don't do anything with
27 payroll. And I actually don't do anything with hiring or firing of employees whatsoever."

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1 When asked directly, “so you are not the owner of that location at all?” Respondent stated: “No.
2 I’m not the owner.”

3 21. On or about April 17, 2015, Stephen Gichuru and/or Respondent submitted a
4 Fictitious Name Permit application to the Medical Board of California, in which Mr. Gichuru was
5 listed as a 49% owner and Respondent was listed as the 51% owner of AFMC, Inc. Respondent
6 co-signed the application. The Fictitious Name Permit was issued by the Board, pursuant to this
7 application, on May 13, 2015. It expired on May 31, 2017. As of the date of this Accusation, the
8 Fictitious Name Permit was not renewed and AFMC, Inc. continues to engage in the practice of
9 medicine without a valid Fictitious Name Permit.

10 **Ivy’s Medical Weight Loss Medical Center of Inglewood**

11 22. On or about March 25, 2019, Nicola Adkins, R.N. and Dominique Martin, R.N., both
12 licensed as Registered Nurses in the State of California, registered a California corporation called
13 Ivy’s Medical Weight Loss Medical Center of Inglewood, Inc., (IMWLMC, Inc.) with the
14 California Secretary of State. Respondent was listed as a director. According to Respondent,
15 nurses Adkins and Martin own 49% of the corporate stock, and Respondent owns 51%.

16 23. Respondent’s ownership of any part of IMWLMC, Inc. is fictitious. Respondent was
17 asked what role he had in starting this practice. Respondent stated: “Actually, I didn’t. Well, I
18 came in under actually the original owner who was – her name was Ivy. She then sold the
19 business to them and then they approached me to be the medical director and I was like well okay
20 I can be – I can continue being the medical director. We have since changed the paperwork over
21 to 51/49... That’s why I was – I’m the 51 percent but, you know, they are the ownership tax-
22 wise... I just get a stipend every month. That’s it.” During his interview with the Board’s
23 investigators, Respondent indicated that IMWLMC, Inc. is engaged in the practice of medicine
24 and employs a physician assistant as well as himself.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Moscone Knox Professional Corporations Act)**

3 24. Respondent Brian C. Payne, M.D. is subject to disciplinary action under section 2286
4 of the Code, because he violated, attempted to violate, directly or indirectly, or assisted in or
5 abetted the violation, or conspired to violate Moscone-Knox Professional Corporations Act.

6 25. The allegations of paragraphs 14 - 23 herein are incorporated herein by reference.

7 26. Respondent violated, attempted to violate, directly or indirectly, or assisted in or
8 abetted the violation, or conspired to violate Moscone-Knox Professional Corporations Act:

9 A) By falsely claiming 51% of MVP, Inc. corporate stock;

10 B) By falsely claiming 51% ownership of AFMC, Inc. corporate stock;

11 C) By falsely claiming 51% ownership of IMWLMC, Inc. corporate stock.

12 D) By participating in the formation of IMWLMC, Inc. in violation of Moscone-
13 Knox Professional Corporations Act, Corporations Code section 13401.3, where the number of
14 non-physician licensed persons owning shares in IMWLMC exceeded the number of licensed
15 physician share owners.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Aiding or Abetting Unlicensed Corporate Practice of Medicine)**

18 27. Respondent Brian C. Payne, M.D. is subject to disciplinary action under sections
19 2234, 2286, 2400, 2402 and 2052 of the Code, because he aided or abetted the unlicensed
20 corporate practice of medicine.

21 28. The allegations of paragraphs 14 - 23 herein are incorporated herein by reference.

22 29. Respondent aided or abetted in the unlicensed corporate practice of medicine as
23 follows:

24 A) By falsely claiming 51% ownership of corporate stock in MVP, Inc., Respondent
25 aided or abetted MVP., Inc. to engage in the unlicensed practice of medicine as a professional
26 medical corporation;

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28 ///

1 B) By falsely claiming 51% ownership of corporate stock in AFMC, Inc.,
2 Respondent aided or abetted AFMC, Inc. to engage in the unlicensed practice of medicine as a
3 professional medical corporation;

4 C) By falsely claiming 51% ownership of corporate stock in IMWLMC, Inc.,
5 Respondent aided or abetted IMWLMC, Inc. to engage in the unlicensed practice of medicine.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Acts of Dishonesty or Corruption)**

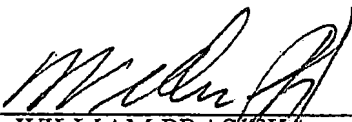
8 30. By the virtue of the allegations in the First and Second Causes for Discipline,
9 Respondent Brian C. Payne, M.D. is subject to disciplinary action under section 2234,
10 subdivision (e), in that he committed acts involving dishonesty or corruption substantially related
11 to the qualifications, functions or duties of a physician and surgeon.

12 **PRAAYER**

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

- 15 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 67059,
16 issued to Brian C. Payne, M.D.;
- 17 2. Revoking, suspending or denying approval of Brian C. Payne, M.D.'s authority to
18 supervise physician assistants and advanced practice nurses;
- 19 3. Ordering Brian C. Payne, M.D., to pay the Board the costs of the investigation and
20 enforcement of this case, and if placed on probation, the costs of probation monitoring; and
- 21 4. Taking such other and further action as deemed necessary and proper.

22
23 DATED: JUN 20 2022

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

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