

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

**In the Matter of the Accusation
Against:**

Nicholas Aaron Fettman, M.D.

**Physician's and Surgeon's
Certificate No. A 116624**

Case No.: 800-2021-078215

Respondent.

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 December 14, 2023.

IT IS SO ORDERED: November 14, 2023.

MEDICAL BOARD OF CALIFORNIA



**Laurie Rose Lubiano, J.D. Chair
Panel A**

1 ROB BONTA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 LATRICE R. HEMPHILL
Deputy Attorney General
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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 **NICHOLAS AARON FETTMAN, M.D.**
14 **412 Canyon Vista Dr.**
Thousand Oaks, CA 91320-2725

15 **Physician's and Surgeon's Certificate**
16 **No. A 116624,**

17 Respondent.

Case No. 800-2021-078215

OAH No. 2023070514

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18
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 Executive Director of the Medical Board of
23 California (Board). He brought this action solely in his official capacity and is represented in this
24 matter by Rob Bonta, Attorney General of the State of California, by Latrice R. Hemphill, Deputy
25 Attorney General.

26 2. Respondent Nicholas Aaron Fettman, M.D. (Respondent) is represented in this
27 proceeding by attorney Marglyn E. Paseka, Esq., whose address is: 50 California Street, 34th
28 Floor, San Francisco, CA 94111-4799.

3. On or about April 15, 2011, the Board issued Physician's and Surgeon's Certificate No. A 116624 to Nicholas Aaron Fettman, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2021-078215, and will expire on December 31, 2024, unless renewed.

JURISDICTION

4. Accusation No. 800-2021-078215 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 31, 2023. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2021-078215 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2021-078215. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2021-078215, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2021-078215, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. A 116624 to disciplinary action.

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

CONTINGENCY

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

13. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2021-078215 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 116624 issued to Respondent NICHOLAS AARON FETTMAN, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions:

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

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

2. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the use of products or beverages containing alcohol.

3. WRITTEN EXAMINATION.

Within 60 calendar days of the effective date of this Decision, Respondent shall take and pass the Special Purpose Examination (SPEX) or an equivalent examination as determined by the Board or its designee.

Failure to pass the required written examination within 180 calendar days after the effective date of this Decision is a violation of probation. Respondent shall pay the costs of all examinations.

If Respondent fails to pass the written examination, Respondent shall receive a notification

1 from the Board or its designee to cease the practice of medicine within three (3) calendar days
2 after being so notified. Respondent shall not practice medicine until Respondent successfully
3 passes the examination, as evidenced by written notice to Respondent from the Board or its
4 designee.

5 4. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision,
6 Respondent shall submit to the Board or its designee for prior approval the name and
7 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who
8 has a doctoral degree in psychology and at least five years of postgraduate experience in the
9 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall
10 undergo and continue psychotherapy treatment, including any modifications to the frequency of
11 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

12 The psychotherapist shall consider any information provided by the Board or its designee
13 and any other information the psychotherapist deems relevant and shall furnish a written
14 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
15 psychotherapist with any information and documents that the psychotherapist may deem
16 pertinent.

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

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

25 5. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
26 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
27 monitor, the name and qualifications of one or more licensed physicians and surgeons whose
28 licenses are valid and in good standing, and who are preferably American Board of Medical

1 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
2 relationship with Respondent, or other relationship that could reasonably be expected to
3 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
4 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
5 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

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

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

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

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

28 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of

1 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
2 name and qualifications of a replacement monitor who will be assuming that responsibility within
3 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
4 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
5 notification from the Board or its designee to cease the practice of medicine within three (3)
6 calendar days after being so notified. Respondent shall cease the practice of medicine until a
7 replacement monitor is approved and assumes monitoring responsibility.

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

13 6. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)
14 days of the effective date of this Decision, Respondent shall provide to the Board the names,
15 physical addresses, mailing addresses, and telephone numbers of any and all employers and
16 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's
17 worksite monitor, and Respondent's employers and supervisors to communicate regarding
18 Respondent's work status, performance, and monitoring.

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

22 7. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
23 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
24 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
25 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall
26 make daily contact with the Board or its designee to determine whether biological fluid testing is
27 required. Respondent shall be tested on the date of the notification as directed by the Board or its
28 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at

1 any time, including weekends and holidays. Except when testing on a specific date as ordered by
2 the Board or its designee, the scheduling of biological fluid testing shall be done on a random
3 basis. The cost of biological fluid testing shall be borne by the Respondent.

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

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

13 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry
14 Association or have completed the training required to serve as a collector for the United
15 States Department of Transportation.

16 (b) Its specimen collectors conform to the current United States Department of
17 Transportation Specimen Collection Guidelines.

18 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published
19 by the United States Department of Transportation without regard to the type of test
20 administered.

21 (d) Its specimen collectors observe the collection of testing specimens.

22 (e) Its laboratories are certified and accredited by the United States Department of Health
23 and Human Services.

24 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day
25 of receipt and all specimens collected shall be handled pursuant to chain of custody
26 procedures. The laboratory shall process and analyze the specimens and provide legally
27 defensible test results to the Board within seven (7) business days of receipt of the
28 specimen. The Board will be notified of non-negative results within one (1) business day

1 and will be notified of negative test results within seven (7) business days.

2 (g) Its testing locations possess all the materials, equipment, and technical expertise
3 necessary in order to test Respondent on any day of the week.

4 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens
5 for the detection of alcohol and illegal and controlled substances.

6 (i) It maintains testing sites located throughout California.

7 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line
8 computer database that allows the Respondent to check in daily for testing.

9 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff
10 access to drug test results and compliance reporting information that is available 24 hours a
11 day.

12 (l) It employs or contracts with toxicologists that are licensed physicians and have
13 knowledge of substance abuse disorders and the appropriate medical training to interpret
14 and evaluate laboratory biological fluid test results, medical histories, and any other
15 information relevant to biomedical information.

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

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

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

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

26 If a biological fluid test result indicates Respondent has used, consumed, ingested, or
27 administered to himself or herself a prohibited substance, the Board shall order Respondent to
28 cease practice and instruct Respondent to leave any place of work where Respondent is practicing

1 medicine or providing medical services. The Board shall immediately notify all of Respondent's
2 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or
3 provide medical services while the cease-practice order is in effect.

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

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

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

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

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

22 8. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of
23 the effective date of this Decision, Respondent shall submit to the Board or its designee, for its
24 prior approval, the name of a substance abuse support group, which he or she shall attend for the
25 duration of probation. Respondent shall attend substance abuse support group meetings at least
26 once per week, or as ordered by the Board or its designee. Respondent shall pay all substance
27 abuse support group meeting costs.

28 The facilitator of the substance abuse support group meeting shall have a minimum of three

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

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

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

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

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

28 Respondent shall pay all worksite monitoring costs.

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

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

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

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

1 cease the practice of medicine until a replacement monitor is approved and assumes monitoring
2 responsibility.

3 10. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING

4 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of
5 probation.

6 A. If Respondent commits a major violation of probation as defined by section
7 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take
8 one or more of the following actions:

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

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

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

21 B. If Respondent commits a minor violation of probation as defined by section
22 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
23 one or more of the following actions:

24 (1) Issue a cease-practice order;

25 (2) Order practice limitations;

26 (3) Order or increase supervision of Respondent;

27 (4) Order increased documentation;

28 (5) Issue a citation and fine, or a warning letter;

1 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in
2 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
3 Regulations, at Respondent's expense;

4 (7) Take any other action as determined by the Board or its designee.

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

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

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

21 12. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
22 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
23 advanced practice nurses.

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

27 14. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
28 ordered to reimburse the Board its costs of investigation and enforcement in the amount of

1 \$17,889.00 (seventeen thousand eight hundred eighty-nine dollars). Costs shall be payable to the
2 Medical Board of California. Failure to pay such costs shall be considered a violation of
3 probation.

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

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

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

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

15 16. GENERAL PROBATION REQUIREMENTS.

16 Compliance with Probation Unit

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

18 Address Changes

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

24 Place of Practice

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

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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 17. 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 18. 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
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 19. 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 20. 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 21. 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

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

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

23. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2021-078215 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Marglyn E. Paseka, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.


DATED: 09 / 07 / 2023



NICHOLAS AARON FETTMAN, M.D.
Respondent

1 I have read and fully discussed with Respondent Nicholas Aaron Fettman, M.D. the terms
2 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
3 Order. I approve its form and content.

4 DATED: 09 / 07 / 2023


MARGLYN E. PASEKA, ESQ.
Attorney for Respondent

6
7 **ENDORSEMENT**

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

10 DATED: _____

Respectfully submitted,

11
12 ROB BONTA
Attorney General of California
13 JUDITH T. ALVARADO
Supervising Deputy Attorney General

14
15 LATRICE R. HEMPHILL
Deputy Attorney General
16 *Attorneys for Complainant*

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1 I have read and fully discussed with Respondent Nicholas Aaron Fettman, M.D. the terms
2 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
3 Order. I approve its form and content.

4 DATED: _____

MARGLYN E. PASEKA, ESQ.
Attorney for Respondent

6
7 **ENDORSEMENT**

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

10 DATED: September 8, 2023

Respectfully submitted,

11
12 ROB BONTA
Attorney General of California
13 JUDITH T. ALVARADO
Supervising Deputy Attorney General

14 

15 LATRICE R. HEMPHILL
16 Deputy Attorney General
Attorneys for Complainant

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EXHIBIT A
ACCUSATION NO. 800-2021-078215

1 ROB BONTA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
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5 Los Angeles, CA 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:

Case No. 800-2021-078215

13 **NICHOLAS AARON FETTMAN, M.D.**
14 **412 Canyon Vista Dr.**
Thousand Oaks, CA 91320-2725

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. A 116624,**

Respondent.

17
18
19 **PARTIES**

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

23 2. On or about April 15, 2011, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 116624 to Nicholas Aaron Fettman, M.D. (Respondent). The Physician's
25 and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on December 31, 2024, unless renewed.

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[illegible]

4. Section 2227 of the Code states:

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

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

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

5. Section 2234 of the Code, states:

(b) Gross negligence.

2

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

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

9 (d) Incompetence.

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

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

14 (g) The failure by a certificate holder, in the absence of good cause, to attend
15 and participate in an interview by the board. This subdivision shall only apply to a
16 certificate holder who is the subject of an investigation by the board.

17 6. Section 2239 of the Code states:

18 (a) The use or prescribing for or administering to himself or herself, of any
19 controlled substance; or the use of any of the dangerous drugs specified in Section
20 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous
21 or injurious to the licensee, or to any other person or to the public, or to the extent that
22 such use impairs the ability of the licensee to practice medicine safely or more than
23 one misdemeanor or any felony involving the use, consumption, or
24 self-administration of any of the substances referred to in this section, or any
25 combination thereof, constitutes unprofessional conduct. The record of the
26 conviction is conclusive evidence of such unprofessional conduct.

27 (b) A plea or verdict of guilty or a conviction following a plea of nolo
28 contendere is deemed to be a conviction within the meaning of this section. The
Medical Board may order discipline of the licensee in accordance with Section 2227
or the Medical Board may order the denial of the license when the time for appeal has
elapsed or the judgment of conviction has been affirmed on appeal or when an order
granting probation is made suspending imposition of sentence, irrespective of a
subsequent order under the provisions of Section 1203.4 of the Penal Code allowing
such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
setting aside the verdict of guilty, or dismissing the accusation, complaint,
information, or indictment.

7. Section 822 of the Code states:

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

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

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

1 (c) Placing the licentiate on probation.

2 (d) Taking such other action in relation to the licentiate as the licensing agency
3 in its discretion deems proper.

4 The licensing section shall not reinstate a revoked or suspended certificate or
5 license until it has received competent evidence of the absence or control of the
6 condition which caused its action and until it is satisfied that with due regard for the
7 public health and safety the person's right to practice his or her profession may be
8 safely reinstated.

9 COST RECOVERY

10 8. Section 125.3 of the Code states:

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

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

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

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

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

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

FACTUAL ALLEGATIONS

9. Respondent is a board-certified otolaryngologist who previously practiced at West Coast Ear Nose Throat Head and Neck Surgery (West Coast) in Simi Valley, California.

10. On or about May 24, 2021, the Board's Central Complaint Unit (CCU) received a complaint alleging that Respondent was in a residential facility to address addiction, but opted to self-discharge from the facility and enabled another patient to do the same.

11. On or about September 16, 2021, investigators with the Department of Consumer Affairs, Division of Investigation, Health Quality Investigation Unit (HQIU) conducted an unannounced visit to Respondent's prior place of employment, West Coast. Investigators interviewed T.K., another practicing physician in the medical group. T.K. indicated that in January 2021, Respondent informed the medical group that he was burnt out and needed time away. Respondent returned to the medical group in February 2021, but by the end of the month, he left the medical group again. Respondent admitted to the medical group that he was using cocaine and had previously checked himself into a residential treatment facility to help with his addiction. T.K. stated that in June or July 2021, the medical group officially separated from Respondent.

12. After further investigation, the Board asked Respondent to voluntarily submit to a physical and mental examination.

13. On or about August 4, 2022, Respondent agreed to undergo physical and mental examinations to determine if he could safely practice medicine.

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1 14. Respondent underwent a physical examination on September 2, 2022. During the
2 examination, Respondent admitted to having a history of addiction to Vicodin, fentanyl, and
3 cocaine.

4 15. The examiner found that Respondent did not have a physical illness or condition that
5 would render him unable to safely practice medicine. However, the examiner opined that
6 Respondent does require monitoring, treatment, and oversight in order to practice medicine
7 safely. Specifically, the examiner recommended that Respondent submit to random toxicology
8 screening and ongoing psychotherapeutic counseling in order to practice safely.

9 16. Respondent underwent a mental examination on September 20, 2022. The examiner
10 found that Respondent met the DSM-5¹ criteria for opiate use disorder, which is severe but in
11 early remission, cocaine use disorder, which is moderate but in early remission, and major
12 depressive disorder, with recurrent episodes but currently in remission.

13 17. The examiner, who conducted the mental examination, opined that Respondent is not
14 able to practice medicine safely without restrictions or conditions as a result of his psychiatric
15 conditions. The examiner noted that Respondent is not currently practicing medicine but, upon
16 his return to practice, he should be subject to monitoring. The examiner recommended that
17 Respondent undergo random testing for controlled substances and alcohol, attend group
18 psychotherapy and individual psychotherapy, and undergo psychiatric treatment. The examiner
19 also recommended that Respondent remain in an intensive outpatient level of care until a step-
20 down to a less intensive level of care is deemed clinically appropriate by his treatment team.
21 Lastly, the examiner recommended continued psychiatric supervision of medication-assisted
22 treatment for Respondent's opioid use disorder.

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26 _____
27 ¹ DSM-5, also known as the Diagnostic and Statistical Manual of Mental Disorders (Fifth
28 Edition), is a reference book on mental health and brain-related conditions and disorders. The
DSM is published by the American Psychiatric Association and contains descriptions, symptoms,
and other criteria necessary for diagnosing mental health disorders.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misuse of Controlled Substances)**

3 18. Respondent is subject to disciplinary action under section 2239, subdivision (a), of
4 the Code insofar as Respondent used drugs to the extent, or in such a manner, as to be dangerous
5 or injurious to himself, as more particularly alleged in paragraphs 9 through 17, above, which are
6 incorporated herein by reference as if fully set forth.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Inability to Practice Medicine Safely)**

9 19. Respondent is subject to disciplinary action under section 822 of the Code in that
10 Respondent has a mental illness or condition that requires monitoring, treatment, and practice
11 restrictions. The circumstances are as follows:

12 20. Complainant refers to and, by this reference, incorporates paragraphs 9 through 17,
13 above, as though set forth fully herein.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct)**

16 21. Respondent is subject to disciplinary action under section 2234 of the Code in that he
17 engaged in unprofessional conduct. The circumstances are as follows:

18 22. The allegation in the First Cause for Discipline, in paragraph 18, above, is
19 incorporated herein by reference as if fully set forth.

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1 PRAYER

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

- 4 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 116624,
5 issued to Respondent Nicholas Aaron Fettman, M.D.;
- 6 2. Revoking, suspending or denying approval of Respondent Nicholas Aaron Fettman,
7 M.D.'s authority to supervise physician assistants and advanced practice nurses;
- 8 3. Ordering Respondent Nicholas Aaron Fettman, M.D., to pay the Board the costs of
9 the investigation and enforcement of this case, and if placed on probation, the costs of probation
10 monitoring; and
- 11 4. Taking such other and further action as deemed necessary and proper.

12
13 DATED: MAY 31 2023

JENNA JONES FOR
REJI VARGHESE
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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