

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

In the Matter of the Accusation Against

Micah Diaz Berry, M.D.

Physician's and Surgeon's
License No. A110714

Case No. 800-2019-063200

Respondent.

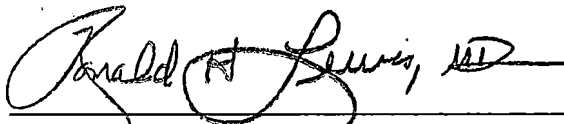
DECISION

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

This Decision shall become effective at 5:00 p.m. on August 27, 2020.

IT IS SO ORDERED: July 28, 2020.

MEDICAL BOARD OF CALIFORNIA



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

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Attorney General of California
2 STEVEN D. MUNI
Supervising Deputy Attorney General
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9
10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

14 **MICAH DIAZ BERRY, M.D.**
15 **211 Prospect Street**
Nevada City, CA 95959-2833

16 **Physician's and Surgeon's Certificate**
17 **No. A 110714**

18 Respondent.

Case No. 800-2019-063200

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical Board
24 of California (Board). Complainant brought this action solely in her official capacity and is
25 represented in this matter by Xavier Becerra, Attorney General of the State of California, by Ryan
26 J. Yates, Deputy Attorney General:

27 2. Respondent Micah Diaz Berry, M.D. (Respondent) is represented in this proceeding by
28 attorney Shannon V. Baker, whose address is: 765 University Avenue, Sacramento, CA 95825. On

1 or about January 13, 2010, the Board issued Physician's and Surgeon's Certificate No. A 110714
2 to Micah Diaz Berry, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full
3 force and effect at all times relevant to the charges brought in Accusation No. 800-2019-063200,
4 and will expire on June 30, 2021, unless renewed.

5 **JURISDICTION**

6 3. Accusation No. 800-2019-063200 was filed before the Board, and is currently pending
7 against Respondent. The Accusation and all other statutorily required documents were properly
8 served on Respondent on May 22, 2020. Respondent timely filed his Notice of Defense contesting
9 the Interim Suspension Order.

10 4. A copy of Accusation No. 800-2019-063200 is attached as exhibit A and incorporated
11 herein by reference.

12 **ADVISEMENT AND WAIVERS**

13 5. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 800-2019-063200. Respondent has also carefully read,
15 fully discussed with his counsel, and understands the effects of this Stipulated Settlement and
16 Disciplinary Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Interim Suspension Order; the right to confront and
19 cross-examine the witnesses against him; the right to present evidence and to testify on his own
20 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
21 production of documents; the right to reconsideration and court review of an adverse decision; and
22 all other rights accorded by the California Administrative Procedure Act and other applicable laws.
23 Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set
24 forth above.

25 **CULPABILITY**

26 7. Respondent understands that the charges and allegations in Accusation No. 800-2019-
27 063200, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and
28 Surgeon's Certificate.

1 8. For the purpose of resolving the Accusation without the expense and uncertainty of
2 further proceedings, Respondent agrees that, at a hearing, complainant could establish a *prima*
3 *facie* case with respect to the charges and allegations contained in Accusation No. 800-2019-
4 063200 and that those charges constitute cause for discipline. Respondent hereby gives up his
5 right to contest that cause for discipline exists based on those charges.

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

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

12 CIRCUMSTANCES IN MITIGATION

13 10. Respondent Micah Diaz Berry, M.D. has never been the subject of any disciplinary
14 action. He is admitting responsibility at an early stage in the proceedings.

15 CONTINGENCY

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

26 12. Respondent agrees that if he ever petitions for early termination or modification of
27 probation, or if an accusation and/or petition to revoke probation is filed against him before the
28 Board, all of the charges and allegations contained in Accusation No. 800-2019-063200 shall be

1 deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any
2 other licensing proceeding involving Respondent in the State of California.

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

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

9 **DISCIPLINARY ORDER**

10 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 110714
11 issued to Respondent Micah Diaz Berry, M.D. is revoked. However, the revocation is stayed and
12 Respondent is placed on probation for five (5) years on the following terms and conditions:

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

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

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

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

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

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

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

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

11 The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon
12 who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of
13 physicians and surgeons with substance abuse disorders, and is approved by the Board or its
14 designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable
15 professional standards for conducting substance abuse clinical diagnostic evaluations. The
16 evaluator shall not have a current or former financial, personal, or business relationship with
17 Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and
18 independent evaluation. The clinical diagnostic evaluation report shall set forth, in the
19 evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a
20 threat to himself or herself or others, and recommendations for substance abuse treatment,
21 practice restrictions, or other recommendations related to Respondent's rehabilitation and ability
22 to practice safely. If the evaluator determines during the evaluation process that Respondent is a
23 threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24)
24 hours of such a determination.

25 In formulating his or her opinion as to whether Respondent is safe to return to either part-
26 time or full-time practice and what restrictions or recommendations should be imposed, including
27 participation in an inpatient or outpatient treatment program, the evaluator shall consider the
28 following factors: Respondent's license type; Respondent's history; Respondent's documented

1 length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use);
2 Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical
3 history and current medical condition; the nature, duration and severity of Respondent's
4 substance abuse problem or problems; and whether Respondent is a threat to himself or herself or
5 the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 For purposes of this condition, the terms “biological fluid testing” and “testing” mean the
2 acquisition and chemical analysis of a Respondent’s urine, blood, breath, or hair.

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

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

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

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

25 The facilitator shall provide a signed document to the Board or its designee showing
26 Respondent’s name, the group name, the date and location of the meeting, Respondent’s
27 attendance, and Respondent’s level of participation and progress. The facilitator shall report any
28

1 unexcused absence by Respondent from any substance abuse support group meeting to the Board,
2 or its designee, within twenty-four (24) hours of the unexcused absence.

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

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

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

19 Respondent shall pay all worksite monitoring costs.

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

24 The worksite monitor shall verbally report any suspected substance abuse to the Board and
25 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected
26 substance abuse does not occur during the Board's normal business hours, the verbal report shall
27 be made to the Board or its designee within one (1) hour of the next business day. A written
28 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and

1 any other information deemed important by the worksite monitor shall be submitted to the Board
2 or its designee within 48 hours of the occurrence.

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

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

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

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

28

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

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

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

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

16 (1) Issue a cease-practice order;

17 (2) Order practice limitations;

18 (3) Order or increase supervision of Respondent;

19 (4) Order increased documentation;

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

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

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

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

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

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

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

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

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

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

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

24 15. GENERAL PROBATION REQUIREMENTS.

25 Compliance with Probation Unit

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

27 Address Changes

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

6 Place of Practice

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

10 License Renewal

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

13 Travel or Residence Outside California

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

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

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

23 17. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
24 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
25 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
26 defined as any period of time Respondent is not practicing medicine as defined in Business and
27 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
28 patient care, clinical activity or teaching, or other activity as approved by the Board. If

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

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

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

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

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

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

25 19. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
26 of probation is a violation of probation. If Respondent violates probation in any respect, the
27 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
28 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,

1 or an Accusation is filed against Respondent during probation, the Board shall have continuing
2 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
3 is final.

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

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

19 22. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
20 a new license or certification, or petition for reinstatement of a license, by any other health care
21 licensing action agency in the State of California, all of the charges and allegations contained in
22 Accusation No. 800-2019-063200 shall be deemed to be true, correct, and admitted by
23 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
24 restrict license.

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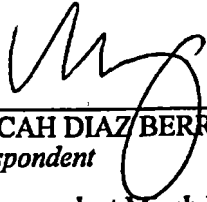
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ACCEPTANCE

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

DATED:

5/28/20

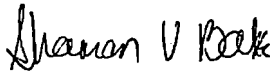


MICAHA DIAZ BERRY, M.D.
Respondent

I have read and fully discussed with Respondent Micah Diaz Berry, 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:

5/29/20



SHANNON V. BAKER
Attorney for Respondent

ENDORSEMENT

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

DATED:

June 2, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVEN D. MUNI
Supervising Deputy Attorney General



RYAN J. YATES
Deputy Attorney General
Attorneys for Complainant

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7 E-Mail: Ryan.Yates@doj.ca.gov

8 *Attorneys for Complainant*

9

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

11

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13

In the Matter of the Accusation Against:

Case No. 800-2019-063200

14

**Micah Diaz Berry, M.D.
211 Prospect Street
Nevada City, CA 95959-2833**

ACCUSATION

15

16

**Physician's and Surgeon's Certificate
No. A 110714,**

17

Respondent.

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Complainant alleges:

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PARTIES

22

1. Christine J. Lally (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

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2. On or about January 13, 2010, the Medical Board issued Physician's and Surgeon's Certificate No. A 110714 to Micah Diaz Berry, 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 June 30, 2021, unless renewed.

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

4 6. Section 2238 of the Code states:

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

7 7. Section 2239 of the Code states:

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

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

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

28 ///

1 arranged for Respondent to take a drug test. Following the incident, Respondent provided a urine
2 sample which subsequently tested positive for opiates—specifically heroin.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Violation of Drug Statutes)**

5 14. Respondent is subject to disciplinary action under section 2238 in that he has violated
6 federal and state drug statutes, which constitutes unprofessional conduct. The circumstances are
7 set forth in paragraphs 11 through 13, above, which are incorporated by reference and realleged
8 as if fully set forth here.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(General Unprofessional Conduct)**

11 15. Respondent is subject to disciplinary action under section 2234 in that he has engaged
12 in conduct which breaches the rules or ethical code of the medical profession, or conduct which is
13 unbecoming in a member in good standing of the medical profession, and which demonstrates an
14 unfitness to practice medicine. The circumstance are set forth in paragraphs 11 through 13,
15 above, which are incorporated by reference and realleged as if fully set forth here.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Use of Controlled Substances in a Dangerous Manner)**

18 16. Respondent is subject to disciplinary action under section 2239 in that he used a
19 controlled substance in a manner as to be dangerous to himself or to the public, or to the extent
20 that such use impairs the ability of the licensee to practice medicine safely. The circumstance are
21 set forth in paragraphs 11 through 13, above, which are incorporated by reference and realleged
22 as if fully set forth here.

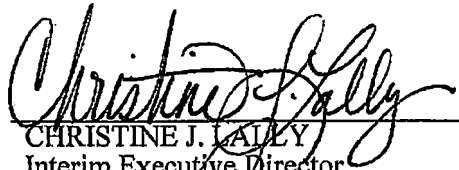
23 **PRAYER**

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

26 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 110714, issued
27 to Micah Diaz Berry, M.D.;

- 1 2. Revoking, suspending or denying approval of Micah Diaz Berry, M.D.'s authority to
2 supervise physician assistants and advanced practice nurses;
3 3. Ordering Micah Diaz Berry, M.D., if placed on probation, to pay the Board the costs
4 of probation monitoring; and
5 4. Taking such other and further action as deemed necessary and proper.

6
7 DATED: MAY 22 2020


CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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