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

In the Matter of the First Amended Accusation Against: **Michael Joseph Thoene, M.D.** **Physician's and Surgeons Certificate No. G 25265** **Respondent.**	**Case No. 800-2016-023503**

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 August 7, 2020.

IT IS SO ORDERED: July 10, 2020.

MEDICAL BOARD OF CALIFORNIA

Kristina D. Lawson, J.D., Chair
Panel B

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Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **MICHAEL JOSEPH THOENE, M.D.** **514 South Magnolia** **El Cajon, CA 92020** **Physician's and Surgeon's Certificate No. G 25265,** Respondent.	Case No. 800-2016-023503 OAH No. 2019080287 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical Board of California (Board). This action was brought by then Complainant Kimberly Kirchmeyer solely in her official capacity.[1] Complainant is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Rosemary F. Luzon, Deputy Attorney General.

[1] Ms. Kirchmeyer became the Director of the Department of Consumer Affairs on October 28, 2019.

2. Respondent Michael Joseph Thoene, M.D. (Respondent) is represented in this proceeding by attorney David M. Balfour, Esq., whose address is: Nossaman LLP, 1925 Palomar Oaks Way, Suite 220, Carlsbad, CA 92008.

3. On or about July 31, 1973, the Board issued Physician's and Surgeon's Certificate No. G 25265 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2016-023503, and will expire on October 31, 2020, unless renewed.

JURISDICTION

4. On or about May 1, 2018, an Order adopting the Stipulation of the Parties re Interim Order Imposing License Restrictions was issued by the Office of Administrative Hearings in the matter entitled, *Kimberly Kirchmeyer v. Michael Joseph Thoene, M.D.*, Case No. 800-2016-023503. Pursuant to said Order, Physician's and Surgeon's Certificate No. G 25265 is subject to the following license restrictions until issuance of a final decision by the Board on an Accusation to be filed against Respondent, or until further order from the Office of Administrative Hearings: (1) Alcohol – Abstain from Use; (2) Controlled Substances – Abstain from Use; (3) Controlled Substances – Total Restriction; (4) Biological Fluid Testing; (5) Notification; and (6) Violation(s) of Interim Order Imposing Licensing Restrictions. A true and correct copy of the May 1, 2018, Interim Order Imposing License Restrictions is attached as Exhibit A and incorporated herein by reference as if fully set forth herein.

5. On or about September 20, 2019, First Amended Accusation No. 800-2016-023503 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on or about September 20, 2019, at his address of record. Respondent timely filed his Notice of Defense contesting the First Amended Accusation. A true and correct copy of First Amended Accusation No. 800-2016-023503 is attached as Exhibit B and incorporated herein by reference as if fully set forth herein.

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ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2016-023503. 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 his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws, having been fully advised of same by his attorney of record, David M. Balfour, Esq.

8. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in First Amended Accusation No. 800-2016-023503, a copy of which is attached hereto as Exhibit B, and that he has thereby subjected his Physician's and Surgeon's Certificate No. G 25265 to disciplinary action.

10. Respondent agrees that if he ever petitions for early termination or modification of this Stipulated Settlement and Disciplinary Order, or if an accusation and/or petition to revoke probation is filed against him before the Medical Board of California, all of the charges and allegations contained in First Amended Accusation No. 800-2016-023503 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

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11. 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.

12. Respondent agrees that his Physician's and Surgeon's Certificate No. G 25265 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

13. This Stipulated Settlement and Disciplinary Order shall be subject to approval by the Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

14. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Board does not, in its discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, Respondent shall assert no claim that the Board, or any

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member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

15. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

16. 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.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 25265 issued to Respondent Michael Joseph Thoene, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years from the effective date of the Decision on the following terms and conditions.

1. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedule V of the Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. If Respondent forms the medical opinion, after an appropriate prior examination and medical indication, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and medical indication, may independently issue a medically

appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on Respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits Respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

2. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and address of the patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

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

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

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

5. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

6. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully

complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the First Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

7. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the First Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

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

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

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

9. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision, First

Amended Accusation, and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the Respondent did not successfully complete the clinical competence assessment program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

10. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the

psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

If the psychiatric evaluation determines that Respondent is not mentally fit to practice medicine safely, Respondent shall immediately cease the practice of medicine after being so notified by the Board or its designee. Respondent shall not engage in the practice of medicine until notified by the Board or its designee that Respondent is mentally fit to practice medicine safely. The period of time that Respondent is not practicing medicine shall not be counted toward completion of the term of probation.

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

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

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of medicine without

restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of medicine without restrictions.

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

12. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee. Respondent shall provide the evaluating physician with any information and documentation that the evaluating physician may deem pertinent.

Following the evaluation, Respondent shall comply with all restrictions or conditions recommended by the evaluating physician within 15 calendar days after being notified by the Board or its designee. If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval the name and qualifications of a California licensed treating physician of Respondent's choice. Upon approval of the treating physician, Respondent shall within 15 calendar days undertake medical treatment and shall continue such treatment until further notice from the Board or its designee.

The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit quarterly reports to the Board or its designee indicating whether or not the Respondent is capable of practicing medicine safely. Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment that the Board or its designee deems necessary.

If, prior to the completion of probation, Respondent is found to be physically incapable of resuming the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the

Board determines that Respondent is physically capable of resuming the practice of medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

If the medical evaluation determines that Respondent is not physically fit to practice medicine safely, Respondent shall immediately cease the practice of medicine after being so notified by the Board or its designee. Respondent shall not engage in the practice of medicine until notified by the Board or its designee that Respondent is physically fit to practice medicine safely. The period of time that Respondent is not practicing medicine shall not be counted toward completion of the term of probation.

13. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

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

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

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

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

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

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

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

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

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

15. PROHIBITED PRACTICE. During probation, Respondent is prohibited from providing medical care and treatment to family members. After the effective date of this Decision, all patients being treated by the Respondent shall be notified that the Respondent is prohibited from providing medical care and treatment to family members. Any new patients must be provided this notification at the time of their initial appointment.

Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for

immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) It maintains testing sites located throughout California.

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

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

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

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

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

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

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

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

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

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the

specimen collector and the laboratory, communicating with the licensee, his treating physician(s), other health care provider, or group facilitator, as applicable.

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

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

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

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

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

The facilitator shall provide a signed document to the Board or its designee showing Respondent's name, the group name, the date and location of the meeting, Respondent's

attendance, and Respondent's level of participation and progress. The facilitator shall report any unexcused absence by Respondent from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

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

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

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

Respondent shall pay all worksite monitoring costs.

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

The worksite monitor shall verbally report any suspected substance abuse to the Board and Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written

report that includes the date, time, and location of the suspected abuse; Respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

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

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

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

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

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

(2) Increase the frequency of biological fluid testing.

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

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

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

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

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

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he has violated any term or condition of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was

stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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

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

22. PATIENT DISCLOSURE.

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

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

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

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

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

26. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

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Travel or Residence Outside California

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

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

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

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

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model

Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

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

29. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

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

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

application shall be treated as a petition for reinstatement of a revoked certificate.

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, David M. Balfour, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G 25265. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 4-24-20

MICHAEL JOSEPH THOENE, M.D.
Respondent

I have read and fully discussed with Respondent Michael Joseph Thoene, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 4/24/2020

DAVID M. BALFOUR, ESQ.
Attorney for Respondent

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ENDORSEMENT

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

DATED: 4/27/20

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

ROSEMARY F. LUZON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Interim Order Imposing License Restrictions No. 800-2016-023503

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Attorneys for Petitioner

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

KIMBERLY KIRCHMEYER, Executive Director, Medical Board of California, Department of Consumer Affairs, State of California, Petitioner, v. **MICHAEL JOSEPH THOENE, M.D.** 514 South Magnolia El Cajon, CA 92020 Physician's and Surgeon's Certificate No. G 25265, Respondent.	Case No. 800-2016-023503 OAH No. 2018040598 **STIPULATION OF THE PARTIES RE INTERIM ORDER IMPOSING LICENSE RESTRICTIONS AND ORDER**

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

PARTIES

1. Kimberly Kirchmeyer (Petitioner) is the Executive Director of the Medical Board of California and is represented in the above-entitled matter by Xavier Becerra, Attorney General of the State of California, by Deputy Attorney General Rosemary F. Luzon.

2. Michael Joseph Thoene, M.D. (Respondent) is represented in this proceeding by Elizabeth M. Brady, Esq., whose address is: Law Office of Elizabeth M. Brady, 8880 Rio San Diego Drive, Suite 800, San Diego, CA 92108-1642.

JURISDICTION

3. On July 31, 1973, the Medical Board of California issued Physician's and Surgeon's Certificate No. G 25265 to Respondent. Physician's and Surgeon's Certificate No. G 25265 was in full force and effect at all times relevant herein and will expire on October 31, 2018, unless renewed.

4. Pursuant to the provisions of California Government Code section 11529, an administrative law judge of the Medical Quality Hearing Panel established pursuant to section 11371 may issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare. Interim orders may also be issued without notice if it appears from the facts shown by affidavit that serious injury would result to the public before the matter can be heard on notice.

FACTUAL BASIS FOR INTERIM ORDER IMPOSING LICENSE RESTRICTIONS

5. Respondent admits that Petitioner could establish a prima facie case establishing that Respondent is presently unable to practice medicine safely without restrictions due to a mental or physical condition and that permitting him to continue to practice medicine without restrictions would endanger the public health, safety and welfare. The admissions made by Respondent herein are only for the purposes of this Interim Suspension Order proceeding, and shall not be admissible in any other criminal or civil proceeding.

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6. Respondent agrees to the issuance of an Interim Order Imposing License Restrictions under Government Code section 11529 immediately restricting his Physician's and Surgeon's Certificate No. G 25265 as detailed in paragraph 8, below.

7. In exchange for Respondent's admissions, above, Petitioner agrees to file this stipulation in lieu of proceeding with the hearing on the Petition for Interim Order of Suspension with the Office of Administrative Hearings in San Diego, California.

8. Based on the foregoing stipulations and agreements, the parties hereby stipulate and agree that an interim order imposing the following license restrictions on Respondent's Physician's and Surgeon's Certificate No. G 25265 should be issued forthwith by the Office of Administrative Hearings, in order to protect the public health, safety and welfare. The parties further stipulate and agree that, once this interim order imposing license restrictions is issued by the Office of Administrative Hearings, Respondent shall be required to fully comply with the following license restrictions until issuance of a final decision by the Medical Board of California on an Accusation to be filed against him, or until further order from the Office of Administrative Hearings:

A. ALCOHOL - ABSTAIN FROM USE.

Respondent shall abstain completely from the use of products or beverages containing alcohol.

If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The Respondent shall not resume the practice of medicine until the final decision on an accusation is effective.

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B. CONTROLLED SUBSTANCES - ABSTAIN FROM USE.

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

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

If Respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The Respondent shall not resume the practice of medicine until the final decision on an accusation is effective.

C. CONTROLLED SUBSTANCES - TOTAL RESTRICTION.

Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5.

If Respondent forms the medical opinion, after an appropriate prior examination and a medical indication, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and a

medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on Respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits Respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

D. BIOLOGICAL FLUID TESTING.

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

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

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

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

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

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

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

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

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

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

(i) It maintains testing sites located throughout California.

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

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

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

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

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

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

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

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

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

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

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

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

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

E. NOTIFICATION.

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

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

F. VIOLATION(S) OF INTERIM ORDER IMPOSING LICENSE RESTRICTIONS.

Any violation of this Interim Order Imposing License Restrictions by Respondent shall constitute unprofessional conduct and grounds for disciplinary action.

9. Any motion to vacate the Interim Order Imposing License Restrictions issued in this case shall be filed in accordance with the provisions of Title 1, California Code of Regulations, sections 1006 and 1022. However, no such motion may be heard on an *ex parte* basis and any motion to vacate the Interim Order Imposing License Restrictions issued in this

case shall be served on Petitioner's counsel and filed with the Office of Administrative Hearings no less than thirty (30) business days prior to any hearing on the motion. Once served and filed, no such motion shall be decided without first affording the parties the opportunity to present oral argument.

WAIVERS

10. Respondent is fully aware of all of his rights under California Government Code section 11529, subdivision (d), to a noticed hearing on the issue of whether an interim order of license restrictions should be issued in the above-entitled matter, and all other rights accorded him under California Government Code section 11529, subdivision (d), at which he is entitled, at a minimum, to all the following rights:

(a) To be represented by counsel.

(b) To have a record made of the proceedings, copies of which may be obtained by the licentiate upon payment of any reasonable charges associated with the record.

(c) To present written evidence in the form of relevant declarations, affidavits, and documents. The discretion of the administrative law judge to permit testimony at the hearing conducted pursuant to this section shall be identical to the discretion of a superior court judge to permit testimony at a hearing conducted pursuant to Section 527 of the Code of Civil Procedure.

(d) To present oral argument.

11. Having the benefit of counsel, Respondent hereby knowingly, intelligently, freely and voluntarily waives and gives up each and every one of the rights set forth and/or referenced in paragraph 10, above.

12. Respondent is fully aware of all of his rights under Government Code section 11529, subdivisions (f) and (g), which state as follows:

"(f) In all cases in which an interim order is issued, and an accusation is not filed and served pursuant to Sections 11503 and 11505 within 30 days of the date on which the parties to the hearing on the interim order have submitted the matter, the order shall be dissolved. Upon service of the accusation the licensee shall

have, in addition to the rights granted by this section, all of the rights and privileges available as specified in this chapter. If the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request, unless the licensee stipulates to a later hearing, and a decision within 15 days of the date the decision is received from the administrative law judge, or the board shall nullify the interim order previously issued, unless good cause can be shown by the Division of Medical Quality for a delay.

"(g) If an interim order is issued, a written decision shall be prepared within 15 days of the hearing, by the administrative law judge, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached."

13. Having the benefit of counsel, Respondent hereby knowingly, intelligently, freely and voluntarily waives and gives up each and every one of the rights set forth and/or referenced in paragraph 12, above.

ADDITIONAL PROVISIONS

14. The parties hereby stipulate that all proceedings in the above-entitled Interim Order Imposing License Restrictions matter shall be conducted at the Office of Administrative Hearings located in San Diego, California.

15. The parties further stipulate that copies of this "Stipulation of the Parties Re Interim Order Imposing License Restrictions," including copies of signatures appearing thereon, may be used in lieu of original documents and signatures and, further, that such copies and signatures shall have the same force and effect as originals.

DATED: May 1, 2018

MICHAEL JOSEPH THOENE, M.D.
Respondent

DATED: May 1, 2018

ELIZABETH M. BRADY, ESQ.
Attorney for Respondent

DATED: 5/1/18

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
ROSEMARY F. LUZON
Deputy Attorney General
Attorneys for Petitioner

SD2018800384/71442275

INTERIM ORDER IMPOSING LICENSE RESTRICTIONS

Based on the foregoing stipulations and agreements, an Interim Order Imposing License Restrictions is hereby issued immediately imposing license restrictions on Physician's and Surgeon's Certificate No. G 25265, heretofore issued by the Medical Board of California to Respondent Michael Joseph Thoene, M.D., and, accordingly, Respondent is hereby immediately ordered to comply with all of the terms, conditions and license restrictions contained in paragraph 8, above. This Interim Order Imposing License Restrictions shall remain in full force and effect until issuance of a final decision by the Medical Board of California on an Accusation to be filed against Respondent, or until further order from the Office of Administrative Hearings. Any motion to vacate this Interim Order Imposing License Restrictions shall be filed in accordance with the provisions of Title 1, California Code of Regulations, sections 1006 and 1022. However, no such motion may be heard on an *ex parte* basis and any motion to vacate this Interim Order Imposing License Restrictions shall be served on Petitioner's counsel and filed with the Office of Administrative Hearings no less than thirty (30) business days prior to any hearing on the motion. Once served and filed, no such motion shall be decided without first affording the parties the opportunity to present oral argument.

IT IS SO ORDERED this 1st day of May, 2018.

Robert Walker
ADMINISTRATIVE LAW JUDGE

Exhibit B

First Amended Accusation No. 800-2016-023503

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Sept 20 2019
BY ANDREA GERRIA ANALYST

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

In the Matter of the First Amended Accusation Against: **Michael Joseph Thoene, M.D.** **514 South Magnolia** **El Cajon, CA 92020** **Physician's and Surgeon's Certificate No. G 25265,** Respondent.	Case No. 800-2016-023503 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about July 31, 1973, the Board issued Physician's and Surgeon's Certificate No. G 25265 to Michael Joseph Thoene, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2020, unless renewed.

3. On or about May 1, 2018, an Order adopting the Stipulation of the Parties re Interim Order Imposing License Restrictions was issued by the Office of Administrative Hearings in the matter entitled, *Kimberly Kirchmeyer v. Michael Joseph Thoene, M.D.*, Case No. 800-2016-023503. Pursuant to said Order, Physician's and Surgeon's Certificate No. G 25265 is subject to the following license restrictions until issuance of a final decision by the Board on an Accusation to be filed against Respondent, or until further order from the Office of Administrative Hearings: (1) Alcohol – Abstain from Use; (2) Controlled Substances – Abstain from Use; (3) Controlled Substances – Total Restriction; (4) Biological Fluid Testing; (5) Notification; and (6) Violation(s) of Interim Order Imposing Licensing Restrictions.

JURISDICTION

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

5. Section 2220 of the Code states:

"Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. . ."

6. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government 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:

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

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

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

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

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

". . ."

7. Section 2234 of the Code states:

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

"(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.

"(b) Gross negligence.

". . ."

8. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

9. Section 2239 of the Code states:

"(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.

"..."[1]

10. Section 725 of the Code states:

"(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon . . .

"..."

11. Section 2241.5 of the Code states:

"...

"(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

"..."

12. Section 2266 of the Code states:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

13. Unprofessional conduct under section 2234 of the Code is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

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[1] There is a nexus between a physician's use of alcoholic beverages and his or her fitness to practice medicine, established by the Legislature in section 2239, "in all cases where a licensed physician used alcoholic beverages to the extent or in such a manner as to pose a danger to himself or others." (*Watson v. Superior Court* (*Medical Board*) (2009) 176 Cal.App.4th 1407, 1411.)

14. Health and Safety Code section 11152 states:

"No person shall write, issue, fill, compound, or dispense a prescription that does not conform to this division."

15. Health and Safety Code section 11153 states:

"(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

"..."

16. Health and Safety Code section 11170 states:

"No person shall prescribe, administer, or furnish a controlled substance for himself."

17. Health and Safety Code section 11180 states:

"No person shall obtain or possess a controlled substance obtained by a prescription that does not comply with this division."

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18. Section 820 of the Code states:

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

19. Section 822 of the Code states:

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

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

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

"(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."

20. Section 2228.1 of the Code states:

"(a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board 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:

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

"(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.

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

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

"(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 stipulated settlement based upon a nolo contendre or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does include an express acknowledgment that the disclosure requirements of this section would serve to protect the public interest.

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

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"(d) On and after July 1, 2019, the board shall provide the following 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 online license information Internet Web site.

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

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

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

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

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

". . ."

FIRST CAUSE FOR DISCIPLINE

(Use of Alcohol and/or Drugs to the Extent, or in a Manner, as to be Dangerous to Respondent, Another Person, or the Public)

21. Respondent has subjected his Physician's and Surgeon's Certificate No. G 25265 to disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a), of the Code, in that he has used alcohol and/or controlled substances and dangerous drugs to an extent, or in such a manner, as to be dangerous or injurious to himself, another person, or the public, or to an extent that such use impaired his ability to practice medicine safely, as more particularly alleged hereinafter:

December 28, 2014, DUI Arrest

22. Respondent is a dermatologist who works at the East County Dermatology Medical Group in El Cajon, California.

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23. On or about December 28, 2014, at approximately 3:15 p.m., Officer F. of the San Diego Police Department (SDPD) observed Respondent make an illegal u-turn and drive while talking on his cell phone. While driving behind Respondent's vehicle, Officer F. observed Respondent continuously straddle the lane divider, cross over to the adjacent lane, and then come back to his lane at least three times. As Officer F. attempted to pull alongside Respondent to get his attention, Respondent crossed over the lane divider again and into Officer F.'s lane. Believing that Respondent may be impaired, Officer F. initiated a traffic stop by activating his overhead lights. Respondent did not yield and continued driving. Officer F. sounded his air horn approximately three to four times in order to get Respondent's attention, at which point Respondent slowed and stopped in the middle of the road. Officer F. approached Respondent's vehicle and, while standing approximately two to three feet away from Respondent, Officer F. smelled the odor of an alcoholic beverage coming from his person. Officer F. observed that Respondent's face was very lax and his speech was extremely slow and somewhat slurred.

24. At approximately 3:27 p.m., Officer R.B. arrived at the scene to assist with a DUI evaluation. Officer R.B. observed Respondent's vehicle was stopped in front of Officer F.'s patrol vehicle, with the rear of Respondent's vehicle sticking out approximately four feet into the road. Upon speaking with Respondent, Officer R.B. smelled an odor of alcohol emitting from Respondent's breath and body. Officer R.B. also observed that Respondent had watery, glassy eyes and slurred speech. Respondent agreed to perform a series of field sobriety tests (FSTs). Respondent had difficulty exiting his vehicle and had to use the door to maintain his balance as Officer F. assisted him out of the vehicle. Officer L. and Officer B. also arrived at the scene to provide assistance. Officer R.B. administered the FSTs, which Respondent failed. Based on Respondent's driving infractions, the odor of alcohol emitting from his breath and person, and his failure on the FSTs, Officer R.B. placed Respondent under arrest for driving under the influence.

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25. Respondent's wife had arrived at the scene during the FSTs and Respondent requested that all of his personal property be handed to her. Officer L. transferred Respondent's personal property to the wife. During this exchange, Respondent took out a blue pill located in his front pocket. Respondent stated that the pill was hydrocodone,[2] which he took for his bad back. Without being asked, Respondent stated that he "took it a few hours before[.]" Respondent requested that the pill be transferred to his wife as well.

26. Respondent was transported to the SDPD headquarters, where he was administered a breath test. The result of the first test showed a blood alcohol concentration (BAC) level of 0.092%. The result of the second test showed a BAC level of 0.088%. Respondent also consented to a blood test and provided a blood sample. Respondent was then transported and booked into the Central Jail. During a final search of Respondent's person, Officer R.B. located a white pill in Respondent's right front pocket. The pill was marked "M367." Respondent stated it was Vicodin from an old prescription. While Respondent was waiting for booking to be completed, Respondent spontaneously stated, "Damn Chargers, after they lost, I did those shots of Vodka. They got me into this mess."

27. According to the test results of the blood sample provided by Respondent during the December 28, 2014, arrest, Respondent's blood was positive for opiates (hydrocodone) and benzodiazepines (desalkylflurazepam).[3]

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[2] Hydrocodone (Norco) is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

[3] Desalkylflurazepam is an active metabolite of several benzodiazepine drugs, such as flurazepam, midazolam, and quazepam. These benzodiazepines are Schedule IV controlled substances pursuant to Health and Safety Code section 11057, subdivision (d), and dangerous drugs pursuant to Business and Professions Code section 4022.

June 22, 2015, Hospitalization

28. Between on or about June 22, 2015, and July 22, 2015, Respondent was admitted to the hospital for multiple complications, including, *inter alia*, alcoholism and alcohol withdrawal seizure with severe delirium tremens. During this hospitalization, Respondent told an attending physician that he was narcotic addicted and needed Norco for chronic low back pain. Respondent also stated that although he had been sober for more than eight and a half years, he began drinking alcohol again four weeks earlier and that he drank three to four shots of vodka on a daily basis.

April 6, 2017, Hospitalization

29. Between on or about April 6, 2017, and April 18, 2017, Respondent was admitted to the hospital for abdominal pain, nausea, vomiting, and severe dehydration. Respondent was diagnosed with, *inter alia*, severe acute alcoholic pancreatitis, alcoholism with alcohol withdrawal issues, and severe delirium tremens. During this hospitalization, Respondent told an attending physician that he was a "closet alcoholic" and that, despite his history of alcoholism, he drank four to five alcoholic drinks per setting and drank sporadically, sometimes in "binge style." Respondent also reported to a consulting physician that he last drank vodka the day before his hospitalization and felt symptoms of alcohol withdrawal. Upon admission to the emergency department, Respondent denied that he drank alcohol and stated that he had stopped drinking in 2015. However, laboratory test results showed that his ethanol level was "26" upon admission.

Self-Prescribing a Controlled Substance

30. On or about April 8, 2014, Respondent filled a prescription for Depo-testosterone,[4] which he prescribed to himself.

31. On or about July 1, 2014, Respondent filled a prescription for Depo-testosterone, which he prescribed to himself.

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[4] Depo-testosterone is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (f), and a dangerous drug pursuant to Business and Professions Code section 4022.

32. On or about March 3, 2015, Respondent filled a prescription for Depo-testosterone, which he prescribed to himself.

33. On or about May 4, 2015, Respondent filled a prescription for Depo-testosterone, which he prescribed to himself.

34. On or about September 14, 2015, Respondent filled a prescription for Depo-testosterone, which he prescribed to himself.

35. On or about January 31, 2018, Respondent underwent a physical evaluation conducted pursuant to Business and Professions Code section 820. Respondent admitted to the physician evaluator that he prescribed and administered Depo-testosterone to himself.

Improper Prescribing of Controlled Substances to Family Members and Others

Patient A[5]

36. During the period of on or about April 9, 2013, to December 28, 2013, Respondent had eleven (11) visits with Patient A, Respondent's relative.

37. These visits took place on or about April 9, 2013, May 21, 2013, May 30, 2013, September 9, 2013, September 16, 2013, September 23, 2013, October 2, 2013, October 23, 2013, October 30, 2013, November 13, 2013, and December 28, 2013.

38. According to Respondent's medical records, Patient A's medical problems during this timeframe generally included, but were not limited to, acute insomnia, herpes zoster, telogen effluvium hair loss, and superficial basal cell carcinoma.

39. According to Respondent's medical records, on or about April 9, 2013, Patient A complained of difficulty sleeping. Respondent prescribed Lunesta to Patient A as a "one-time" prescription for acute insomnia. On or about September 9, 2013, Patient A complained of severe pain in the right lower neck to right shoulder/upper arm area. Respondent's diagnosis was herpes zoster and he prescribed Norco to Patient A. On or about September 16, 2013, September 23, 2013, October 2, 2013, October 30, 2013, November 13, 2013, and December 28, 2013, Patient A continued to complain of pain. Respondent prescribed Norco to Patient A. On or about October

[5] References to "Patient A," "Patient B," "Patient C," "Patient D," and "Patient E" herein are used to protect patient privacy.

2, 2013, and October 30, 2013, Patient A also complained of difficulty sleeping. On or about October 30, 2013, Respondent prescribed Ambien[6] to Patient A for insomnia.

40. According to the Controlled Substance Utilization Review and Evaluation System (CURES) report for Patient A, between in or about May 2013, and December 2013, Patient A filled approximately twenty (20) prescriptions of Norco and three (3) prescriptions of Ambien, which Respondent prescribed.

41. During the period of on or about January 22, 2014, to December 16, 2014, Respondent had ten (10) visits with Patient A.

42. These visits took place on or about January 22, 2014, February 5, 2014, March 5, 2014, May 7, 2014, July 16, 2014, August 27, 2014, September 23, 2014, October 15, 2014, November 19, 2014, and December 16, 2014.

43. According to Respondent's medical records, Patient A's medical problems during this timeframe generally included, but were not limited to, postherpetic neuralgia and eczematous dermatitis.

44. According to Respondent's medical records, on or about January 22, 2014, Patient A saw Respondent and complained of shooting pains. Respondent's diagnosis was persistent postherpetic neuralgia diagnosis and he prescribed Norco to Patient A. On or about March 5, 2014, Patient A complained of severe pain due to postherpetic neuralgia and difficulty sleeping "even with Norco." Respondent prescribed Ambien to Patient A. On or about May 7, 2014, Respondent prescribed Norco to Patient A for postherpetic neuralgia. On or about July 16, 2014, Patient A saw Respondent, who noted that her "only problem" was postherpetic neuralgia "which seems to be controlled with Norco." Respondent further noted that he felt Norco was "safe in the doses prescribed as long as it is under [the] doctor's control." On or about August 27, 2014, September 23, 2014, November 19, 2014, and December 16, 2014, Respondent continued to prescribe Norco to Patient A for postherpetic neuralgia. On or about October 15, 2014,

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[6] Ambien (zolpidem tartrate) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

Respondent prescribed Norco to Patient A, but no diagnosis or other information justifying the use of the medication was documented.

45. According to the CURES report for Patient A, between in or about January 2014, and December 2014, Patient A filled approximately twenty-seven (27) prescriptions of Norco and twenty-six (26) prescriptions of Ambien, which Respondent prescribed.

46. During the period of on or about January 16, 2015, to December 12, 2015, Respondent had thirteen (13) visits with Patient A.

47. These visits took place on or about January 16, 2015, February 20, 2015, March 16, 2015, April 28, 2015, May 20, 2015, June 10, 2015, July 16, 2015, August 14, 2015, September 13, 2015, October 14, 2015, November 16, 2015, November 30, 2015, and December 12, 2015.

48. According to Respondent's medical records, Patient A's medical problems during this timeframe generally included, but were not limited to, eczema reflare and postherpetic neuralgia.

49. According to Respondent's medical records, on or about February 20, 2015, March 16, 2015, April 28, 2015, May 20, 2015, November 16, 2015, and November 30, 2015, Respondent prescribed Norco to Patient A for postherpetic neuralgia. On or about January 16, 2015, June 10, 2015, July 16, 2015, August 14, 2015, October 14, 2015, and December 12, 2015, Respondent prescribed Norco to Patient A, but no diagnosis or other information justifying the use of the medication was documented. On or about August 6, 2015, September 8, 2015, and October 20, 2015, Respondent authorized Patient A's prescription refills for Ambien.

50. According to the CURES report for Patient A, between in or about January 2015, and November 2015, Patient A filled approximately sixteen (16) prescriptions of Norco and eleven (11) prescriptions of Ambien, which Respondent prescribed.

51. During the period of on or about January 27, 2016, to December 20, 2016, Respondent had thirteen (13) visits with Patient A.

52. These visits took place on or about January 27, 2016, February 29, 2016, March 30, 2016, April 20, 2016, May 5, 2016, May 26, 2016, June 14, 2016, July 11, 2016, August 9, 2016, September 6, 2016, October 5, 2016, November 1, 2016, and December 20, 2016.

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53. According to Respondent's medical records, Patient A's medical problems during this timeframe generally included, but were not limited to, right abdomen lesion, severe flare up of postherpetic neuralgia, and recurrent eczema.

54. According to Respondent's medical records, on or about February 29, 2016, March 30, 2016, April 20, 2016, and June 14, 2016, Respondent prescribed Norco to Patient A for continuing postherpetic neuralgia. On or about January 27, 2016, May 26, 2016, July 11, 2016, August 9, 2016, September 6, 2016, October 5, 2016, November 1, 2016, and December 20, 2016, Respondent prescribed Norco to Patient A, but no diagnosis or other information justifying the use of the medication was documented. On or about May 5, 2016, Respondent prescribed Ambien to Patient A for insomnia. On or about May 23, 2016, June 13, 2016, September 6, 2016, and December 1, 2016, Respondent authorized Patient A's prescription refills for Ambien.

55. According to the CURES report for Patient A, between in or about January 2016, and December 2016, Patient A filled approximately eighteen (18) prescriptions of Norco and twelve (12) prescriptions of Ambien, which Respondent prescribed.

56. During the period of on or about January 4, 2016, to December 26, 2017, Respondent had fourteen (14) visits with Patient A.

57. These visits took place on or about January 4, 2017, January 31, 2017, February 27, 2017, March 22, 2017, April 25, 2017, May 16, 2017, June 12, 2017, July 10, 2017, August 4, 2017, September 18, 2017, October 12, 2017, November 6, 2017, November 30, 2017, and December 26, 2017.

58. According to Respondent's medical records, Patient A's medical problems during this timeframe generally included, but were not limited to, chronic pain of the right shoulder and neck area, difficulty sleeping, postherpetic neuralgia, and eczema reflare.

59. According to Respondent's medical records, on or about January 4, 2017, Patient A complained of persistent chronic pain of the right shoulder and neck area, as well as difficulty sleeping. Respondent prescribed Norco to Patient A and authorized her prescription refill for Ambien. On or about January 31, 2017, February 27, 2017, June 12, 2017, August 4, 2017, October 12, 2017, and December 26, 2017, Respondent prescribed Norco to Patient A for

continuing postherpetic neuralgia. On or about March 22, 2017, April 25, 2017, May 16, 2017, July 10, 2017, September 18, 2017, November 6, 2017, and November 30, 2017, Respondent prescribed Norco to Patient A, but no diagnosis or other information justifying the use of the medication was documented. On or about January 9, 2017, March 20, 2017, September 26, 2017, and November 8, 2017, Respondent authorized Patient A's prescription refill for Ambien. On or about June 21, 2017, Respondent authorized a new prescription for Sonata for Patient A.[7]

60. According to the CURES report for Patient A, between in or about January 2017, and December 2017, Patient A filled approximately seventeen (17) prescriptions of Norco, twenty-one (21) prescriptions of Ambien, and three (3) prescriptions of Sonata, which Respondent prescribed.

61. During the period of on or about January 11, 2018, to July 23, 2018, Respondent had eight (8) visits with Patient A.

62. These visits took place on or about January 11, 2018, January 30, 2018, February 27, 2018, March 14, 2018, March 27, 2018, May 1, 2018, June 28, 2018, and July 23, 2018.

63. According to Respondent's medical records, Patient A's medical problems during this timeframe generally included, but were not limited to, continuing postherpetic neuralgia, recurrence of telogen effluvium hair loss, and eczema reflare.

64. According to Respondent's medical records, on or about January 9, 2018, Respondent authorized Patient A's prescription refill for Ambien. On or about January 11, 2018, Respondent noted that Patient A was in "excellent health." On or about January 11, 2018, and January 30, 2018, Respondent prescribed Norco to Patient A, but no diagnosis or other information justifying the use of the medication was documented. On or about February 27, 2018, Respondent noted that Patient A still had "considerable" postherpetic neuralgia, which seemed to be "controlled adequately with Norco[,]" and he prescribed Norco to Patient A. On or about March 27, 2018, Respondent noted that Patient A was "[d]oing well with Norco" and he continued Patient A on Norco for postherpetic neuralgia. On or about May 1, 2018, Respondent noted that Patient A still

[7] Sonata (zaleplon) is a Schedule IV controlled substances pursuant to Health and Safety Code section 11057, subdivision (d), and dangerous drugs pursuant to Business and Professions Code section 4022.

had postherpetic neuralgia and took Norco, but "will refer her to pain management for further treatment."

65. According to the CURES report for Patient A, between in or about January 2018, and April 2018, Patient A filled approximately four (4) prescriptions of Norco and four (4) prescriptions of Ambien, which Respondent prescribed.

Patient B

66. During the period of on or about January 14, 2014, to December 17, 2014, Respondent had eight (8) visits with Patient B, Respondent's relative.

67. These visits took place on or about January 14, 2014, January 28, 2014, February 25, 2014, May 1, 2014, September 8, 2014, October 15, 2014, November 13, 2014, and December 17, 2014.

68. According to Respondent's medical records, Patient B's medical problems during this timeframe generally included, but were not limited to, herpes zoster, postherpetic neuralgia, and difficulty sleeping.

69. According to Respondent's medical records, on or about January 14, 2014, Patient B saw Respondent and complained of pain in the left lateral lumbosacral area. Respondent's diagnosis was herpes zoster and he prescribed Norco to Patient B. On or about January 28, 2014, and February 25, 2014, Patient B complained of continuing pain and difficulty sleeping. Respondent prescribed Norco to Patient B for postherpetic neuralgia. On or about May 1, 2014, September 8, 2014, November 13, 2014, and December 17, 2014, Respondent also prescribed Norco to Patient B for postherpetic neuralgia. On or about October 15, 2014, Respondent prescribed Norco to Patient B, but no diagnosis or other information justifying the use of the medication was documented.

70. According to the CURES report for Patient B, between in or about June 2014, and December 2014, Patient B filled approximately eight (8) prescriptions of Norco and four (4) prescriptions of Ambien, which Respondent prescribed.

71. During the period of on or about January 7, 2015, to December 15, 2015, Respondent had twelve (12) visits with Patient B.

72. These visits took place on or about January 7, 2015, February 3, 2015, March 2, 2015, April 16, 2015, May 4, 2015, June 2, 2015, July 15, 2015, August 5, 2015, September 14, 2015, October 6, 2015, November 5, 2015, and December 15, 2015.

73. According to Respondent's medical records, Patient B's medical problems during this timeframe generally included, but were not limited to, postherpetic neuralgia.

74. According to Respondent's medical records, on or about January 7, 2015, February 3, 2015, March 2, 2015, May 4, 2015, June 2, 2015, July 15, 2015, September 14, 2015, and December 15, 2015, Respondent prescribed Norco to Patient B for postherpetic neuralgia and related pain. On or about April 16, 2015, August 5, 2015, October 6, 2015, and November 5, 2015, Respondent prescribed Norco to Patient B, but no diagnosis or other information justifying the use of the medication was documented. On or about May 4, 2015, Respondent noted that Patient B's postherpetic neuralgia was "still painful, but controlled with Norco" and that "this is okay as long as the amount is controlled." On or about August 5, 2015, Respondent noted that Patient B sometimes took more than four (4) Norco pills a day and cautioned him to keep the dose at a minimum. On or about December 15, 2015, Respondent noted that Norco was superior to alternative medications because of the low incidence of side effects with hydrocodone. He further noted that, "Addiction can be an issue, but not if the dose is controlled."

75. According to the CURES report for Patient B, between in or about January 2015, and October 2015, Patient B filled approximately ten (10) prescriptions of Norco, which Respondent prescribed.

76. During the period of on or about January 20, 2016, to December 28, 2016, Respondent had thirteen (13) visits with Patient B.

77. These visits took place on or about January 20, 2016, February 9, 2016, March 10, 2016, April 5, 2016, May 3, 2016, June 16, 2016, July 15, 2016, August 25, 2016, September 9, 2016, September 26, 2016, October 14, 2016, December 5, 2016, and December 28, 2016.

78. According to Respondent's medical records, Patient B's medical problems during this timeframe generally included, but were not limited to, postherpetic neuralgia.

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79. According to Respondent's medical records, on or about January 20, 2016, March 10, 2016, April 5, 2016, June 16, 2016, July 15, 2016, August 25, 2016, September 9, 2016, September 26, 2016, December 5, 2016, and December 28, 2016, Respondent prescribed Norco to Patient B for postherpetic neuralgia. On or about February 9, 2016, May 3, 2016, and October 14, 2016, Respondent prescribed Norco to Patient B, but no diagnosis or other information justifying the use of the medication was documented. On or about April 5, 2016, Respondent noted that he discussed alternative medications with Patient B, but Patient B preferred to continue with Norco. On or about December 28, 2016, Respondent noted that Patient B continued to have left lumbosacral pain and that his postherpetic neuralgia was persisting and becoming spasmodic. Respondent continued Patient B on Norco.

80. According to the CURES report for Patient B, between in or about January 2016, and December 2016, Patient B filled approximately fourteen (14) prescriptions of Norco, which Respondent prescribed.

81. During the period of on or about January 23, 2017, to December 11, 2017, Respondent had sixteen (16) visits with Patient B.

82. These visits took place on or about January 23, 2017, February 17, 2017, March 8, 2017, March 31, 2017, April 14, 2017, May 1, 2017, May 23, 2017, June 6, 2017, July 2, 2017, July 18, 2017, August 16, 2017, September 9, 2017, October 5, 2017, October 20, 2017, November 15, 2017, and December 11, 2017.

83. According to Respondent's medical records, Patient B's medical problems during this timeframe generally included, but were not limited to, postherpetic neuralgia.

84. According to Respondent's medical records, on or about January 23, 2017, February 17, 2017, March 8, 2017, March 31, 2017, April 14, 2017, May 1, 2017, June 6, 2017, July 18, 2017, August 16, 2017, September 9, 2017, October 5, 2017, and November 15, 2017, Respondent prescribed Norco to Patient B for postherpetic neuralgia. On or about May 23, 2017, July 2, 2017, and October 20, 2017, Respondent prescribed Norco to Patient B, but no diagnosis or other information justifying the use of the medication was documented. On or about February 17, 2017, Respondent noted that Patient B's postherpetic neuralgia continued to interrupt Patient

B's sleep and that this "can be a problem." On or about April 14, 2017, Respondent noted he discussed dosages with Patient B and that Patient B had "increased this considerably." He cautioned Patient B to decrease the dosage of Norco. On or about July 18, 2017, Respondent noted he discussed risks, complications, side effects, and alternatives to Norco with Patient B. On or about November 15, 2017, Respondent noted that Patient B's postherpetic neuralgia was persisting and that he discussed stopping Norco with Patient B, which Patient B was agreeable to trying. Respondent continued Patient B on Norco and noted that he would recheck Patient B's status in one month. On or about December 11, 2017, Respondent noted that Patient B was "doing better" and he prescribed Norco to Patient B.

85. According to the CURES report for Patient B, between in or about January 2017, and December 2017, Patient B filled approximately sixteen (16) prescriptions of Norco, which Respondent prescribed.

86. In or about 2018, Respondent had one (1) visit with Patient B.

87. This visit took place on or about January 4, 2018.

88. During this visit, Respondent noted that, "We have decided to taper Norco and stop it, if possible, to see if the pain of postherpetic neuralgia is tolerable. Will give his Norco prescription 10/325 #120 with the intent to taper this over several months and stop."

89. According to the CURES report for Patient B, between in or about January 2018, and July 2018, Patient B filled approximately one (1) prescription for Norco, which Respondent prescribed.

Patient C

90. In or about 2013, Respondent had three (3) visits with Patient C, Respondent's relative.

91. These visits took place on or about December 5, 2013, December 7, 2013, and December 8, 2013.

92. According to Respondent's medical records, Patient C's medical problems during this timeframe generally included, but were not limited to, left hip pain and difficulty sleeping.

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93. According to Respondent's medical records, on or about December 5, 2013 and December 8, 2013, Patient C complained of left hip pain with difficulty walking. Respondent prescribed Norco to Patient C. On or about December 7, 2013, Patient C complained of trouble sleeping at night. Respondent prescribed Ambien to Patient C.

94. According to the CURES report for Patient C, in or about December 2013, Patient C filled approximately two (2) prescriptions for Norco and one (1) prescription for Ambien, which Respondent prescribed.

95. During the period of on or about February 10, 2014, to November 24, 2014, Respondent had eight (8) visits with Patient C.

96. These visits took place on or about February 10, 2014, February 13, 2014, May 15, 2014, May 24, 2014, June 8, 2014, August 7, 2014, November 3, 2014, and November 24, 2014.

97. According to Respondent's medical records, Patient C's medical problems during this timeframe generally included, but were not limited to, left hip pain, difficulty sleeping, superficial basal cell carcinomas, weight problems, and post-operative hip replacement.

98. According to Respondent's medical records, on or about February 10, 2014, May 15, 2014, May 24, 2014, Patient C complained of difficulty sleeping. Respondent prescribed Ambien to Patient C for insomnia. On or about June 8, 2014, Respondent authorized Patient A's prescription refill for Ambien, but no diagnosis or other information justifying the use of the medication was documented. On or about February 13, 2014, Patient C complained of continuing left hip pain. Respondent prescribed Norco to Patient C. On or about November 3, 2014, Patient C complained of problems with her weight. Respondent prescribed Qsymia (phentermine and topiramate)[8] to Patient C. On or about November 24, 2014, Respondent noted that Patient C was "postop left hip replacement" and he prescribed Norco to Patient C.

99. According to the CURES report for Patient C, between in or about February 2014, and November 2014, Patient C filled approximately two (2) prescriptions for Norco, eleven (11) prescriptions for Ambien, and one (1) prescription for Qsymia, which Respondent prescribed.

[8] Phentermine is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (f), and a dangerous drug pursuant to Business and Professions Code section 4022.

100. During the period of on or about March 3, 2015, and June 23, 2015, Respondent had four (4) visits with Patient C.

101. These visits took place on or about March 3, 2015, April 7, 2015, May 26, 2015, and June 23, 2015.

102. According to Respondent's medical records, Patient C's medical problems during this timeframe generally included, but were not limited to, residual hip pain.

103. According to Respondent's medical records, on or about March 3, 2015, April 7, 2015, and May 26, 2015, Respondent prescribed Norco to Patient C for continuing hip pain. On or about June 23, 2015, Respondent prescribed Ambien to Patient C, but no diagnosis or other information justifying the use of the medication was documented.

104. According to the CURES report for Patient C, between in or about February 2015, and December 2015, Patient C filled approximately three (3) prescriptions for Norco and seven (7) prescriptions for Ambien, which Respondent prescribed.

105. In or about 2016, Respondent had one (1) visit with Patient C.

106. This visit took place on or about April 11, 2016.

107. During this visit, Patient C complained of trouble controlling her weight. Respondent prescribed phentermine to Patient C.

108. According to the CURES report for Patient C, between in or about January 2016, and December 2016, Patient C filled approximately seven (7) prescriptions for Ambien and five (5) prescriptions for phentermine, which Respondent prescribed.

109. In or about 2016, Respondent had no visits with Patient C.

110. According to the CURES report for Patient C, between in or about January 2017, and November 2017, Patient C filled approximately seven (7) prescriptions for Ambien and four (4) prescriptions for phentermine, which Respondent prescribed.

111. In or about 2018, Respondent had two (2) visits with Patient C.

112. These visits took place on January 24, 2018, and February 7, 2018.

113. According to Respondent's medical records, the purpose for both visits was botox placement in the glabellar area.

114. According to the CURES report for Patient C, between in or about January 2018, and April 2018, Patient C filled approximately three (3) prescriptions for phentermine, which Respondent prescribed.

Patient D

115. During the period of on or about May 20, 2013, to November 6, 2013, Respondent had five (5) visits with Patient D.

116. These visits took place on or about May 20, 2013, July 25, 2013, August 9, 2013, October 7, 2013, and November 6, 2013.

117. According to Respondent's medical records, Patient D's medical problems during this timeframe generally included, but were not limited to, herpes zoster, severe left lumbrosacral pain, and postherpetic neuralgia.

118. According to Respondent's medical records, on or about May 20, 2013, Patient D complained of a recent episode of herpes zoster of the left lumbosacral area with severe pain. Respondent prescribed Norco and Soma[9] to Patient D. On or about July 25, 2013, and October 7, 2013, Patient D continued to complain of pain due to postherpetic neuralgia. Respondent prescribed Norco and Soma to Patient D. On or about August 9, 2013, Respondent authorized Patient D's prescription refill for Norco, but no diagnosis or other information justifying the use of the medication was documented. On or about November 6, 2013, Respondent prescribed Norco to Patient D for postherpetic neuralgia.

119. According to the CURES report for Patient D, between in or about February 2013, and December 2013, Patient D filled approximately six (6) prescriptions for Norco and ten (10) prescriptions for Soma, which Respondent prescribed.

120. During the period of on or about February 13, 2014, to December 1, 2014, Respondent had four (4) visits with Patient D.

121. These visits took place on or about February 13, 2014, August 23, 2014, September 22, 2014, and December 1, 2014.

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[9] Soma (carisoprodol) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

122. According to Respondent's medical records, Patient D's medical problems during this timeframe generally included, but were not limited to, postherpetic neuralgia.

123. According to Respondent's medical records, on or about February 13, 2014, Respondent noted that Patient D's postherpetic neuralgia was improving with Norco. Respondent authorized Patient D's prescription refill for Norco. On or about August 23, 2014, Respondent noted that Patient D's postherpetic neuralgia continued to improve and that he would attempt to taper Norco. Respondent prescribed Norco to Patient D. On or about September 22, 2014, Respondent noted that he must taper Norco at this point since Patient D's postherpetic neuralgia continued to improve. On or about December 1, 2014, Respondent again noted that Patient D's postherpetic neuralgia had much improved and Respondent authorized Patient D's prescription refill for Norco "with the stipulation that this is the last refill for this medication."

124. According to the CURES report for Patient D, between in or about January 2014, and December 2014, Patient D filled approximately eleven (11) prescriptions for Norco and two (2) prescriptions for Soma, which Respondent prescribed.

125. Between in or about 2015, and 2016, Respondent had two (2) visits with Patient D.

126. These visits took place on or about December 21, 2015, and June 23, 2016.

127. According to Respondent's medical records, Patient D's medical problems during this timeframe generally included, but were not limited to, left lumbrosacral back pain.

128. According to Respondent's medical records, on or about December 21, 2015, Respondent noted that Patient D still had left lumbosacral back pain, but Respondent was doubtful that the back pain was due to postherpetic neuralgia. Respondent prescribed Norco to Patient D. On or about June 23, 2016, Patient D complained of lingering back pain. Respondent again noted that he did not believe the pain was due to postherpetic neuralgia at that point. Patient D requested a refill of his prescription for Norco, which Respondent provided.

129. According to the CURES report for Patient D, in or about December 2015, and February 2016, Patient D filled approximately two (2) prescriptions for Norco, which Respondent prescribed.

130. In or about 2018, Respondent had two (2) visits with Patient D.

131. These visits took place on or about March 1, 2018, and April 5, 2018.

132. According to Respondent's medical records, Patient D's medical problems during this timeframe generally included, but were not limited to, single seborrheic keratosis of the right abdomen, upper respiratory infection, and back pain.

133. According to Respondent's medical records, on or about April 5, 2018, Patient D saw Respondent and complained of a lingering respiratory infection. Respondent noted that the physician who was treating Patient D was "on vacation" and that Patient D had run out of Tylenol-Codeine that was prescribed for back pain. Respondent authorized Patient D's prescription refill for Tylenol-Codeine.

134. According to the CURES report for Patient D, in or about April 2018, Patient D filled approximately one (1) prescription for Tylenol-Codeine, which Respondent prescribed.

Patient E

135. In or about 2013, Respondent had three (3) visits with Patient E.

136. These visits took place on or about February 20, 2013, July 22, 2013, and August 8, 2013.

137. According to Respondent's medical records, Patient E's medical problems during this timeframe generally included, but were not limited to, lower lip sensitivity, recurrent herpes simplex, cyst in the right upper thigh posterior area, and insomnia.

138. According to Respondent's medical records, on or about September 4, 2013, Respondent authorized Patient E's prescription refill for Ambien for insomnia. Other than noting "insomnia," no diagnosis or other information justifying the use of the medication was documented in the medical records.

139. According to the CURES report for Patient E, between in or about January 2013, and December 2013, Patient E filled approximately thirteen (13) prescriptions for Ambien, which Respondent prescribed.

140. In or about 2014, Respondent had two (2) visits with Patient E.

141. These visits took place on or about January 30, 2014, and December 4, 2014.

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142. According to Respondent's medical records, Patient E's medical problems during this timeframe generally included, but were not limited to, severe eyelid dermatitis (eczematous type), insomnia, and seborrheic blepharitis of the upper and lower eyelids.

143. According to Respondent's medical records, on or about March 17, 2014, May 13, 2014, and October 1, 2014, Respondent authorized Patient E's prescription refills for Ambien for insomnia. Other than noting "insomnia," no diagnosis or other information justifying the use of the medication was documented in the medical records.

144. According to the CURES report for Patient E, between in or about January 2014, and December 2014, Patient E filled approximately thirteen (13) prescriptions for Ambien, which Respondent prescribed.

145. In or about 2015, Respondent had three (3) visits with Patient E.

146. These visits took place on or about March 24, 2015, June 17, 2015, and December 3, 2015.

147. According to Respondent's medical records, Patient E's medical problems during this timeframe generally included, but were not limited to, recurrent seborrheic blepharitis and recurrent burning and tingling of the left lower lip, possibly related to herpes simplex labialis.

148. According to Respondent's medical records, on or about June 17, 2015, and November 5, 2015, Respondent authorized Patient E's prescription refills for Ambien. No diagnosis or other information justifying the use of the medication was documented in the medical records.

149. According to the CURES report for Patient E, between in or about January 2015, and December 2015, Patient E filled approximately eleven (11) prescriptions for Ambien, which Respondent prescribed.

150. In or about 2016, Respondent had two (2) visits with Patient E.

151. These visits took place on or about August 25, 2016, and December 29, 2016.

152. According to Respondent's medical records, Patient E's medical problems during this timeframe generally included, but were not limited to, recurrent lower lip blistering and swelling.

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153. According to Respondent's medical records, on or about March 31, 2016, and August 25, 2016, Respondent authorized Patient E's prescription refills for Ambien for insomnia. Other than noting "insomnia," no diagnosis or other information justifying the use of the medication was documented in the medical records.

154. According to the CURES report for Patient E, between in or about January 2016, and December 2016, Patient E filled approximately thirteen (13) prescriptions for Ambien, which Respondent prescribed.

155. In or about 2017, Respondent had one (1) visit with Patient E.

156. This visit took place on or about July 25, 2017.

157. During the visit, Patient E complained of lichenification of his right lower eyelid.

158. According to Respondent's medical records, on or about January 23, 2017, June 29, 2017, and October 23, 2017, Respondent authorized Patient E's prescription refills for Ambien for insomnia. Other than noting "insomnia," no diagnosis or other information justifying the use of the medication was documented in the medical records.

159. According to the CURES report for Patient E, between in or about January 2017, and December 2017, Patient E filled approximately twelve (12) prescriptions for Ambien, which Respondent prescribed.

160. In or about 2018, Respondent had three (3) visits with Patient E.

161. These visits took place on or about January 11, 2018, January 29, 2018, and March 8, 2018.

162. According to Respondent's medical records, Patient E's medical problems during this timeframe generally included, but were not limited to, superficial basal cell carcinoma of the left neck and eczematous patch of the right lower leg.

163. According to Respondent's medical records, on or about March 29, 2018, Respondent authorized Patient E's prescription refill for Ambien for insomnia. No diagnosis or other information justifying the use of the medication was documented in the medical records.

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164. According to the CURES report for Patient E, between in or about January 2018, and December 2018, Patient E filled approximately three (3) prescriptions for Ambien, which Respondent prescribed.

SECOND CAUSE FOR DISCIPLINE

(Using or Prescribing for or Administering Controlled Substances to Himself)

165. Respondent has subjected his Physician's and Surgeon's Certificate No. G 25265 to disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a), of the Code, in that he used, prescribed for, or administered a controlled substance to himself, as more particularly alleged in paragraphs 30 through 35, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Violation of State Laws Regulating Dangerous Drugs and/or Controlled Substances)

166. Respondent has subjected his Physician's and Surgeon's Certificate No. G 25265 to disciplinary action under sections 2227 and 2234, as defined by section 2238, of the Code, in that he has violated a state law or laws regulating dangerous drugs and/or controlled substances, as more particularly alleged hereinafter:

A. Paragraphs 30 through 164, above, are hereby incorporated by reference and re-alleged as if fully set forth herein.

B. Respondent used, prescribed for, or administered a controlled substance to himself, in violation of Health and Safety Code sections 11152, 11170, and 11180.

C. Respondent issued prescriptions to Patients A, B, C, D, and E for controlled substances outside the usual course of his professional practice, in violation of Health and Safety Code sections 11152 and 11153.

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FOURTH CAUSE FOR DISCIPLINE

(Gross Negligence)

167. Respondent has subjected his Physician's and Surgeon's Certificate No. G 25265 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), and section 2241.5, subdivision (d), of the Code, in that he committed gross negligence in his care and treatment of Patients A, B, C, D, and E, as more particularly alleged in paragraphs 36 through 164, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

168. Respondent committed gross negligence in his care and treatment of Patients A, B, C, D, and E, which included, but was not limited to, the following:

Patient A

A. Respondent chronically treated Patient A, a family member, for postherpetic neuralgia and did not timely refer Patient A to a pain management specialist.

B. Respondent treated and prescribed medications to Patient A for medical conditions outside the scope of dermatology practice, *i.e.*, chronic postherpetic neuralgia and insomnia.

C. Respondent chronically prescribed Norco and sleep medications (Ambien and Sonata) to Patient A.

Patient B

D. Respondent chronically treated Patient B, a family member, for postherpetic neuralgia and did not refer Patient B to a pain management specialist.

E. Respondent treated and prescribed medications to Patient B for medical conditions outside the scope of dermatology practice, *i.e.*, chronic postherpetic neuralgia and insomnia.

F. Respondent chronically prescribed Norco and Ambien to Patient B.

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Patient C

G. Respondent treated and prescribed medications to Patient C, a family member, for medical conditions outside the scope of dermatology practice, *i.e.*, hip pain, insomnia, and weight loss.

H. Respondent chronically prescribed Norco, Ambien, and phentermine to Patient C.

Patient D

I. Respondent chronically treated Patient D for postherpetic neuralgia and did not refer Patient D to a pain management specialist.

J. Respondent treated and prescribed medications to Patient D for a medical condition outside the scope of dermatology practice, *i.e.*, chronic postherpetic neuralgia and back pain.

K. Respondent chronically prescribed Norco and Soma to Patient D.

Patient E

L. Respondent treated and prescribed medications to Patient E for a medical condition outside the scope of dermatology practice, *i.e.*, insomnia.

M. Respondent chronically prescribed Ambien to Patient E.

FIFTH CAUSE FOR DISCIPLINE

(Excessive Prescribing of Controlled Substances)

169. Respondent has subjected his Physician's and Surgeon's Certificate No. G 25265 to disciplinary action under sections 2227 and 2234, as defined by section 725, subdivision (a), of the Code, in that he committed repeated acts of clearly excessive prescribing of controlled substances to Patients A, B, C, D, and E, as more particularly alleged in paragraphs 36 through 164, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

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SIXTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

170. Respondent has subjected his Physician's and Surgeon's Certificate No. G 25265 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that he failed to maintain adequate and accurate records regarding his care and treatment of Patients A, B, C, D, and E, as more particularly alleged in paragraphs 36 through 164, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

SEVENTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

171. Respondent has subjected his Physician's and Surgeon's Certificate No. G 25265 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 22 through 164, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

EIGHTH CAUSE FOR DISCIPLINE

(Violating or Attempting to Violate Any Provision of the Medical Practice Act)

172. Respondent has subjected his Physician's and Surgeon's Certificate No. G 25265 to disciplinary action under sections 2227 and 2234, subdivision (a), of the Code, in that he has violated or attempted to violate, directly or indirectly, provisions or terms of the Medical Practice Act, as more particularly alleged in paragraphs 22 through 171, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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SECTION 822 CAUSE FOR ACTION

(Mental Illness and/or Physical Illness Affecting Competency)

173. Respondent has subjected his Physician's and Surgeon's Certificate No. G 25265 to action under section 822 of the Code in that his ability to practice medicine safely is impaired because he is mentally ill and/or physically ill affecting competency, as more particularly alleged in paragraphs 22 through 164, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. G 25265, issued to Respondent Michael Joseph Thoene, M.D.;

2. Revoking, suspending or denying approval of Respondent Michael Joseph Thoene, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice nurses;

3. Ordering Respondent Michael Joseph Thoene, M.D., if placed on probation, to pay the Board the costs of probation monitoring;

4. Ordering Respondent Michael Joseph Thoene, M.D., if placed on probation, to disclose the disciplinary order to patients pursuant to section 2228.1 of the Code;

5. Taking action as authorized by section 822 of the Code as the Board, in its discretion, deems necessary and proper; and

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

DATED: September 20, 2019

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

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