

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

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

Benjamin Kwittken, M.D.

**Physician's and Surgeon's
Certificate No. A 146802**

Respondent.

Case No.: 800-2022-089948

DECISION

The attached Stipulated Settlement 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 January 12, 2024.

IT IS SO ORDERED: December 13, 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 REBECCA L. SMITH
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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. 800-2022-089948

13 BENJAMIN KWITTKEN, M.D.
14 147 North Brent Street
Ventura, CA 93003

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Physician's and Surgeon's Certificate
16 No. A 146802,

Respondent.
17

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 Rebecca L. Smith, Deputy
25 Attorney General.

26 2. Benjamin Kwittken, M.D. (Respondent) is represented in this proceeding by attorney
27 Kevin Cauley, whose address is 225 South Lake Avenue, Suite 300, Pasadena, California 91101-
28 3009.

1 3. On or about January 5, 2017, the Board issued Physician's and Surgeon's Certificate
2 No. A 146802 to Respondent. That license was in full force and effect at all times relevant to the
3 charges brought in Accusation No. 800-2022-089948, and will expire on January 31, 2025, unless
4 renewed.

5 **JURISDICTION**

6 4. Accusation No. 800-2022-089948 was filed before the Board, and is currently
7 pending against Respondent. The Accusation and all other statutorily required documents were
8 properly served on Respondent on June 7, 2023. Respondent timely filed his Notice of Defense
9 contesting the Accusation.

10 5. A copy of Accusation No. 800-2022-089948 is attached as Exhibit A and
11 incorporated herein by reference.

12 **ADVISEMENT AND WAIVERS**

13 6. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 800-2022-089948. Respondent has also carefully read,
15 fully discussed with his counsel, and understands the effects of this Stipulated Settlement and
16 Disciplinary Order.

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

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

25 **CULPABILITY**

26 9. Respondent understands and agrees that the charges and allegations in Accusation
27 No. 800-2022-089948, if proven at a hearing, constitute cause for imposing discipline upon his
28 Physician's and Surgeon's Certificate.

10. Respondent agrees that, at a hearing, Complainant could establish a prima facie case or factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. 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. 800-2022-089948, 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 146802 to disciplinary action

12. ACKNOWLEDGMENT. Respondent acknowledges the Disciplinary Order below, requiring the disclosure of probation pursuant to Business and Professions Code section 2228.1, serves to protect the public interest.

13. 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.

RESERVATION

14. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

15. 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

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1 action between the parties, and the Board shall not be disqualified from further action by having
2 considered this matter.

3 16. Respondent agrees that if he ever petitions for early termination or modification of
4 probation, or if an accusation and/or petition to revoke probation is filed against him before the
5 Board, all of the charges and allegations contained in Accusation No. 800-2022-089948 shall be
6 deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or
7 any other licensing proceeding involving Respondent in the State of California.

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

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

14 **DISCIPLINARY ORDER**

15 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 146802 issued
16 to Respondent Benjamin Kwittken, M.D. is revoked. However, the revocation is stayed and
17 Respondent is placed on probation for five (5) years on the following terms and conditions:

18 1. **CONTROLLED SUBSTANCES - PARTIAL RESTRICTION.** Respondent shall not
19 order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by
20 the California Uniform Controlled Substances Act, except in the perioperative setting when
21 Respondent is acting as an anesthesiologist where the patient will only use such controlled
22 substances at the location of the procedure (i.e., the foregoing exception shall not apply to any
23 controlled substances that are used outside of such perioperative setting). Perioperative setting is
24 defined as immediately prior to surgery, during surgery or immediately after surgery.

25 Respondent shall not issue an oral or written recommendation or approval to a patient or a
26 patient's primary caregiver for the possession or cultivation of marijuana for the personal medical
27 purposes of the patient within the meaning of Health and Safety Code section 11362.5. If
28 Respondent forms the medical opinion, after an appropriate prior examination and medical

1 indication, that a patient's medical condition may benefit from the use of marijuana, Respondent
2 shall so inform the patient and shall refer the patient to another physician who, following an
3 appropriate prior examination and medical indication, may independently issue a medically
4 appropriate recommendation or approval for the possession or cultivation of marijuana for the
5 personal medical purposes of the patient within the meaning of Health and Safety Code section
6 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that
7 Respondent is prohibited from issuing a recommendation or approval for the possession or
8 cultivation of marijuana for the personal medical purposes of the patient and that the patient or
9 the patient's primary caregiver may not rely on Respondent's statements to legally possess or
10 cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully
11 document in the patient's chart that the patient or the patient's primary caregiver was so
12 informed. Nothing in this condition prohibits Respondent from providing the patient or the
13 patient's primary caregiver information about the possible medical benefits resulting from the use
14 of marijuana.

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

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

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

27 4. EDUCATION COURSE. Within sixty (60) calendar days of the effective date of this
28 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee

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

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

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

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

27 6. PSYCHOTHERAPY. Within sixty (60) calendar days of the effective date of this
28 Decision, Respondent shall submit to the Board or its designee for prior approval the name and

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

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

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

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

19 7. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
20 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice
21 where: 1) Respondent merely shares office space with another physician but is not affiliated for
22 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
23 location.

24 If Respondent fails to establish a practice with another physician or secure employment in
25 an appropriate practice setting within sixty (60) calendar days of the effective date of this
26 Decision, Respondent shall receive a notification from the Board or its designee to cease the
27 practice of medicine within three (3) calendar days after being so notified. Respondent shall not
28 resume practice until an appropriate practice setting is established.

1 If, during the course of the probation, Respondent's practice setting changes and
2 Respondent is no longer practicing in a setting in compliance with this Decision, Respondent
3 shall notify the Board or its designee within five (5) calendar days of the practice setting change.
4 If Respondent fails to establish a practice with another physician or secure employment in an
5 appropriate practice setting within sixty (60) calendar days of the practice setting change,
6 Respondent shall receive a notification from the Board or its designee to cease the practice of
7 medicine within three (3) calendar days after being so notified. Respondent shall not resume
8 practice until an appropriate practice setting is established.

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

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

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

28 During the first year of probation, Respondent shall be subject to fifty-two (52) to one-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 The facilitator of the substance abuse support group meeting shall have a minimum of three
26 (3) years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed
27 or certified by the state or nationally certified organizations. The facilitator shall not have a
28 current or former financial, personal, or business relationship with Respondent within the last five

1 (5) years. Respondent's previous participation in a substance abuse group support meeting led by
2 the same facilitator does not constitute a prohibited current or former financial, personal, or
3 business relationship.

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

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

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

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

25 Respondent shall pay all worksite monitoring costs.

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

1 by the Board or its designee; and review Respondent's work attendance.

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

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

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

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1 12. VIOlation OF PROBATION CONDITION FOR SUBSTANCE ABUSING
2 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of
3 probation.

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

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

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

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

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

22 (1) Issue a cease-practice order;

23 (2) Order practice limitations;

24 (3) Order or increase supervision of Respondent;

25 (4) Order increased documentation;

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

27 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in
28 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of

1 Regulations, at Respondent's expense;

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

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

10 13. PATIENT DISCLOSURE. Before a patient's first visit following the effective date
11 of this order and while Respondent is on probation, Respondent must provide all patients, or
12 patient's guardian or health care surrogate, with a separate disclosure that includes Respondent's
13 probation status, the length of the probation, the probation end date, all practice restrictions
14 placed on Respondent by the board, the board's telephone number, and an explanation of how the
15 patient can find further information on Respondent's probation on Respondent's profile page on
16 the board's website. Respondent shall obtain from the patient, or the patient's guardian or health
17 care surrogate, a separate, signed copy of that disclosure. Respondent shall not be required to
18 provide a disclosure if any of the following applies: (1) The patient is unconscious or otherwise
19 unable to comprehend the disclosure and sign the copy of the disclosure and a guardian or health
20 care surrogate is unavailable to comprehend the disclosure and sign the copy; (2) The visit occurs
21 in an emergency room or an urgent care facility or the visit is unscheduled, including
22 consultations in inpatient facilities; (3) Respondent is not known to the patient until immediately
23 prior to the start of the visit; (4) Respondent does not have a direct treatment relationship with the
24 patient.

25 14. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
26 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
27 Chief Executive Officer at every hospital where privileges or membership are extended to
28 Respondent, at any other facility where Respondent engages in the practice of medicine,

1 including all physician and locum tenens registries or other similar agencies, and to the Chief
2 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
3 Respondent. Respondent shall submit proof of compliance to the Board or its designee within
4 fifteen (15) calendar days.

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

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

9 16. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
10 ordered to reimburse the Board its costs of investigation and enforcement, in the amount of
11 \$23,453.40 (twenty-three thousand four hundred fifty-three dollars and forty cents). Costs shall
12 be payable to the Medical Board of California. Failure to pay such costs shall be considered a
13 violation of probation.

14 Payment must be made in full within thirty (30) calendar days of the effective date of the
15 Order, or by a payment plan approved by the Medical Board of California. Any and all requests
16 for a payment plan shall be submitted in writing by respondent to the Board. Failure to comply
17 with the payment plan shall be considered a violation of probation.

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

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

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

25 18. GENERAL PROBATION REQUIREMENTS.

26 Compliance with Probation Unit

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

28 ///

1 Address Changes

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

7 Place of Practice

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

11 License Renewal

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

14 Travel or Residence Outside California

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

18 In the event Respondent should leave the State of California to reside or to practice
19 Respondent shall notify the Board or its designee in writing thirty (30) calendar days prior to the
20 dates of departure and return.

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

24 20. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
25 its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting
26 more than thirty (30) calendar days and within fifteen (15) calendar days of Respondent's return
27 to practice. Non-practice is defined as any period of time Respondent is not practicing medicine
28 as defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours

1 in a calendar month in direct patient care, clinical activity or teaching, or other activity as
2 approved by the Board. If Respondent resides in California and is considered to be in non-
3 practice, Respondent shall comply with all terms and conditions of probation. All time spent in
4 an intensive training program which has been approved by the Board or its designee shall not be
5 considered non-practice and does not relieve Respondent from complying with all the terms and
6 conditions of probation. Practicing medicine in another state of the United States or Federal
7 jurisdiction while on probation with the medical licensing authority of that state or jurisdiction
8 shall not be considered non-practice. A Board-ordered suspension of practice shall not be
9 considered as a period of non-practice.

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

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

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

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

23 21. COMPLETION OF PROBATION. Respondent shall comply with all financial
24 obligations (e.g., restitution, probation costs) not later than one-hundred twenty (120) calendar
25 days prior to the completion of probation. This term does not include cost recovery, which is due
26 within thirty (30) calendar days of the effective date of the Order, or by a payment plan approved
27 by the Medical Board and timely satisfied. Upon successful completion of probation,
28 Respondent's certificate shall be fully restored.

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

8 23. LICENSE SURRENDER. Following the effective date of this Decision, if
9 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
10 the terms and conditions of probation, Respondent may request to surrender his or her license.
11 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
12 determining whether or not to grant the request, or to take any other action deemed appropriate
13 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
14 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
15 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
16 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
17 application shall be treated as a petition for reinstatement of a revoked certificate.

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

23 25. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
24 a new license or certification, or petition for reinstatement of a license, by any other health care
25 licensing action agency in the State of California, all of the charges and allegations contained in
26 Accusation No. 800-2022-089948 shall be deemed to be true, correct, and admitted by
27 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
28 restrict license.

1 ACCEPTANCE

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

7
8 DATED: August 11, 2023


9 BENJAMIN KWITKEN, M.D.
Respondent

10 I have read and fully discussed with Respondent Benjamin Kwitken, M.D. the terms and
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
12 I approve its form and content.

13
14 DATED: August 11, 2023


15 KEVIN CAULEY
Attorney for Respondent

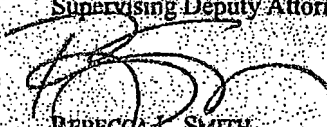
16 ENDORSEMENT

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

19
20 DATED: August 11, 2023

Respectfully submitted,

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

23
24 
25 REBECCA L. SMITH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2022-089948

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

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

11
12 In the Matter of the Accusation Against:

Case No. 800-2022-089948

13 **Benjamin Kwittken, M.D.**
14 **Ventura Anesthesia Medical Grp**
147 North Brent Street
Ventura, CA 93003

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. A 146802,**

17 Respondent.

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 January 5, 2017, the Board issued Physician's and Surgeon's Certificate
24 Number A 146802 to Benjamin Kwittken, M.D. (Respondent). That Certificate was in full force
25 and effect at all times relevant to the charges brought herein and will expire on January 31, 2025,
26 unless renewed.

27 3. On April 11, 2023, an Order Imposing Interim License Restrictions was issued
28 pursuant to stipulation by Respondent. Pursuant to that Order, Respondent's Physician's and

1 Surgeon's Certificate Number A 146802 is restricted and Respondent is required to fully comply
2 with the following terms and conditions as set forth below, pending a formal hearing and decision
3 on an Accusation:

4 A. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent shall not
5 order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by
6 the California Uniform Controlled Substances Act, except in the perioperative setting when
7 Respondent is acting as an anesthesiologist where the patient will only use such controlled
8 substances at the location of the procedure (i.e., the foregoing exception shall not apply to any
9 controlled substances that are used outside of such perioperative setting). Perioperative setting is
10 defined as immediately prior to surgery, during surgery or immediately after surgery. Respondent
11 shall not issue an oral or written recommendation or approval to a patient or a patient's primary
12 caregiver for the possession or cultivation of marijuana for the personal medical purposes of the
13 patient within the meaning of Health and Safety Code section 11362.5. If Respondent forms the
14 medical opinion, after an appropriate prior examination and medical indication, that a patient's
15 medical condition may benefit from the use of marijuana, Respondent shall so inform the patient
16 and shall refer the patient to another physician who, following an appropriate prior examination
17 and medical indication, may independently issue a medically appropriate recommendation or
18 approval for the possession or cultivation of marijuana for the personal medical purposes of the
19 patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent
20 shall inform the patient or the patient's primary caregiver that Respondent is prohibited from
21 issuing a recommendation or approval for the possession or cultivation of marijuana for the
22 personal medical purposes of the patient and that the patient or the patient's primary caregiver
23 may not rely on Respondent's statements to legally possess or cultivate marijuana for the personal
24 medical purposes of the patient. Respondent shall fully document in the patient's chart that the
25 patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits
26 Respondent from providing the patient or the patient's primary caregiver information about the
27 possible medical benefits resulting from the use of marijuana.

28 ///

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

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

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

13 D. BIOLOGICAL FLUID TESTING. Within seven (7) days of the date of issuance by
14 the Office of Administrative Hearings of the Interim Order Imposing License Restrictions,
15 Respondent shall contract with a laboratory or service, approved in advance by the Board or its
16 designee, that will conduct random, unannounced, observed, biological fluid testing and meets all
17 of the standards approved in advance by the Board or its designee. "Biological fluid testing" may
18 include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug
19 screening approved by the Board or its designee.

20 The cost of biological fluid testing shall be borne by the Respondent.

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

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

1 After the issuance of a cease-practice order, the Board shall determine whether the
2 positive biological fluid test is in fact evidence of prohibited substance use by consulting
3 with the specimen collector and the laboratory, communicating with the licensee, his
4 treating physician(s), other health care provider, or group facilitator, as applicable. A
5 biological fluid test will not be considered negative if a positive result is obtained while
6 practicing, even if the practitioner holds a valid prescription for the substance.

7 If no prohibited substance use exists, the Board shall lift the cease-practice order
8 within one (1) business day.

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

13 E. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within seven (7)
14 days of the date of issuance by the Office of Administrative Hearings of the Interim Order
15 Imposing License Restrictions, Respondent shall submit to the Board or its designee, for its
16 prior approval, the name of a substance abuse support group which he shall attend until
17 issuance of a final decision by the Board on an Accusation to be filed against Respondent,
18 or until further order from the Office of Administrative Hearings. Respondent shall attend
19 substance abuse support group meetings at least once per week. Respondent shall pay all
20 substance abuse support group meeting costs.

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

28 ///

1 The facilitator shall submit monthly signed reports to the Board or its designee
2 showing Respondent's name, the group name, the date and location of the meeting,
3 Respondent's attendance every week, and Respondent's level of participation and progress
4 in the meetings.

5 F. PSYCHOTHERAPY. Within seven (7) days of the date of issuance by the
6 Office of Administrative Hearings of the Interim Order Imposing License Restrictions,
7 Respondent shall submit to the Board or its designee for prior approval the name and
8 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist
9 who has a doctoral degree in psychology and at least five (5) years of postgraduate
10 experience in the diagnosis and treatment of emotional and mental disorders. Upon
11 approval, Respondent shall undergo and continue psychotherapy treatment until issuance of
12 a final decision by the Board on an Accusation to be filed against Respondent, or until
13 further order from the Office of Administrative Hearings.

14 Respondent shall pay the cost of all psychotherapy treatment.

15 Respondent shall cooperate in providing the psychotherapist with any information
16 and documents that the psychotherapist may deem pertinent.

17 Respondent shall have the treating psychotherapist submit quarterly status reports to
18 the Board or its designee.

19 G. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within
20 seven (7) days of the date of issuance by the Office of Administrative Hearings of the
21 Interim Order Imposing License Restrictions, Respondent shall submit to the Board or its
22 designee for prior approval as a worksite monitor, the name and qualifications of one or
23 more licensed physician and surgeons, other licensed health care professional(s) if no
24 physician and surgeon is available, or, as approved by the Board or its designee, a person in
25 a position of authority who is capable of monitoring the Respondent at work.

26 The worksite monitor shall not have a current or former financial, personal, or
27 familial relationship with Respondent, or any other relationship that could reasonably be
28 expected to compromise the ability of the monitor to render impartial and unbiased reports

1 to the Board or its designee. If it is impractical for anyone but Respondent's employer to
2 serve as the worksite monitor, this requirement may be waived by the Board or its designee,
3 however, under no circumstances shall Respondent's worksite monitor be an employee or
4 supervisee of the Respondent.

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

9 Respondent shall pay all worksite monitoring costs.

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

14 The worksite monitor shall verbally report any suspected substance abuse to the
15 Board and Respondent's employer or supervisor within one (1) business day of occurrence.
16 If the suspected substance abuse does not occur during the Board's normal business hours,
17 the verbal report shall be made to the Board or its designee within one (1) hour of the next
18 business day. A written report that includes the date, time, and location of the suspected
19 abuse; Respondent's actions; and any other information deemed important by the worksite
20 monitor shall be submitted to the Board or its designee within forty-eight (48) hours of the
21 occurrence.

22 The worksite monitor shall complete and submit a written report monthly or as
23 directed by the Board or its designee which shall include the following: (1) Respondent's
24 name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name
25 and signature; (3) the worksite monitor's license number, if applicable; (4) the location or
26 location(s) of the worksite; (5) the dates Respondent had face-to-face contact with the
27 worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of
28 Respondent's work attendance; (8) any change in Respondent's behavior and/or personal

1 habits; and (9) any indicators that can lead to suspected substance abuse by Respondent.
2 Respondent shall complete any required consent forms and execute agreements with the
3 approved worksite monitor and the Board, or its designee, authorizing the Board, or its
4 designee, and worksite monitor to exchange information.

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

14 H. NOTIFICATION. Within seven (7) days of the date of issuance by the Office
15 of Administrative Hearings of the Interim Order Imposing License Restrictions, the
16 Respondent shall provide a true copy of the Interim Order Imposing License Restrictions to
17 the Chief of Staff or the Chief Executive Officer at every hospital where privileges or
18 membership are extended to Respondent, at any other facility (e.g., urgent care facility)
19 where Respondent engages in the practice of medicine, including all physician and locum
20 tenens registries or other similar agencies, and to the Chief Executive Officer at every
21 insurance carrier which extends malpractice insurance coverage to Respondent.
22 Respondent shall submit proof of compliance to the Board or its designee within fifteen
23 (15) calendar days.

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

26 I. VIOLATION(S) OF INTERIM ORDER IMPOSING LICENSE

27 RESTRICTIONS. Any violation of this Interim Order Imposing License Restrictions by

28 ///

1 Respondent shall constitute unprofessional conduct and independent grounds for
2 disciplinary action.

3 JURISDICTION

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

7 5. Section 2004 of the Code states:

8 The board shall have the responsibility for the following:

9 (a) The enforcement of the disciplinary and criminal provisions of the Medical
10 Practice Act.

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

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

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

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

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

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

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

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

21 6. Section 2227 of the Code states:

22 (a) A licensee whose matter has been heard by an administrative law judge of
23 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
24 Code, or whose default has been entered, and who is found guilty, or who has entered
into a stipulation for disciplinary action with the board, may, in accordance with the
provisions of this chapter:

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

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

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

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

4 (5) Have any other action taken in relation to discipline as part of an order of
5 probation, as the board or an administrative law judge may deem proper.

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

12 STATUTORY PROVISIONS

13 7. Section 820 of the Code states:

14 Whenever it appears that any person holding a license, certificate or permit
15 under this division or under any initiative act referred to in this division may be
16 unable to practice his or her profession safely because the licentiate's ability to
17 practice is impaired due to mental illness, or physical illness affecting competency,
18 the licensing agency may order the licentiate to be examined by one or more
19 physicians and surgeons or psychologists designated by the agency. The report of the
20 examiners shall be made available to the licentiate and may be received as direct
21 evidence in proceedings conducted pursuant to Section 822.

22 8. Section 822 of the Code states:

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

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

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

(c) Placing the licentiate on probation.

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

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

9. Section 824 of the Code states:

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

1 10. Section 2234 of the Code, states:

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

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

7 (b) Gross negligence.

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

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

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

20 (d) Incompetence.

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

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

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

28 11. Section 2228.1 of the Code states:

 (a) On and after July 1, 2019, except as otherwise provided in subdivision (c),
the board and the Podiatric Medical Board of California shall require a licensee to
provide a separate disclosure that includes the licensee's probation status, the length
of the probation, the probation end date, all practice restrictions placed on the licensee
by the board, the board's telephone number, and an explanation of how the patient
can find further information on the licensee's probation on the licensee's profile page
on the board's online license information internet web site, to a patient or the
patient's guardian or health care surrogate before the patient's first visit following the
probationary order while the licensee is on probation pursuant to a probationary order
made on and after July 1, 2019, in any of the following circumstances:

 (1) A final adjudication by the board following an administrative hearing or
admitted findings or prima facie showing in a stipulated settlement establishing any
of the following:

///

1 (A) The commission of any act of sexual abuse, misconduct, or relations with a
patient or client as defined in Section 726 or 729.

2 (B) Drug or alcohol abuse directly resulting in harm to patients or the extent
that such use impairs the ability of the licensee to practice safely.

3 (C) Criminal conviction directly involving harm to patient health.

4 (D) Inappropriate prescribing resulting in harm to patients and a probationary
5 period of five years or more.

6 (2) An accusation or statement of issues alleged that the licensee committed any
of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and a
7 stipulated settlement based upon a nolo contendere or other similar compromise that
does not include any prima facie showing or admission of guilt or fact but does
8 include an express acknowledgment that the disclosure requirements of this section
would serve to protect the public interest.

9 (b) A licensee required to provide a disclosure pursuant to subdivision (a) shall
10 obtain from the patient, or the patient's guardian or health care surrogate, a separate,
signed copy of that disclosure.

11 (c) A licensee shall not be required to provide a disclosure pursuant to
12 subdivision (a) if any of the following applies:

13 (1) The patient is unconscious or otherwise unable to comprehend the
disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a
14 guardian or health care surrogate is unavailable to comprehend the disclosure and
sign the copy.

15 (2) The visit occurs in an emergency room or an urgent care facility or the visit
16 is unscheduled, including consultations in inpatient facilities.

17 (3) The licensee who will be treating the patient during the visit is not known to
the patient until immediately prior to the start of the visit.

18 (4) The licensee does not have a direct treatment relationship with the patient.

19 (d) On and after July 1, 2019, the board shall provide the following
20 information, with respect to licensees on probation and licensees practicing under
probationary licenses, in plain view on the licensee's profile page on the board's
21 online license information internet web site.

22 (1) For probation imposed pursuant to a stipulated settlement, the causes
alleged in the operative accusation along with a designation identifying those causes
23 by which the licensee has expressly admitted guilt and a statement that acceptance of
the settlement is not an admission of guilt.

24 (2) For probation imposed by an adjudicated decision of the board, the causes
25 for probation stated in the final probationary order.

26 (3) For a licensee granted a probationary license, the causes by which the
probationary license was imposed.

27 (4) The length of the probation and end date.

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1 (5) All practice restrictions placed on the license by the board.

2 (e) Section 2314 shall not apply to this section.

3 12. Section 2239 of the Code states:

4 (a) The use or prescribing for or administering to himself or herself, of any
5 controlled substance; or the use of any of the dangerous drugs specified in Section
6 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous
7 or injurious to the licensee, or to any other person or to the public, or to the extent that
8 such use impairs the ability of the licensee to practice medicine safely or more than
9 one misdemeanor or any felony involving the use, consumption, or
10 self-administration of any of the substances referred to in this section, or any
11 combination thereof, constitutes unprofessional conduct. The record of the
12 conviction is conclusive evidence of such unprofessional conduct.

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

23 COST RECOVERY

24 13. Section 125.3 of the Code states:

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

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

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

(d) The administrative law judge shall make a proposed finding of the amount
of reasonable costs of investigation and prosecution of the case when requested
pursuant to subdivision (a). The finding of the administrative law judge with regard
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).

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

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

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

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

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

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

20 (j) This section does not apply to any board if a specific statutory provision in
21 that board's licensing act provides for recovery of costs in an administrative
22 disciplinary proceeding.

23 FIRST CAUSE FOR DISCIPLINE

24 (Inability to Safely Practice Medicine)

25 14. Respondent is subject to disciplinary action pursuant to section 822 of the Code in
26 that Respondent cannot safely practice medicine without practice restrictions. The circumstances
27 are as follows:

28 15. On or about July 12, 2022, the Board received a complaint that Respondent, an
attending anesthesiologist at Community Memorial Hospital in Ventura, California, appeared to
be using illicit substances, while at work and performing cases in the operating room. The
complainant observed major changes in Respondent's behavior in the operating room, including
changes in his speech, gait, and balance as well as taking multiple long bathroom breaks, and
even wiping blood off of his skin.

16. On or about December 27, 2022, the Board received a Business and Professions Code
section 805 Health Facility/Peer Review Reporting Form from Ventura Anesthesia Medical
Group, a medical group that contracts with health facilities to provide anesthesia services and

1 with whom Respondent is a partner, stating that restrictions have been placed on Respondent's
2 staff privileges, effective December 14, 2022, to be reviewed annually. The restrictions were
3 initiated after learning of Respondent's substance abuse, his treatment for substance abuse, and
4 his on-going participation in a recovery program.

5 17. From on or about June 16, 2022 through September 6, 2022, Respondent underwent a
6 twelve-week residential treatment program.

7 a. Respondent reported abusing fentanyl, morphine, Dilaudid, Valium, and
8 propofol. He reported last injecting opiates/narcotics on May 28, 2022, last using Valium on June
9 8, 2022, and last injected propofol on June 10, 2022. In December 2021, Respondent began
10 diverting morphine, Dilaudid, and fentanyl from work and injecting four-to-five times a month.
11 In December 2021, he also first experienced propofol as a prescribed substance while undergoing
12 an upper endoscopy. He reported using Valium about once a week, and drinking one to two
13 drinks a night after work. He began diverting propofol in March 2022, and his substance abuse
14 escalated. With each instance of diversion, it became easier and he engaged in increasingly
15 riskier behavior, ultimately resulting in using at work. His diversion became suspected when an
16 injection site kept bleeding during a surgical procedure. He had decided to use in the bathroom at
17 work between cases and figured that he would be fully recovered before he needed to be in the
18 operating room. He injected under his watch to conceal the injection site. However, when the
19 next surgery took place, the site continued to bleed. He told the surgeon it was a needle stick. A
20 supervisor was called into the operating room. Respondent thought it was a random observation
21 of the surgery and was not aware that he was being monitored. He began his vacation the next
22 day and when he returned to work he was called in for a meeting with the senior partner at his
23 practice. He repeated that the bleeding was due to a finger stick. Despite the meeting, he could
24 not stop using propofol and continued to use in the following weeks. He then confided in a friend
25 who had been to treatment for propofol abuse and was reported. He initially denied that he had a
26 problem but then acknowledged that he had been diverting and using propofol, which resulted in
27 the residential program treatment referral.

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1 b. Respondent completed six weeks of didactic lectures in primary treatment on
2 chemical dependence issues. He had daily group therapy, completed psychological testing, and
3 completed weekly professionals-specific group sessions. He learned how to utilize the 12-steps
4 while in primary treatment. It was noted at the time of his discharge from Pavilion that
5 Respondent met the milestones of recovery with complete agreement with total abstinence,
6 needing ongoing support for recovery, and that the problems in his life are related to his primary
7 diagnosis of Substance Use Disorder.

8 18. On or about September 8, 2022, Respondent entered into a private monitoring
9 agreement for an unspecified period of time. Respondent agreed to submit three random urine
10 samples a month to test for substances on the standard panel, one including fentanyl, as well as
11 two hair tests a month that test for propofol. During the unspecified period of the monitoring
12 agreement, Respondent agreed to refrain from using alcohol and other mind-altering substances.
13 Respondent also agreed to attend a weekly physicians monitoring group for additional support.

14 19. On or about January 9, 2023, Respondent underwent a mental examination by Board
15 appointed psychiatrist, Dr. A.S. Upon completion of the examination, Dr. A.S. concluded that
16 Respondent suffers from a mental illness that impacts his ability to engage in the practice of
17 medicine. Specifically, Respondent meets the diagnostic criteria for alcohol use disorder, opioid
18 use disorder, sedative, hypnotic, or anxiolytic use disorder (benzodiazepines, Propofol, Ketamine,
19 nitrous oxide), and generalized anxiety disorder.

20 20. Dr. A.S. opined that Respondent has a problematic pattern of alcohol, opioid,
21 sedative, and anxiolytic use that has led to clinically significant impairment. Respondent is only
22 able to practice medicine safely at this time with restrictions, which include frequent random
23 testing for drug and alcohol use. Respondent poses a present danger or threat to the public health,
24 welfare or safety if he practices medicine without restrictions.

25 SECOND CAUSE FOR DISCIPLINE

26 (Unsafe Use of Drugs and Alcohol)

27 21. Respondent's license is subject to disciplinary action under section 2234, subdivision
28 (a) and section 2239 of the Code, in that he used drugs and alcoholic beverages, to the extent, or

1 in such a manner as to be dangerous and injurious to Respondent, or to any other person or to the
2 public. The circumstances are as follows:

3 22. The allegations set forth in the First Cause for Discipline are incorporated herein as if
4 fully set forth.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct)**

7 23. Respondent's license is subject to disciplinary action under section 2234, subdivision
8 (a), of the Code in that he has engaged in unprofessional conduct which breaches the rules or
9 ethical code of the medical profession, or conduct which is unbecoming to a member in good
10 standing of the medical profession, and which demonstrates an unfitness to practice medicine.
11 The circumstances are as follows:

12 24. The allegations set forth in the First and Second Causes for Discipline are
13 incorporated herein as if fully set forth.

14 **PRAYER**

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

17 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 146802,
18 issued to Respondent Benjamin Kwittken, M.D.;

19 2. Revoking, suspending or denying approval of Respondent Benjamin Kwittken,
20 M.D.'s authority to supervise physician assistants and advanced practice nurses;

21 3. Ordering Respondent Benjamin Kwittken, M.D., to pay the Board the costs of the
22 investigation and enforcement of this case, and if placed on probation, the costs of probation
23 monitoring;

24 4. Ordering Respondent Benjamin Kwittken, M.D., if placed on probation, to provide
25 patient notification in accordance with Business and Professions Code section 2228.1; and

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

JUN 07 2023

DATED: _____

Jenna Jones for

REJI VARGHESE

Interim Executive Director

Medical Board of California

Department of Consumer Affairs

State of California

Complainant

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