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

11 In the Matter of the Accusation Against:

Case No. 800-2023-094494

12 **MICHAEL SCOTT CHING, M.D.**
13 **3555 Cesar Chavez**
San Francisco, CA 94110-4403

A C C U S A T I O N

14 **Physician's and Surgeon's Certificate**
15 **No. A 116619,**

Respondent.

17
18 **PARTIES**

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

22 2. On or about April 15, 2011, the Medical Board issued Physician's and Surgeon's
23 Certificate Number 116619 to Michael Scott Ching, M.D. (Respondent). The Physician's and
24 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
25 herein and will expire on October 31, 2024, unless renewed.

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JURISDICTION

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

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

9 5. Section 2234 of the Code, states:

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

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

15 (b) Gross negligence.

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

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

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

26 ...

27 6. Section 2236 of the Code states:

28 (a) The conviction of any offense substantially related to the qualifications, functions, or

1 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
2 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive
3 evidence only of the fact that the conviction occurred.

4 (b) The district attorney, city attorney, or other prosecuting agency shall notify the Medical
5 Board of the pendency of an action against a licensee charging a felony or misdemeanor
6 immediately upon obtaining information that the defendant is a licensee. The notice shall identify
7 the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall
8 also notify the clerk of the court in which the action is pending that the defendant is a licensee,
9 and the clerk shall record prominently in the file that the defendant holds a license as a physician
10 and surgeon.

11 (c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours
12 after the conviction, transmit a certified copy of the record of conviction to the board. The
13 division may inquire into the circumstances surrounding the commission of a crime in order to fix
14 the degree of discipline or to determine if the conviction is of an offense substantially related to
15 the qualifications, functions, or duties of a physician and surgeon.

16 (d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
17 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
18 shall be conclusive evidence of the fact that the conviction occurred.

19 7. Section 2239 of the Code states:

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

28 (b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed

1 to be a conviction within the meaning of this section. The Medical Board may order discipline of
2 the licensee in accordance with Section 2227 or the Medical Board may order the denial of the
3 license when the time for appeal has elapsed or the judgment of conviction has been affirmed on
4 appeal or when an order granting probation is made suspending imposition of sentence,
5 irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code
6 allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
7 setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
8 indictment.

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

10 (a) For the purposes of denial, suspension or revocation of a license, certificate or permit
11 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
12 considered to be substantially related to the qualifications, functions or duties of a person holding
13 a license, certificate or permit under the Medical Practice Act if to a substantial degree it
14 evidences present or potential unfitness of a person holding a license, certificate or permit to
15 perform the functions authorized by the license, certificate or permit in a manner consistent with
16 the public health, safety or welfare. Such crimes, misconduct, or acts shall include but not be
17 limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or
18 abetting the violation of, or conspiring to violate any provision of state or federal law governing
19 the applicant's or licensee's professional practice.

20 (b) In making the substantial relationship determination required under subdivision (a) for a
21 crime, the board shall consider the following criteria:

22 (1) The nature and gravity of the crime;

23 (2) The number of years elapsed since the date of the crime; and

24 (3) The nature and duties of the profession.

25 COST RECOVERY

26 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licensee found to have committed a violation or violations of
28 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
2 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
3 included in a stipulated settlement.

4 **FACTUAL ALLEGATIONS**

5 10. On or about January 1, 2023, Respondent was involved in an automobile accident on
6 I-80 westbound near Berkeley at approximately 5:55 p.m. Respondent was subsequently arrested
7 and provided breath tests that registered .12 and .11 percent blood alcohol content (BAC).

8 11. A passenger in one of the cars involved in the accident incurred a chipped tooth and a
9 cut lip due to the collision.

10 12. On or about February 26, 2024, in Alameda County Superior Court, case number 23-
11 CR-000100, *People of the State of California v. Michael Scott Ching*, Respondent pleaded no
12 contest to violating Vehicle Code section 23153(b), driving with a BAC in excess of .08 percent
13 and causing injury, a misdemeanor.

14 13. Respondent was sentenced to three years' probation, 56 days participation in the
15 Sheriff's Weekend Alternative Program, and ordered to pay a \$2,053.00 fine, among other terms
16 and conditions.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Conviction)**

19 14. Paragraphs 10 through 13 are incorporated by reference as if fully set forth.

20 15. Respondent Michael Scott Ching, M.D. is subject to disciplinary action under
21 sections 2234 and 2236 of the Code, as well as California Code of Regulations, title 16, section
22 1360, in that Respondent was convicted on or about February 26, 2024, of driving a vehicle with
23 an alcohol blood content in excess of .08 percent and causing injury, a violation of Vehicle Code
24 section 23153(b), a misdemeanor.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Excessive Use of Alcohol)**

27 16. Paragraphs 10 through 13 are incorporated by reference as if fully set forth.
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