

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

In the Matter of the Accusation Against:)

WENDY ANNE COLE, M.D.)

Case No. 800-2018-046321

Physician's & Surgeon's)
Certificate No. A75088)

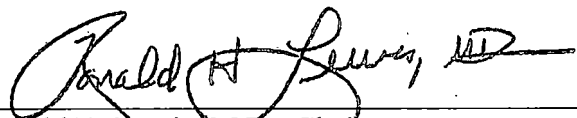
Respondent.)

**ORDER CORRECTING NUNC PRO TUNC
CLERICAL ERROR IN ORDER DATE OF DECISION**

On its own motion, the Medical Board of California (hereafter "board") finds that there is a clerical error reflecting the year of the order date of the Decision in the above-entitled matter, and that such clerical error should be corrected.

IT IS HEREBY ORDERED that the Decision in the above-entitled matter be and is hereby amended and corrected nunc pro tunc to reflect that the Decision is ordered December 17, 2019.

IT IS SO ORDERED December 18, 2019.



Ronald H. Lewis, M.D., Chair
Panel A
Medical Board of California

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

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

WENDY ANNE COLE, M.D.

**Physician's and Surgeon's
Certificate No. A75088**

Respondent

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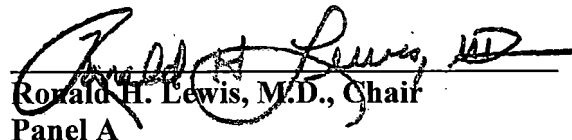
DECISION

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

This Decision shall become effective at 5:00 p.m. on January 16, 2020.

IT IS SO ORDERED: December 17, 2020.

MEDICAL BOARD OF CALIFORNIA



Ronald H. Lewis, M.D., Chair
Panel A

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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. 800-2018-046321

13 **WENDY ANNE COLE, M.D.**
14 **5 Ravine Way**
Novato Ca 94947

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Physician's and Surgeon's Certificate No. A**
16 **75088**

17 Respondent.

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. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Greg W. Chambers,
25 Deputy Attorney General.

26 2. Respondent Wendy Anne Cole, M.D. (Respondent) is represented in this proceeding
27 by attorney Paul Chan, whose address is: 1851 Heritage Lane, Suite 128, Sacramento, CA
28 95815-4996.

3. On or about June 15, 2001, the Board issued Physician's and Surgeon's Certificate No. A 75088 to Wendy Anne Cole, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2018-046321, and will expire on April 30, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-046321 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 2, 2019. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2018-046321 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2018-046321. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2018-046321.

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

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

CONTINGENCY

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

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

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 75088 issued to Respondent Wendy Anne Cole, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain

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

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

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

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

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

27 Respondent shall submit a certification of successful completion to the Board or its
28 designee not later than fifteen (15) calendar days after successfully completing the program or not

1 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

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

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

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

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

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

27 If Respondent fails to establish a practice with another physician or secure employment in
28 an appropriate practice setting within sixty (60) calendar days of the effective date of this

1 Decision, Respondent shall receive a notification from the Board or its designee to cease the
2 practice of medicine within three (3) calendar days after being so notified. The Respondent shall
3 not resume practice until an appropriate practice setting is established.

4 If, during the course of the probation, the Respondent's practice setting changes and the
5 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent
6 shall notify the Board or its designee within five (5) calendar days of the practice setting change.

7 If Respondent fails to establish a practice with another physician or secure employment in an
8 appropriate practice setting within 60 calendar days of the practice setting change, Respondent
9 shall receive a notification from the Board or its designee to cease the practice of medicine within
10 three (3) calendar days after being so notified. The Respondent shall not resume practice until an
11 appropriate practice setting is established.

12 6. LIMITATION OF PRACTICE. During probation, Respondent is prohibited from
13 practicing medicine during overnight shifts, and prohibited from working more than forty (40)
14 hours a week.

15 7. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS: Within thirty (30)
16 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as
17 may be required by the Board or its designee, Respondent shall undergo and complete a clinical
18 diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed
19 board certified physician and surgeon. The examiner shall consider any information provided by
20 the Board or its designee and any other information he or she deems relevant, and shall furnish a
21 written evaluation report to the Board or its designee.

22 The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon
23 who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of
24 physicians and surgeons with substance abuse disorders, and is approved by the Board or its
25 designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable
26 professional standards for conducting substance abuse clinical diagnostic evaluations. The
27 evaluator shall not have a current or former financial, personal, or business relationship with
28 Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and

1 independent evaluation. The clinical diagnostic evaluation report shall set forth, in the
2 evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a
3 threat to himself or herself or others, and recommendations for substance abuse treatment,
4 practice restrictions, or other recommendations related to Respondent's rehabilitation and ability
5 to practice safely. If the evaluator determines during the evaluation process that Respondent is a
6 threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24)
7 hours of such a determination.

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

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

22 The Board shall review the clinical diagnostic evaluation report within five (5) business
23 days of receipt to determine whether Respondent is safe to return to either part-time or full-time
24 practice and what restrictions or recommendations shall be imposed on Respondent based on the
25 recommendations made by the evaluator. Respondent shall not be returned to practice until she
26 has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating
27 that she has not used, consumed, ingested, or administered to herself a prohibited substance, as
28 defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 Respondent shall pay all worksite monitoring costs.

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

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

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

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

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

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

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

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

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

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

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

24 (1) Issue a cease-practice order;

25 (2) Order practice limitations;

26 (3) Order or increase supervision of Respondent;

27 (4) Order increased documentation;

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

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

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

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

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

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

21 14. PATIENT DISCLOSURE. Before a patient's first visit following the effective date
22 of this order and while the Respondent is on probation, the Respondent must provide all patients,
23 or patient's guardian or health care surrogate, with a separate disclosure that includes the
24 Respondent's probation status, the length of the probation, the probation end date, all practice
25 restrictions placed on the Respondent by the board, the board's telephone number, and an
26 explanation of how the patient can find further information on the Respondent's probation on the
27 Respondent's profile page on the board's website. Respondent shall obtain from the patient, or
28 the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

1 Respondent shall not be required to provide a disclosure if any of the following applies: (1) The
2 patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the
3 disclosure and a guardian or health care surrogate is unavailable to comprehend the disclosure
4 and sign the copy; (2) The visit occurs in an emergency room or an urgent care facility or the visit
5 is unscheduled, including consultations in inpatient facilities; (3) Respondent is not known to the
6 patient until immediately prior to the start of the visit; (4) Respondent does not have a direct
7 treatment relationship with the patient.

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

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

14 Respondent shall submit quarterly declarations not later than ten (10) calendar days after
15 the end of the preceding quarter.

16 17. GENERAL PROBATION REQUIREMENTS.

17 Compliance with Probation Unit

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

19 Address Changes

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

25 Place of Practice

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

1 License Renewal

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

4 Travel or Residence Outside California

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

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

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

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

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

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

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

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

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

13 20. COMPLETION OF PROBATION. Respondent shall comply with all financial
14 obligations (e.g., restitution, probation costs) not later than one-hundred twenty (120) calendar
15 days prior to the completion of probation. Upon successful completion of probation,
16 Respondent's certificate shall be fully restored.

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

24 22. LICENSE SURRENDER. Following the effective date of this Decision, if
25 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
26 the terms and conditions of probation, Respondent may request to surrender his or her license.
27 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
28 determining whether or not to grant the request, or to take any other action deemed appropriate

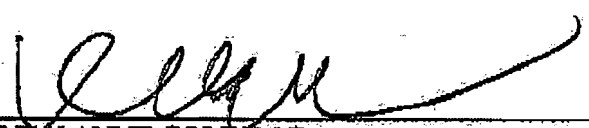
1 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
2 shall within fifteen (15) calendar days deliver Respondent's wallet and wall certificate to the
3 Board or its designee and Respondent shall no longer practice medicine. Respondent will no
4 longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical
5 license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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

11 ACCEPTANCE

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

17
18 DATED: 11-8-19


19 WENDY ANNE COLE, M.D.
Respondent

20
21 I have read and fully discussed with Respondent Wendy Anne Cole, M.D. the terms and
22 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
23 I approve its form and content.

24
25 DATED: 11-8-19


26 PAUL CHAN
Attorney for Respondent

ENDORSEMENT

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

DATED: 11/14/2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

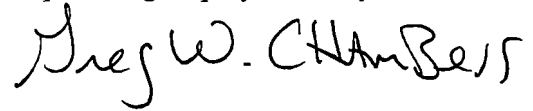

GREG W. CHAMBERS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2018-046321

1 XAVIER BECERRA
Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
3 GREG W. CHAMBERS
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 2 20 19
BY [Signature] ANALYST

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. 800-2018-046321

13 Wendy Anne Cole, M.D.
14 5 Ravine Way
15 Novato Ca 94947

ACCUSATION

16 Physician's and Surgeon's Certificate
17 No. A 75088,

18 Respondent.

19
20 Complainant alleges:

21 PARTIES

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs (Board).

25 2. On or about June 15, 2001, the Medical Board issued Physician's and Surgeon's
26 Certificate Number A 75088 to Wendy Anne Cole, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on April 30, 2021, unless renewed.

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

7. Section 2239 of the Code states in part:

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

8. Section 820 of the Code provides that whenever it appears that a licensee may be unable to practice his or her profession safely as a result of mental illness or physical illness affecting competency, the licensing agency may order an examination of licensee.

9. Section 822 of the Code provides that, if a licensing agency determines that a licensee's ability to practice his or her profession safely is impaired because of mental or physical illness affecting competency, the licensing agency may take action by revoking the licensee's certificate or license, suspending the licensee's right to practice, placing the licensee on probation, or taking such other action in relation to the licensee as the licensing agency in its discretion deems proper.

PERTINENT DRUGS

10. Alprazolam (trade name Xanax) is a psychotropic triazolo analogue of the 1,4 benzodiazepine class of central nervous system-active compounds. Xanax is used for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a dangerous drug as defined in section 4022 and a schedule IV controlled substance and narcotic as defined by section 11057, subdivision (d) of the Health and Safety Code.

1 **FACTS**

2 11. On or about June 5, 2018, Respondent treated a patient in the emergency room who
3 had suffered a drug overdose. The patient was brought in with a bottle of alprazolam.
4 Respondent took alprazolam from the patient's bottle and later administered that alprazolam to
5 herself.

6 12. Respondent has admitted to using the prescription pad of another physician to write a
7 prescription for herself, and to using medications she prescribed to others.

8 13. From June 26, 2018 to June 28, 2018, Respondent underwent a full evaluation at the
9 Mayo Clinic. The evaluators' report diagnosed Respondent with Sedative Hypnotic or Anxiolytic
10 Dependence Uncomplicated, among other issues. The report also recommended certain
11 limitations and restrictions so that Respondent could safely practice medicine.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct: Dangerous Use of Controlled Substances)**

14 14. Respondent's certificate is subject to Board action pursuant to Sections 2234
15 (unprofessional conduct) and 2239 (dangerous use of controlled substances) of the Code, in that
16 while she was on duty as an emergency room physician, Respondent took a controlled substance
17 not prescribed to her, but intended for patient use and administered the controlled substance to
18 herself in a manner dangerous to herself and/or others.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Mental Impairment))**

21 15. Respondent's certificate is subject to Board action pursuant to Sections 822 and 2227
22 of the Code, in that due to a mental illness, her ability to practice medicine safely is impaired.

23 **PRAYER**

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


26 1. Revoking or suspending Respondent's Physician's and Surgeon's Certificate Number
27 A 75088;
28

1 2. Revoking, suspending or denying approval of Respondent's authority to supervise
2 physician assistants and advanced practice nurses;

3 3. Ordering Respondent, if placed on probation, to pay the Board the costs of probation
4 monitoring; and

5 4. Taking such other and further action as deemed necessary and proper.
6

7 DATED: May 2, 2019
8 _____


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant