

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

**In the Matter of the Accusation and
Petition to Revoke Probation Against:**

Ryan Matthew Spivak, M.D.

**Physician's and Surgeon's
C No. A 113632**

Respondent.

Case No. 800-2019-061086

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 September 11, 2020.

IT IS SO ORDERED: August 12, 2020.

MEDICAL BOARD OF CALIFORNIA



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

1 XAVIER BECERRA-
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
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9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation and Petition to
13 Revoke Probation Against:

14 RYAN MATTHEW SPIVAK, M.D.
15 P.O. Box 46666
Los Angeles, CA 90046

16 Physician's and Surgeon's Certificate
17 No. A 113632,

18 Respondent.

Case No. 800-2019-061086

OAH No. 2020020350

**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. William J. Prasifka ("Complainant") is the Executive Director of the Medical Board
24 of California ("Board"). He brought this action solely in his official capacity and is represented
25 in this matter by Xavier Becerra, Attorney General of the State of California, by Rebecca L.
26 Smith, Deputy Attorney General.

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1 Board, all of the charges and allegations contained in Accusation and Petition to Revoke
2 Probation No. 800-2019-061086 shall be deemed true, correct and fully admitted by Respondent
3 for purposes of any such proceeding or any other licensing proceeding involving Respondent in
4 the State of California.

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

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

11 **DISCIPLINARY ORDER**

12 **IT IS HEREBY ORDERED** that Physician's and Surgeon's Certificate No. A 113632
13 issued to Respondent Ryan Matthew Spivak, M.D. is revoked. However, the revocation is stayed
14 and Respondent is placed on probation for two (2) years to run consecutively from the conclusion
15 of Respondent’s probation term in the Board’s Decision in Case No. 800-2016-020767, for a total
16 of nine (9) years’ probation, with the following terms and conditions:

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

24 The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon
25 who holds a valid, unrestricted license, has three (3) years’ experience in providing evaluations of
26 physicians and surgeons with substance abuse disorders, and is approved by the Board or its
27 designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable
28 professional standards for conducting substance abuse clinical diagnostic evaluations. The

1 evaluator shall not have a current or former financial, personal, or business relationship with
2 Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and
3 independent evaluation. The clinical diagnostic evaluation report shall set forth, in the
4 evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a
5 threat to himself or others, and recommendations for substance abuse treatment, practice
6 restrictions, or other recommendations related to Respondent's rehabilitation and ability to
7 practice safely. If the evaluator determines during the evaluation process that Respondent is a
8 threat to himself or others, the evaluator shall notify the Board within twenty-four (24) hours of
9 such a determination.

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

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

24 The Board shall review the clinical diagnostic evaluation report within five (5) business
25 days of receipt to determine whether Respondent is safe to return to either part-time or full-time
26 practice and what restrictions or recommendations shall be imposed on Respondent based on the
27 recommendations made by the evaluator. Respondent shall not be returned to practice until he
28 has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating

1 that he has not used, consumed, ingested, or administered to himself a prohibited substance, as
2 defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

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

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

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

15 2. CONTROLLED SUBSTANCES - TOTAL RESTRICTION. Respondent shall not
16 order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in
17 the California Uniform Controlled Substances Act.

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

21 If Respondent forms the medical opinion, after an appropriate prior examination and a
22 medical indication, that a patient's medical condition may benefit from the use of marijuana,
23 Respondent shall so inform the patient and shall refer the patient to another physician who,
24 following an appropriate prior examination and a medical indication, may independently issue a
25 medically appropriate recommendation or approval for the possession or cultivation of marijuana
26 for the personal medical purposes of the patient within the meaning of Health and Safety Code
27 section 11362.5. In addition, Respondent shall inform the patient or the patient's primary
28 caregiver that Respondent is prohibited from issuing a recommendation or approval for the

1 possession or cultivation of marijuana for the personal medical purposes of the patient and that
2 the patient or the patient's primary caregiver may not rely on Respondent's statements to legally
3 possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall
4 fully document in the patient's chart that the patient or the patient's primary caregiver was so
5 informed. Nothing in this condition prohibits Respondent from providing the patient or the
6 patient's primary caregiver information about the possible medical benefits resulting from the use
7 of marijuana.

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

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

18 4. COMMUNITY SERVICE - FREE SERVICES. Within sixty (60) calendar days of
19 the effective date of this Decision, Respondent shall submit to the Board or its designee for prior
20 approval a community service plan in which Respondent shall within the first two (2) years of
21 probation, provide forty (40) hours of free non-medical services to a community or non-profit
22 organization. Prior to engaging in any community service, Respondent shall provide a true copy
23 of the Decision to the chief of staff, director, office manager, program manager, officer, or the
24 chief executive officer at every community or non-profit organization where Respondent provides
25 non-medical community service and shall submit proof of compliance to the Board or its designee
26 within fifteen (15) calendar days. This condition shall also apply to any change(s) in community
27 service.

28 Community service performed prior to the effective date of the Decision shall not be

1 accepted in fulfillment of this condition.

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

12 6. PRESCRIBING PRACTICES COURSE – Condition Satisfied. Within sixty (60)
13 calendar days of the effective date of this Decision, Respondent shall enroll in a course in
14 prescribing practices approved in advance by the Board or its designee. Respondent shall provide
15 the approved course provider with any information and documents that the approved course
16 provider may deem pertinent. Respondent shall participate in and successfully complete the
17 classroom component of the course not later than six (6) months after Respondent's initial
18 enrollment. Respondent shall successfully complete any other component of the course within
19 one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and
20 shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
21 licensure.

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

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

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

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

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

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

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

1 A professionalism program taken after the acts that gave rise to the charges in the
2 Accusation and Petition to Revoke Probation, but prior to the effective date of the Decision may,
3 in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this
4 condition if the program would have been approved by the Board or its designee had the program
5 been taken after the effective date of this Decision.

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

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

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

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

28 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry

1 Association or have completed the training required to serve as a collector for the United
2 States Department of Transportation.

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

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

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

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

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

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

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

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

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

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

27 (l) It employs or contracts with toxicologists that are licensed physicians and have
28 knowledge of substance abuse disorders and the appropriate medical training to interpret

1 and evaluate laboratory biological fluid test results, medical histories, and any other
2 information relevant to biomedical information.

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

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

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

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

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

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

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

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

28 For purposes of this condition, the term "prohibited substance" means an illegal drug, a

1 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by
2 Respondent and approved by the Board, alcohol, or any other substance Respondent has been
3 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

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

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

14 Respondent shall pay all substance abuse support group meeting costs.

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

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

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

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

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

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

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

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

25 Following the evaluation, Respondent shall comply with all restrictions or conditions
26 recommended by the evaluating physician within fifteen (15) calendar days after being notified
27 by the Board or its designee. If Respondent is required by the Board or its designee to undergo
28 medical treatment, Respondent shall within thirty (30) calendar days of the requirement notice,

1 submit to the Board or its designee for prior approval the name and qualifications of a California
2 licensed treating physician of Respondent's choice. Upon approval of the treating physician,
3 Respondent shall within fifteen (15) calendar days undertake medical treatment and shall
4 continue such treatment until further notice from the Board or its designee.

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

11 If, prior to the completion of probation, Respondent is found to be physically incapable of
12 resuming the practice of medicine without restrictions, the Board shall retain continuing
13 jurisdiction over Respondent's license and the period of probation shall be extended until the
14 Board determines that Respondent is physically capable of resuming the practice of medicine
15 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

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

25 The Board or its designee shall provide the approved monitor with copies of the Decision
26 and Accusation, and a proposed monitoring plan. Within fifteen (15) calendar days of receipt of
27 the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed
28 statement that the monitor has read the Decision and Accusation, fully understands the role of a

1 monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
2 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
3 signed statement for approval by the Board or its designee.

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

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

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

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

28 In lieu of a monitor, Respondent may participate in a professional enhancement program

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

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

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

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

21 Respondent shall pay all worksite monitoring costs.

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

26 The worksite monitor shall verbally report any suspected substance abuse to the Board and
27 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected
28 substance abuse does not occur during the Board's normal business hours, the verbal report shall

1 be made to the Board or its designee within one (1) hour of the next business day. A written
2 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
3 any other information deemed important by the worksite monitor shall be submitted to the Board
4 or its designee within 48 hours of the occurrence.

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

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

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

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

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

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

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

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

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

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 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
14 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
15 one or 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
26 to revoke Respondent's probation if he 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 Interim Suspension Order is filed
2 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
3 is final, and the period of probation shall be extended until the matter is final.

4 18. NOTIFICATION. Within seven (7) days of the effective date of this Decision,
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 19. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
14 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
15 advanced practice nurses.

16 20. 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 21. 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 ten (10) calendar days after
23 the end of the preceding quarter.

24 22. GENERAL PROBATION REQUIREMENTS.

25 Compliance with Probation Unit

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

27 Address Changes

28 Respondent shall, at all times, keep the Board informed of Respondent's business and

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

5 Place of Practice

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

9 License Renewal

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

12 Travel or Residence Outside California

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

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

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

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

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

8 In the event Respondent's period of non-practice while on probation exceeds eighteen (18)
9 calendar months, Respondent shall successfully complete the Federation of State Medical Boards'
10 Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment
11 program that meets the criteria of Condition 18 of the current version of the Board's "Manual of
12 Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of
13 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 25. COMPLETION OF PROBATION. Respondent shall comply with all financial
22 obligations (e.g., restitution, probation costs) not later than one-hundred twenty (120) calendar
23 days prior to the completion of probation. Upon successful completion of probation,
24 Respondent's certificate shall be fully restored.

25 26. 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

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

4 27. 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 license. The
7 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 28. 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 29. 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 and Petition to Revoke Probation No. 800-2019-061086 shall be deemed to be true,
23 correct, and admitted by Respondent for the purpose of any Statement of Issues or any other
24 proceeding seeking to deny or restrict license.

25 30. PETITION FOR EARLY TERMINATION OF PROBATION. Respondent shall not
26 petition for early termination of probation for at least three (3) years from the effective date of
27 this Decision.

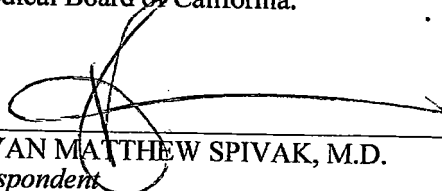
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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorneys Sara E. Hersh and Sarvnaz R. Mackin. 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.

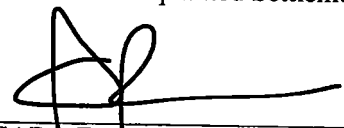
DATED: 07/07/2020



RYAN MATTHEW SPIVAK, M.D.
Respondent

I have read and fully discussed with Respondent Ryan Matthew Spivak, 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: 7/7/20



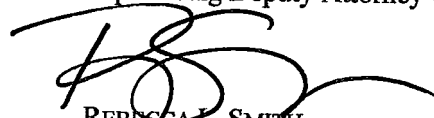
SARA E. HERSCH
SARVAZ R. MACKIN
Attorney for Respondent

ENDORSEMENT

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

DATED: July 7, 2020

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General



REBECCA L. SMITH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation and Petition to Revoke Probation No. 800-2019-061086

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 REBECCA L. SMITH
Deputy Attorney General
4 State Bar No. 179733
California Department of Justice
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Jan 16 20 20
BY A. CERRA ANALYST

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

13 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. 800-2019-061086

14 Ryan Matthew Spivak, M.D.
15 P.O. Box 46666
Los Angeles, CA 90046

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

16 Physician's and Surgeon's Certificate
17 No. A 113632,

Respondent.

18
19
20 **PARTIES**

21 1. Christine J. Lally ("Complainant") brings this Accusation and Petition to Revoke
22 Probation solely in her official capacity as the Interim Executive Director of the Medical Board of
23 California, Department of Consumer Affairs (Board).

24 2. On or about August 11, 2010, the Medical Board issued Physician's and Surgeon's
25 Certificate Number A 113632 to Ryan Matthew Spivak, M.D. ("Respondent"). The Physician's
26 and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on August 31, 2020, unless renewed.

28 ///

1 7. Section 2227 of the Code states:

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

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

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

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

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

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

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

21 8. Section 2234 of the Code, states:

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

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

27 “...”

28 ///

1 9. Section 2236 of the Code states:

2 “(a) The conviction of any offense substantially related to the qualifications, functions, or
3 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
4 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive
5 evidence only of the fact that the conviction occurred.

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

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

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

21 10. Section 2237 of the Code states:

22 “(a) The conviction of a charge of violating any federal statutes or regulations or any statute
23 or regulation of this state, regulating dangerous drugs or controlled substances, constitutes
24 unprofessional conduct. The record of the conviction is conclusive evidence of such
25 unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo
26 contendere is deemed to be a conviction within the meaning of this section.

27 “(b) Discipline may be ordered in accordance with Section 2227 or the Medical Board may
28 order the denial of the license when the time for appeal has elapsed, or the judgment of conviction

1 has been affirmed on appeal, or when an order granting probation is made suspending the
2 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4
3 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of
4 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,
5 information, or indictment.”

6 11. Section 490 of the Code states:

7 “(a) In addition to any other action that a board is permitted to take against a licensee, a
8 board may suspend or revoke a license on the ground that the licensee has been convicted of a
9 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
10 or profession for which the license was issued.

11 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
12 discipline a licensee for conviction of a crime that is independent of the authority granted under
13 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
14 of the business or profession for which the licensee’s license was issued.

15 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
16 conviction following a plea of nolo contendere. Any action that a board is permitted to take
17 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
18 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
19 made suspending the imposition of sentence, irrespective of a subsequent order under the
20 provisions of Section 1203.4 of the Penal Code.

21 “(d) The Legislature hereby finds and declares that the application of this section has been
22 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
23 554, and that the holding in that case has placed a significant number of statutes and regulations
24 in question, resulting in potential harm to the consumers of California from licensees who have
25 been convicted of crimes. Therefore, the Legislature finds and declares that this section
26 establishes an independent basis for a board to impose discipline upon a licensee, and that the
27 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
28 to, but rather are declaratory of, existing law.

1 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
2 prescription,’ ‘Rx only’ or words of similar import.

3 “(b) Any device that bears the statement: ‘Caution: federal law restricts this device to sale
4 by or on the order of a _____,’ ‘Rx only,’ or words of similar import, the blank to be filled
5 in with the designation of the practitioner licensed to use or order use of the device.

6 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
7 prescription or furnished pursuant to Section 4006.”

8 16. Hydrocodone-acetaminophen, also known by the trade name Vicodin, is a Schedule II
9 controlled substance as defined by section 11055, subdivision (b)(1)(I), of the Health and Safety
10 Code and is a dangerous drug as defined in Section 4022 of the Code.

11 17. Hydrocodone-bitartrate acetaminophen, also known by the trade name Norco, is a
12 Schedule II controlled substance as defined by section 11055, subdivision (b)(1)(I), of the Health
13 and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

14 18. Oxycodone-acetaminophen, also known by the trade name Percocet, is a Schedule II
15 controlled substance as defined by section 11055, subdivision (b)(1)(M), of the Health and Safety
16 Code and is a dangerous drug as defined in Section 4022 of the Code.

17 19. Hydromorphone-hydrochloride, also known by the trade name Dilaudid, is a
18 Schedule II controlled substance as defined by section 11055, subdivision (b)(1)(J), of the Health
19 and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

20 20. Acetaminophen-codeine, also known by the trade name Tylenol with Codeine, is a
21 Schedule III controlled substance as defined by section 11056, subdivision (e)(2), of the Health
22 and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

23 21. Alprazolam is a Schedule IV controlled substance as defined by section 11057,
24 subdivision (d)(1), of the Health and Safety Code and is a dangerous drug as defined in Section
25 4022 of the Code.

26 22. Lorazepam is a Schedule IV controlled substance as defined by section 11057,
27 subdivision (d)(16), of the Health and Safety Code and is a dangerous drug as defined in Section
28 4022 of the Code.

1 **FIRST CAUSE TO REVOKE PROBATION**

2 **(Failure to Comply with Probation Condition Number 2:**

3 **Controlled Substances – Partial Restriction)**

4 28. Condition 2 of the May 31, 2017, Decision states:

5 “2. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent
6 shall not order, prescribe, dispense, administer, furnish, or possess any controlled
7 substances as defined by the California Uniform Controlled Substances Act, except in the
8 perioperative setting when Respondent is acting as surgeon where the patient will only use
9 such controlled substances at the location of the procedure (i.e., the foregoing exception
10 shall not apply to any controlled substances that are used outside of such perioperative
11 setting). Perioperative setting is defined as immediately prior to surgery, during surgery
12 or immediately after surgery.

13 “Respondent shall not issue an oral or written recommendation or approval to a
14 patient or a patient’s primary caregiver for the possession or cultivation of marijuana for
15 the personal medical purposes of the patient within the meaning of Health and Safety
16 Code section 11362.5. If Respondent forms the medical opinion, after an appropriate
17 prior examination and medical indication, that a patient’s medical condition may benefit
18 from the use of marijuana, Respondent shall so inform the patient and shall refer the
19 patient to another physician who, following an appropriate prior examination and medical
20 indication, may independently issue a medically appropriate recommendation or approval
21 for the possession or cultivation of marijuana for the personal medical purposes of the
22 patient within the meaning of Health and Safety Code section 11362.5. In addition,
23 Respondent shall inform the patient or the patient’s primary caregiver that Respondent is
24 prohibited from issuing a recommendation or approval for the possession or cultivation of
25 marijuana for the personal medical purposes of the patient and that the patient or the
26 patient’s primary caregiver may not rely on Respondent’s statements to legally possess or
27 cultivate marijuana for the personal medical purposes of the patient. Respondent shall
28 fully document in the patient’s chart that the patient or the patient’s primary caregiver was

1 so informed. Nothing in this condition prohibits Respondent from providing the patient or
2 the patient's primary caregiver information about the possible medical benefits resulting
3 from the use of marijuana.

4 "Throughout his term of probation, Respondent shall provide to his practice
5 monitor, as described below: (a) copies of all records of controlled substances ordered,
6 prescribed, dispensed, administered, or possessed by Respondent (collectively, the "CS
7 Records"); and (b) copies of his surgery records, including drug logs, for each patient that
8 he provides care to in the perioperative setting (collectively, the "Surgery Records").
9 Perioperative setting is defined as immediately prior to surgery, during surgery or
10 immediately after surgery."

11 29. Respondent's probation is subject to revocation because he failed to comply with
12 Probation Condition 2, referenced above. The facts and circumstances regarding this violation
13 are as follows:

14 30. From July 22, 2017 through December 28, 2018, Respondent prescribed controlled
15 substances to patients on 306 occasions to be used outside of the perioperative setting (i.e.,
16 outside of the location of the procedures performed by Respondent).

17 31. In July 2017, Respondent prescribed the following:

- 18 a. On July 22, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient
19 1;¹
20 b. On July 25, 2017, Respondent prescribed at least 5 Norco tablets (325 mg) to
21 Patient 2.
22 c. On July 27, 2017, Respondent prescribed at least 5 Norco tablets (325 mg) to
23 Patient 3.
24 d. On July 27, 2017, Respondent prescribed at least 5 Norco tablets (325 mg) to
25 Patient 4.

26 ///

27 ¹ For privacy purposes, the patients in this Accusation and Petition to Revoke Probation are
28 referred to as Patient 1, Patient 2, Patient 3, etc., with the identities of the patients disclosed to Respondent
in discovery.

- 1 e. On July 31, 2017, Respondent prescribed 10 Norco tablets (325 mg) to Patient
2 5.
- 3 32. In August 2017, Respondent prescribed the following:
- 4 a. On August 1, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
5 Patient 6.
- 6 b. On August 2, 2017, Respondent prescribed 12 Norco tablets (325 mg) to
7 Patient 7.
- 8 c. On August 3, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
9 Patient 8.
- 10 d. On August 3, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
11 Patient 9.
- 12 e. On August 3, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
13 Patient 10.
- 14 f. On August 5, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
15 Patient 11.
- 16 g. On August 5, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
17 Patient 12.
- 18 h. On August 5, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
19 Patient 13.
- 20 i. On August 10, 2017, Respondent prescribed 20 Tylenol with Codeine tablets
21 (30 mg) to Patient 14.
- 22 j. On August 10, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
23 Patient 15.
- 24 k. On August 11, 2017, Respondent prescribed 20 Tylenol with Codeine tablets
25 (30 mg) to Patient 16.
- 26 l. On August 11, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
27 Patient 17.
- 28 ///

- 1 m. On August 15, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
2 Patient 18.
- 3 n. On August 15, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
4 Patient 19.
- 5 o. On August 16, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
6 Patient 20.
- 7 p. On August 16, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
8 Patient 21.
- 9 q. On August 17, 2017, Respondent prescribed 15 Norco tablets (325 mg) to
10 Patient 22.
- 11 r. On August 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
12 Patient 23.
- 13 s. On August 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
14 Patient 24.
- 15 t. On August 21, 2017, Respondent prescribed 10 Norco tablets (325 mg) to
16 Patient 25.
- 17 u. On August 24, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
18 Patient 26.
- 19 v. On August 24, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
20 Patient 27.
- 21 w. On August 31, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
22 Patient 28.
- 23 33. In September 2017, Respondent prescribed the following:
- 24 a. On September 2, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
25 Patient 29.
- 26 b. On September 2, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
27 Patient 30.
- 28 ///

- 1 c. On September 2, 2017, Respondent prescribed an additional 20 Norco tablets
2 (325 mg) to Patient 27.
- 3 d. On September 5, 2017, Respondent prescribed 20 Percocet tablets (325 mg) to
4 Patient 31.
- 5 e. On September 6, 2017, Respondent prescribed 30 Norco tablets (325 mg) to
6 Patient 32.
- 7 f. On September 11, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
8 Patient 33.
- 9 g. On September 11, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
10 Patient 34.
- 11 h. On September 14, 2017, Respondent prescribed 20 Percocet tablets (325 mg) to
12 Patient 35.
- 13 i. On September 14, 2017, Respondent prescribed 30 Percocet tablets (325 mg) to
14 Patient 36.
- 15 j. On September 14, 2017, Respondent prescribed 30 Percocet tablets (325 mg) to
16 Patient 37.
- 17 k. On September 15, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
18 Patient 38.
- 19 l. On September 15, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
20 Patient 39.
- 21 m. On September 19, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
22 Patient 40.
- 23 n. On September 20, 2017, Respondent prescribed 30 Norco tablets (325 mg) to
24 Patient 36.
- 25 o. On September 23, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
26 Patient 41.
- 27 p. On September 25, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
28 Patient 42.

- 1 q. On September 27, 2017, Respondent prescribed 10 Norco tablets (325 mg) to
2 Patient 43.
- 3 34. In October 2017, Respondent prescribed the following:
- 4 a. On October 2, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
5 Patient 40.
- 6 b. On October 4, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
7 Patient 44.
- 8 c. On October 7, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
9 Patient 45.
- 10 d. On October 7, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
11 Patient 46.
- 12 e. On October 7, 2017, Respondent prescribed 35 Norco tablets (325 mg) to
13 Patient 47.
- 14 f. On October 9, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
15 Patient 48.
- 16 g. On October 11, 2017, Respondent prescribed 25 Norco tablets (325 mg) to
17 Patient 21.
- 18 h. On October 11, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
19 Patient 36.
- 20 i. On October 17, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
21 Patient 49.
- 22 j. On October 17, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
23 Patient 50.
- 24 k. On October 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
25 Patient 51.
- 26 l. On October 18, 2017, Respondent prescribed 30 Norco tablets (325 mg) to
27 Patient 52.
- 28 ///

- 1 m. On October 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
2 Patient 36.
- 3 n. On October 21, 2017, Respondent prescribed 30 Norco tablets (325 mg) to
4 Patient 53.
- 5 o. On October 27, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
6 Patient 54.
- 7 p. On October 31, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
8 Patient 55.
- 9 35. In November 2017, Respondent prescribed the following:
- 10 a. On November 1, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
11 Patient 56.
- 12 b. On November 1, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
13 Patient 57.
- 14 c. On November 2, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
15 Patient 58.
- 16 d. On November 6, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
17 Patient 59.
- 18 e. On November 6, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
19 Patient 60.
- 20 f. On November 10, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
21 Patient 61.
- 22 g. On November 13, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
23 Patient 62.
- 24 h. On November 16, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
25 Patient 21.
- 26 i. On November 18, 2017, Respondent prescribed 20 Percocet tablets (325 mg) to
27 Patient 24.
- 28 ///

- 1 j. On November 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
2 Patient 63.
- 3 k. On November 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
4 Patient 64.
- 5 l. On November 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
6 Patient 65.
- 7 m. On November 20, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
8 Patient 59.
- 9 n. On November 22, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
10 Patient 66.
- 11 o. On November 29, 2017, Respondent prescribed 30 Norco tablets (325 mg) to
12 Patient 67.
- 13 36. In December 2017, Respondent prescribed the following:
- 14 a. On December 2, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
15 Patient 48.
- 16 b. On December 2, 2017, Respondent prescribed 30 Percocet tablets (325 mg) to
17 Patient 68.
- 18 c. On December 6, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
19 Patient 69.
- 20 d. On December 14, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
21 Patient 70.
- 22 e. On December 16, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
23 Patient 71.
- 24 f. On December 18, 2017, Respondent prescribed 30 Norco tablets (325 mg) to
25 Patient 72.
- 26 g. On December 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
27 Patient 73.
- 28 ///

- 1 h. On December 21, 2017, Respondent prescribed 20 Norco tablets (325 mg) to
2 Patient 74.
- 3 37. In January 2018, Respondent prescribed the following:
- 4 a. On January 4, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
5 Patient 75.
- 6 b. On January 4, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
7 Patient 76.
- 8 c. On January 4, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
9 Patient 2.
- 10 d. On January 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
11 Patient 77.
- 12 e. On January 11, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
13 Patient 78.
- 14 f. On January 13, 2018, Respondent prescribed 10 Norco tablets (325 mg) to
15 Patient 79.
- 16 g. On January 18, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
17 Patient 80.
- 18 h. On January 18, 2018; Respondent prescribed 20 Norco tablets (325 mg) to
19 Patient 81.
- 20 i. On January 19, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
21 Patient 82.
- 22 j. On January 19, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
23 Patient 83.
- 24 k. On January 22, 2018, Respondent prescribed 25 Norco tablets (325 mg) to
25 Patient 84.
- 26 l. On January 22, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
27 Patient 82.
- 28 ///

- 1 m. On January 23, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
- 2 Patient 85.
- 3 n. On January 23, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
- 4 Patient 86.
- 5 o. On January 25, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
- 6 Patient 82.
- 7 p. On January 29, 2018, Respondent prescribed 15 Norco tablets (325 mg) to
- 8 Patient 87.
- 9 38. In February 2018, Respondent prescribed the following:
- 10 a. On February 12, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
- 11 Patient 88.
- 12 b. On February 12, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
- 13 Patient 89.
- 14 c. On February 14, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
- 15 Patient 21.
- 16 d. On February 17, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
- 17 Patient 90.
- 18 e. On February 19, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
- 19 Patient 91.
- 20 f. On February 19, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
- 21 Patient 92.
- 22 g. On February 21, 2018, Respondent prescribed 25 Percocet tablets (325 mg) to
- 23 Patient 93.
- 24 h. On February 21, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
- 25 Patient 94.
- 26 i. On February 21, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to
- 27 Patient 95.
- 28 ///

- 1 j. On February 22, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
2 Patient 96.
- 3 k. On February 22, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
4 Patient 97.
- 5 l. On February 24, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
6 Patient 98.
- 7 m. On February 24, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
8 Patient 99.
- 9 n. On February 26, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
10 Patient 100.
- 11 o. On February 26, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
12 Patient 101.
- 13 p. On February 28, 2018, Respondent prescribed 40 Percocet tablets (325 mg) to
14 Patient 102.
- 15 39. In March 2018, Respondent prescribed the following:
- 16 a. On March 1, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
17 103.
- 18 b. On March 1, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
19 104.
- 20 c. On March 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
21 105.
- 22 d. On March 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
23 106.
- 24 e. On March 11, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
25 Patient 107.
- 26 f. On March 12, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
27 Patient 108.
- 28 ///

- 1 g. On March 14, 2018, Respondent prescribed 10 Norco tablets (325 mg) to
- 2 Patient 109.
- 3 h. On March 15, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
- 4 Patient 110.
- 5 i. On March 16, 2018, Respondent prescribed 15 Norco tablets (325 mg) to
- 6 Patient 111.
- 7 j. On March 19, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
- 8 Patient 112.
- 9 k. On March 21, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to
- 10 Patient 113.
- 11 l. On March 23, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
- 12 Patient 98.
- 13 m. On March 26, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
- 14 Patient 114.
- 15 n. On March 26, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
- 16 Patient 115.
- 17 o. On March 28, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
- 18 Patient 98.
- 19 40. In April 2018, Respondent prescribed the following:
- 20 a. On April 2, 2018, Respondent prescribed 15 Norco tablets (325 mg) to Patient
- 21 116.
- 22 b. On April 2, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
- 23 117.
- 24 c. On April 2, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
- 25 118.
- 26 d. On April 5, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
- 27 119.
- 28 ///

- 1 e. On April 9, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
2 33.
- 3 f. On April 9, 2018, Respondent prescribed 10 Percocet tablets (325 mg) to
4 Patient 120.
- 5 g. On April 9, 2018, Respondent also prescribed 20 Norco tablets (325 mg) to
6 Patient 120.
- 7 h. On April 10, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
8 121.
- 9 i. On April 11, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
10 34.
- 11 j. On April 12, 2018, Respondent prescribed 25 Percocet tablets (325 mg) to
12 Patient 121.
- 13 k. On April 13, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to
14 Patient 83.
- 15 l. On April 13, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to
16 Patient 122.
- 17 m. On April 13, 2018, Respondent also prescribed 40 Norco tablets (325 mg) to
18 Patient 122.
- 19 n. On April 17, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
20 123.
- 21 o. On April 17, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
22 124.
- 23 p. On April 18, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
24 125.
- 25 q. On April 18, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient
26 126.
- 27 r. On April 18, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
28 127.

- 1 s. On April 20, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient
2 128.
- 3 t. On April 20, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
4 97.
- 5 u. On April 20, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
6 123.
- 7 v. On April 23, 2018, Respondent prescribed 50 Percocet tablets (325 mg) to
8 Patient 129.
- 9 w. On April 24, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient
10 126.
- 11 x. On April 26, 2018, Respondent prescribed 40 Percocet tablets (325 mg) to
12 Patient 130.
- 13 y. On April 26, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
14 65.
- 15 z. On April 26, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient
16 131.
- 17 aa. On April 28, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
18 132.
- 19 bb. On April 30, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient
20 133.
- 21 41. In May 2018, Respondent prescribed the following:
- 22 a. On May 3, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
23 134.
- 24 b. On May 3, 2018, Respondent prescribed 40 Percocet tablets (325 mg) to Patient
25 130.
- 26 c. On May 4, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
27 135.
- 28 ///

- 1 d. On May 4, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
2 136.
- 3 e. On May 7, 2018, Respondent prescribed 40 Norco tablets (325 mg) to Patient
4 137.
- 5 f. On May 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
6 138.
- 7 g. On May 9, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
8 139.
- 9 h. On May 23, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient
10 140.
- 11 i. On May 23, 2018, Respondent prescribed 50 Percocet tablets (325 mg) to
12 Patient 102.
- 13 j. On May 25, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
14 141.
- 15 k. On May 25, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
16 142.
- 17 l. On May 25, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient
18 143.
- 19 m. On May 25, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient
20 144.
- 21 42. In June 2018, Respondent prescribed the following:
- 22 a. On June 1, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
23 61.
- 24 b. On June 1, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
25 145.
- 26 c. On June 4, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient
27 146.
- 28 ///

- 1 d. On June 9, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient
2 147.
- 3 e. On June 13, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient
4 148.
- 5 f. On June 13, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient
6 149.
- 7 g. On June 14, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
8 150.
- 9 h. On June 14, 2018, Respondent prescribed 25 Percocet tablets (325 mg) to
10 Patient 151.
- 11 i. On June 15, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
12 152.
- 13 j. On June 18, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
14 153.
- 15 k. On June 20, 2018, Respondent prescribed 40 Percocet tablets (325 mg) to
16 Patient 154.
- 17 l. On June 23, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
18 155.
- 19 m. On June 28, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient
20 156.
- 21 n. On June 29, 2018, Respondent prescribed an additional 25 Norco tablets (325
22 mg) to Patient 155.
- 23 o. On June 29, 2018, Respondent prescribed 10 Norco tablets (325 mg) to Patient
24 157.
- 25 43. In July 2018, Respondent prescribed the following:
- 26 a. On July 2, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient
27 158.
- 28 ///

- 1 b. On July 5, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
2 159.
- 3 c. On July 5, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
4 155.
- 5 d. On July 6, 2018, Respondent prescribed 40 Percocet tablets (325 mg) to Patient
6 102.
- 7 e. On July 7 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
8 160.
- 9 f. On July 11, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
10 161.
- 11 g. On July 12, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
12 162.
- 13 h. On July 12, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
14 163.
- 15 i. On July 15, 2018, Respondent prescribed 40 Norco tablets (325 mg) to Patient
16 164.
- 17 j. On July 18, 2018, Respondent prescribed 35 Norco tablets (325 mg) to Patient
18 165.
- 19 k. On July 18, 2018, Respondent prescribed 40 Norco tablets (325 mg) to Patient
20 166.
- 21 l. On July 18, 2018, Respondent prescribed 10 Norco tablets (325 mg) to Patient
22 167.
- 23 m. On July 19, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
24 168.
- 25 n. On July 20, 2018, Respondent prescribed 5 Norco tablets (325 mg) to Patient
26 169.
- 27 o. On July 20, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient
28 102.

- 1 p. On July 22, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient
2 170.
- 3 q. On July 23, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
4 18.
- 5 r. On July 23, 2018, Respondent prescribed 6 Norco tablets (325 mg) to Patient
6 171.
- 7 s. On July 23, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient
8 172.
- 9 t. On July 25, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to
10 Patient 173.
- 11 u. On July 26, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
12 174.
- 13 v. On July 26, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to
14 Patient 175.
- 15 w. On July 30, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
16 176.
- 17 x. On July 30, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
18 177.
- 19 y. On July 30, 2018, Respondent prescribed 15 Norco tablets (325 mg) to Patient
20 178.
- 21 z. On July 31, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient
22 179.
- 23 44. In August 2018, Respondent prescribed the following:
- 24 a. On August 3, 2018, Respondent prescribed 30 Dilaudid tablets (2 mg) to
25 Patient 180.
- 26 b. On August 5, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
27 Patient 181.
- 28 ///

- 1 c. On August 8, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
2 Patient 182.
- 3 d. On August 8, 2018, Respondent prescribed 15 Norco tablets (325 mg) to
4 Patient 66.
- 5 e. On August 8, 2018, Respondent prescribed 6 Norco tablets (325 mg) to Patient
6 183.
- 7 f. On August 9, 2018, Respondent prescribed 10 Norco tablets (325 mg) to
8 Patient 184.
- 9 g. On August 9, 2018, Respondent prescribed 10 Norco tablets (325 mg) to
10 Patient 185.
- 11 h. On August 16, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
12 Patient 186.
- 13 i. On August 16, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
14 Patient 187.
- 15 j. On August 18, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to
16 Patient 188.
- 17 k. On August 18, 2018, Respondent prescribed 10 Tylenol with Codeine tablets
18 (30 mg) to Patient 189.
- 19 l. On August 20, 2018, Respondent prescribed 10 Norco tablets (325 mg) to
20 Patient 190.
- 21 m. On August 20, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
22 Patient 191.
- 23 n. On August 22, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
24 Patient 192.
- 25 o. On August 23, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
26 Patient 193.
- 27 p. On August 25, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
28 Patient 194.

- 1 q. On August 27, 2018, Respondent again prescribed 20 Norco tablets (325 mg) to
2 Patient 194.
- 3 r. On August 29, 2018, Respondent prescribed 40 Norco tablets (325 mg) to
4 Patient 186.
- 5 s. On August 29, 2018, Respondent also prescribed 40 Percocet tablets (10 mg) to
6 Patient 186.
- 7 t. On August 31, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to
8 Patient 195.
- 9 45. In September 2018, Respondent prescribed the following:
- 10 a. On September 7, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
11 Patient 196.
- 12 b. On September 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
13 Patient 98.
- 14 c. On September 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
15 Patient 197.
- 16 d. On September 12, 2018, Respondent prescribed 10 Norco tablets (325 mg) to
17 Patient 198.
- 18 e. On September 12, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
19 Patient 140.
- 20 f. On September 13, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
21 Patient 199.
- 22 g. On September 14, 2018, Respondent prescribed 20 Vicodin tablets (500 mg) to
23 Patient 200.
- 24 h. On September 14, 2018, Respondent also prescribed 20 Norco tablets (325 mg)
25 to Patient 200.
- 26 i. On September 17, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
27 Patient 201.
- 28 ///

- 1 j. On September 22, 2018, Respondent prescribed 15 Percocet tablets (325 mg) to
2 Patient 202.
- 3 k. On September 22, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
4 Patient 24.
- 5 l. On September 27, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
6 Patient 203.
- 7 m. On September 27, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
8 Patient 204.
- 9 n. On September 28, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
10 Patient 205.
- 11 o. On September 29, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
12 Patient 206.
- 13 46. In October 2018, Respondent prescribed the following:
- 14 a. On October 3, 2018, Respondent prescribed 35 Norco tablets (325 mg) to
15 Patient 207.
- 16 b. On October 4, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
17 Patient 84.
- 18 c. On October 5, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
19 Patient 152.
- 20 d. On October 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
21 Patient 208.
- 22 e. On October 10, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
23 Patient 209.
- 24 f. On October 11, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
25 Patient 210.
- 26 g. On October 13, 2018, Respondent prescribed 40 Norco tablets (325 mg) to
27 Patient 209.
- 28 ///

- 1 h. On October 17, 2018, Respondent prescribed 40 Norco tablets (325 mg) to
2 Patient 211.
- 3 i. On October 20, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
4 Patient 212.
- 5 j. On October 20, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
6 Patient 213.
- 7 k. On October 20, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
8 Patient 214.
- 9 l. On October 24, 2018, Respondent prescribed 10 Norco tablets (325 mg) to
10 Patient 215.
- 11 m. On October 26, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
12 Patient 216.
- 13 n. On October 26, 2018, Respondent prescribed an additional 20 Norco tablets
14 (325 mg) to Patient 216.
- 15 o. On October 31, 2018, Respondent prescribed 15 Norco tablets (325 mg) to
16 Patient 217.
- 17 p. On October 31, 2018, Respondent prescribed 40 Percocet tablets (325 mg) to
18 Patient 218.
- 19 47. In November 2018, Respondent prescribed the following:
- 20 a. On November 1, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
21 Patient 219.
- 22 b. On November 3, 2018, Respondent prescribed 10 Norco tablets (325 mg) to
23 Patient 220.
- 24 c. On November 7, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
25 Patient 207.
- 26 d. On November 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
27 Patient 221.
- 28 ///

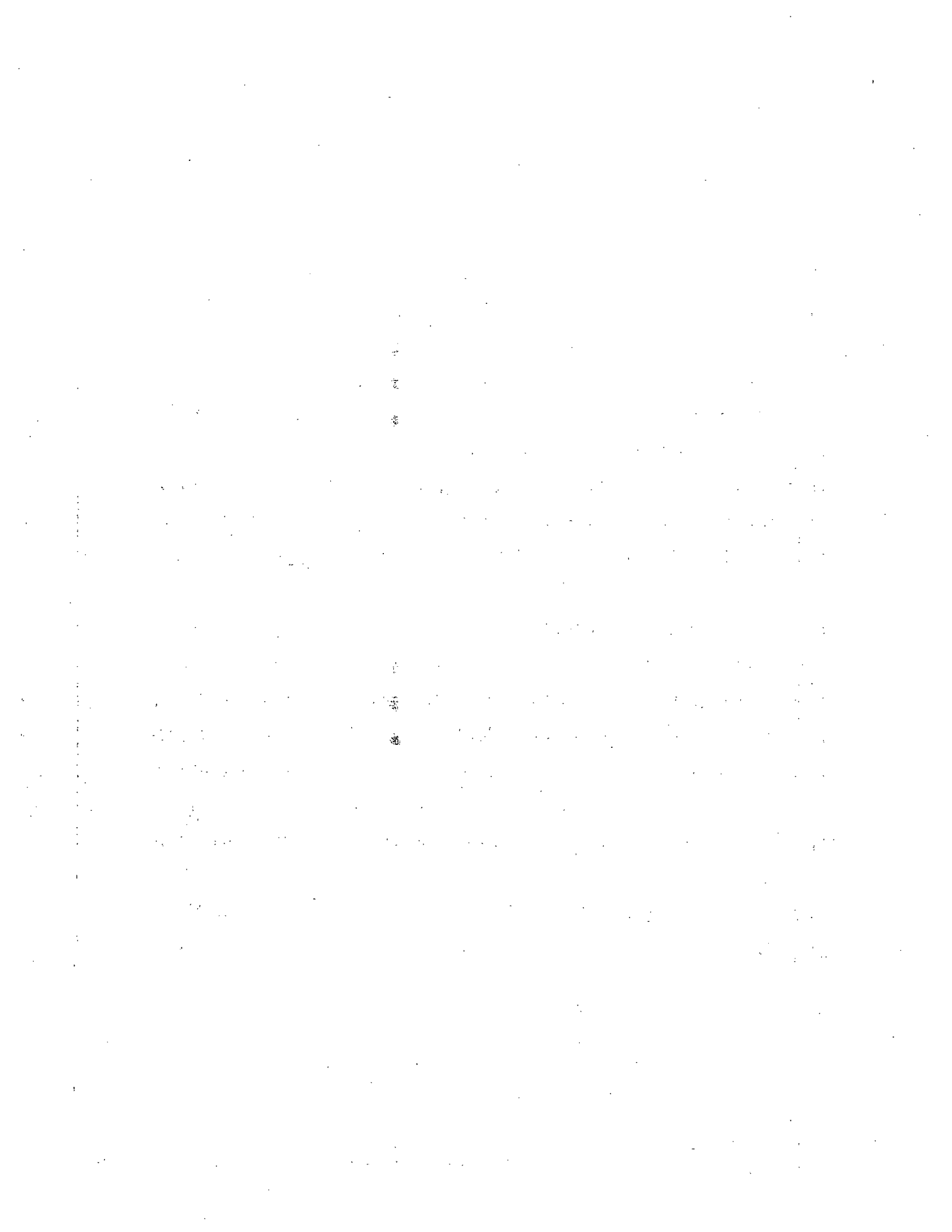
- 1 e. On November 9, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
2 Patient 222.
- 3 f. On November 12, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
4 Patient 223.
- 5 g. On November 13, 2018, Respondent prescribed 6 Norco tablets (325 mg) to
6 Patient 224.
- 7 h. On November 13, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
8 Patient 140.
- 9 i. On November 14, 2018, Respondent prescribed 9 Norco tablets (325 mg) to
10 Patient 225.
- 11 j. On November 15, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
12 Patient 226.
- 13 k. On November 15, 2018, Respondent prescribed 15 Tylenol with Codeine
14 tablets (30 mg) to Patient 227.
- 15 l. On November 16, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
16 Patient 228.
- 17 m. On November 17, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
18 Patient 229.
- 19 n. On November 19, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
20 Patient 230.
- 21 o. On November 19, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to
22 Patient 231.
- 23 p. On November 20, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
24 Patient 232.
- 25 q. On November 21, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
26 Patient 224.
- 27 r. On November 26, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
28 Patient 233.

- 1 s. On November 29, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
2 Patient 234.
- 3 t. On November 29, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
4 Patient 235.
- 5 48. In December 2018, Respondent prescribed the following:
- 6 a. On December 3, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
7 Patient 236.
- 8 b. On December 5, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
9 Patient 224.
- 10 c. On December 6, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
11 Patient 237.
- 12 d. On December 6, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
13 Patient 238.
- 14 e. On December 7, 2018, Respondent prescribed 25 Norco tablets (325 mg) to
15 Patient 239.
- 16 f. On December 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
17 Patient 46.
- 18 g. On December 10, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
19 Patient 146.
- 20 h. On December 10, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
21 Patient 240.
- 22 i. On December 12, 2018, Respondent prescribed 25 Norco tablets (325 mg) to
23 Patient 241.
- 24 j. On December 12, 2018, Respondent prescribed 25 Norco tablets (325 mg) to
25 Patient 242.
- 26 k. On December 13, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
27 Patient 243.
- 28 ///

- 1 l. On December 13, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
2 Patient 105.
- 3 m. On December 14, 2018, Respondent prescribed 25 Norco tablets (325 mg) to
4 Patient 244.
- 5 n. In December 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient
6 245.
- 7 o. On December 18, 2018, Respondent prescribed 25 Norco tablets (325 mg) to
8 Patient 246.
- 9 p. On December 19, 2018, Respondent prescribed 30 Norco tablets (325 mg) to
10 Patient 247.
- 11 q. On December 19, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
12 Patient 148.
- 13 r. On December 20, 2018, Respondent prescribed 10 Norco tablets (325 mg) to
14 Patient 248.
- 15 s. On December 21, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
16 Patient 249.
- 17 t. On December 22, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
18 Patient 250.
- 19 u. On December 22, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
20 Patient 251.
- 21 v. On December 28, 2018, Respondent prescribed 20 Norco tablets (325 mg) to
22 Patient 252.

23 49. From May 2018 through January 2019, Respondent failed to provide his practice
24 monitor, Dr. M.Z. with copies of all records of controlled substances ordered, prescribed,
25 dispensed, administered, or possessed by Respondent.

26 50. From May 2018 through January 2019, Respondent failed to provide his practice
27 monitor, Dr. M.Z. with copies of his surgery records, including drug logs, for each Patient that he
28 provided care to in the perioperative setting.



1 **SECOND CAUSE TO REVOKE PROBATION**

2 (Failure to Comply with Probation Condition Number 3:

3 **Controlled Substances-Maintain Records and Access to Records and Inventories)**

4 51. Condition 3 of the May 31, 2017, Decision states:

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

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

18 52. Respondent's probation is subject to revocation because he failed to comply with
19 Condition 3 of the May 31, 2017 Decision, referenced above. The facts and circumstances
20 regarding this violation are as follows:

21 53. In August 2017, Respondent failed to log the following prescriptions for controlled
22 substances:

23 a. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
24 253.

25 b. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
26 254.

27 54. In December 2017, Respondent failed to log the following prescriptions for controlled
28 substances:

1 a. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
2 255.

3 b. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
4 256.

5 55. In January 2018, Respondent failed to log the following prescriptions for controlled
6 substances:

7 a. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
8 257.

9 56. In February 2018, Respondent failed to log the following prescriptions for controlled
10 substances:

11 a. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
12 258.

13 b. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient
14 259.

15 57. In March 2018, Respondent failed to log the following prescriptions for controlled
16 substances:

17 a. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient
18 260.

19 b. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
20 261.

21 c. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
22 262.

23 d. Ten tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient 263.

24 58. In April 2018, Respondent failed to log the following prescriptions for controlled
25 substances:

26 a. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
27 264.

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1 59. In May 2018, Respondent failed to log the following prescriptions for controlled
2 substances:

- 3 a. Five tablets of Alprazolam (.5 mg) to Patient 137.

4 60. In June 2018, Respondent failed to log the following prescriptions for controlled
5 substances:

- 6 a. Thirty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient 59.

7 b. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
8 265.

- 9 c. Forty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient 242.

10 d. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient
11 266.

12 61. In July 2018, Respondent failed to log the following prescriptions for controlled
13 substances:

14 a. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
15 267.

16 b. Thirty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
17 241.

18 62. In August 2018, Respondent failed to log the following prescriptions for controlled
19 substances:

- 20 a. Fifteen tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 74.

21 b. Thirty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient
22 268.

23 63. In September 2018, Respondent failed to log the following prescriptions for
24 controlled substances:

- 25 a. Ten tablets of Lorazepam (1 mg) to Patient 269.

26 b. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient
27 269.

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1 64. In October 2018, Respondent failed to log the following prescriptions for controlled
2 substances:

- 3 a. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient
4 270.
- 5 b. Twenty tablets of Tramadol (50 mg) to Patient 60.
- 6 c. Forty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient 271.

7 65. In November 2018, Respondent failed to log the following prescriptions for
8 controlled substances:

- 9 a. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
10 272.
- 11 b. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient
12 273.

13 66. In December 2018, Respondent failed to log the following prescriptions for controlled
14 substances:

- 15 a. Eight tablets of Alprazolam (1 mg) to Patient 105.
- 16 b. Twenty tablets of acetaminophen-codeine phosphate to Patient 105.
- 17 c. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient
18 274.
- 19 d. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
20 275.

21 67. In January 2019, Respondent failed to log the following prescriptions for controlled
22 substances:

- 23 a. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient
24 96.
- 25 b. Ten tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 276.
- 26 c. 20 tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient 277.
- 27 d. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient
28 278.

- 1 e. Thirty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
2 279.
- 3 f. Forty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 280.
4 g. Twenty-five tablets of oxycodone HCL-acetaminophen (325 mg) to Patient
5 281.
- 6 h. Ten tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient 282.
7 i. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
8 283.
- 9 j. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient
10 284.
- 11 k. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient
12 285.
- 13 l. Ten tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 286.
14 m. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient
15 287.
- 16 n. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient
17 288.
- 18 o. Twenty-four tablets of acetaminophen-hydrocodone bitartrate (325 mg) to
19 Patient 289.

20 68. In July 2019, Respondent failed to log the following prescriptions for controlled
21 substances:

- 22 a. Ten tablets of tramadol HCL to Patient 290.

23 69. In August 2019, Respondent failed to log the following prescriptions for controlled
24 substances:

- 25 a. Ten tablets of tramadol HCL to Patient 291.

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1 **THIRD CAUSE TO REVOKE PROBATION**

2 **(Failure to Comply with Probation Condition Number 21: Obey all Laws)**

3 70. Condition 21 of the May 31, 2017, Decision states:

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

7 71. Respondent's probation is subject to revocation because he failed to comply with
8 Condition 21 of the May 31, 2017 Decision, referenced above. The facts and circumstances
9 regarding this violation are as follows:

10 72. On April 16, 2018, in proceedings entitled *The People of the State of California v.*
11 *Ryan M. Spivak*, case number BA459131 in the Los Angeles County Superior Court, Respondent,
12 upon his plea of no contest, was convicted of obtaining or possessing a controlled substance
13 obtained by a nonconforming prescription in violation of Health and Safety Code section 11180, a
14 misdemeanor.

15 **FOURTH CAUSE TO REVOKE PROBATION**

16 **(Failure to Comply with Probation Condition Number 22: Quarterly Declarations)**

17 73. Condition 22 of the May 31, 2017, Decision states:

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

21 "..."

22 74. Respondent's probation is subject to revocation because he failed to comply with
23 Condition 22 of the May 31, 2017 Decision, referenced above. The facts and circumstances
24 regarding this violation are as follows:

25 75. On January 9, 2017, Respondent executed his Quarterly Declaration Due Date
26 Statement indicating that he understands that "[f]ailure to comply with the [quarterly
27 declarations] reporting requirements is a **violation of probation and is grounds for**

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1 administrative action to revoke probation and carry out the Decision that was stayed.”

2 [emphasis in original.]

3 76. On July 3, 2018, Respondent executed his Quarterly Declaration for the reporting
4 period of April-June 2018, indicating that since his last quarterly declaration, he has not violated
5 any county or city ordinances, been arrested, charged, convicted of, pled nolo contendere in any
6 state or federal court or foreign county to any misdemeanor, felony, or other offense.

7 **DISCIPLINARY CONSIDERATIONS**

8 77. To determine the degree of discipline, if any, to be imposed on Respondent,
9 Complainant alleges that in a matter entitled *In the Matter of the Accusation against Ryan*
10 *Matthew Spivak, M.D.*, Medical Board Case No. 800-2016-020767, the Board, issued a decision,
11 effective May 31, 2017, in which Respondent’s Physician’s and Surgeon’s Certificate was
12 revoked, for dishonest acts, violation of drug statutes, misuse of controlled substances,
13 illegitimate prescriptions, false/fictitious prescriptions, obtaining prescriptions by fraud/deceit,
14 making or signing false documents, forging prescriptions for self-use, failure to report change of
15 address, as well as unprofessional conduct. However, the revocation was stayed and Respondent
16 was placed on seven years of probation, together with a partial restriction on prescribing
17 controlled substances, as well as the mandatory conditions applying to a substance abusing
18 licensee and other standard terms and conditions. That decision is now final and is incorporated
19 by reference as if fully set forth herein.

20 78. To determine the degree of discipline, if any, to be imposed on Respondent,
21 Complainant alleges that on April 16, 2018, in proceedings entitled *The People of the State of*
22 *California v. Ryan M. Spivak*, case number BA459131 in the Los Angeles County Superior Court,
23 Respondent, upon his plea of no contest, was convicted of obtaining or possessing a controlled
24 substance obtained by a nonconforming prescription in violation of Health and Safety Code
25 section 11180, a misdemeanor.

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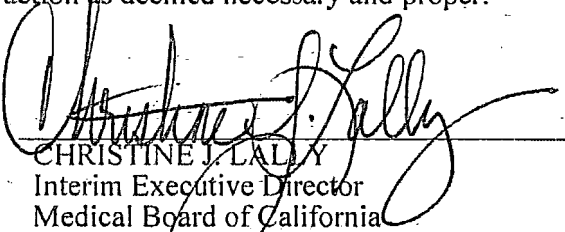
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PRAYER

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 the probation that was granted by Board in Case No. 800-2016-020767 and imposing the disciplinary order that was stayed, thereby revoking Physician's and Surgeon's Certificate Number A 113632, issued to Ryan Matthew Spivak, M.D.;
- 2. Revoking or suspending Physician's and Surgeon's Certificate Number A 113632, issued to Ryan Matthew Spivak, M.D.;
- 3. Revoking, suspending or denying approval of Ryan Matthew Spivak, M.D.'s authority to supervise physician assistants and advanced practice nurses;
- 4. Ordering Ryan Matthew Spivak, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
- 5. Taking such other and further action as deemed necessary and proper.

DATED: JAN-16, 2020



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

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Exhibit A

Stipulated Settlement and Disciplinary Order Case No. 800-2016-020767

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

In the Matter of the Accusation)
Against:)
)
)
Ryan Matthew Spivak, M.D.)
)
Physician's and Surgeon's)
Certificate No. A 113632)
)
Respondent)
_____)

Case No. 800-2016-020767

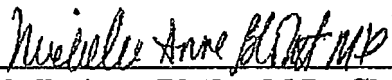
DECISION

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 June 30, 2017.

IT IS SO ORDERED: May 31, 2017.

MEDICAL BOARD OF CALIFORNIA



**Michelle Anne Bholat, M.D., Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 REBECCA L. SMITH
Deputy Attorney General
4 State Bar No. 179733
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 897-2655
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 800-2016-020767

13 RYAN MATTHEW SPIVAK, M.D.
2200 West Third Street, Suite 120A
Los Angeles, California 90057

OAH No. 2016100666

14 Physician's and Surgeon's Certificate
No. A113632,

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16 Respondent.

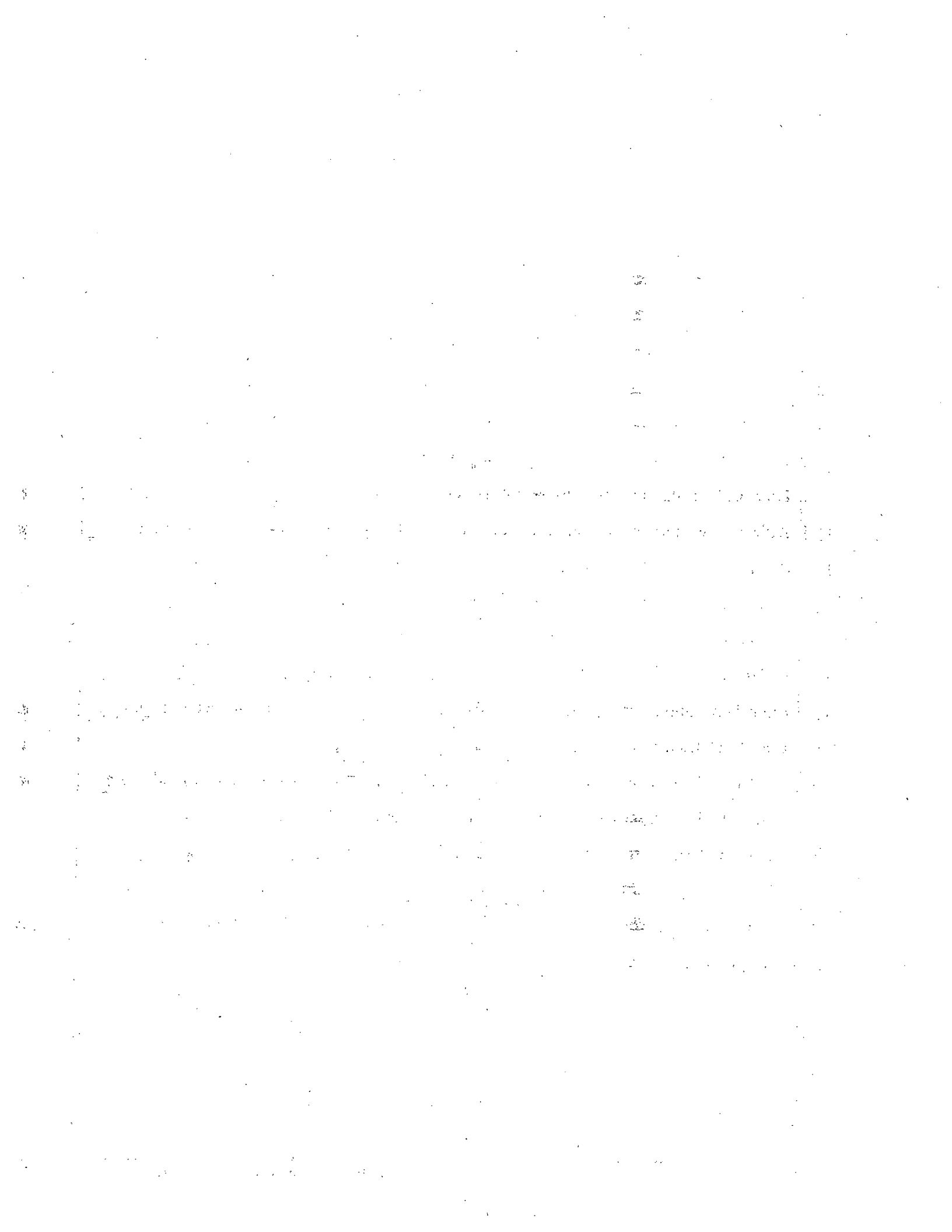
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18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
22 of California (Board). She brought this action solely in her official capacity and is represented in
23 this matter by Xavier Becerra, Attorney General of the State of California, by Rebecca L. Smith,
24 Deputy Attorney General.

25 2. Ryan Matthew Spivak, M.D. (Respondent) is represented in this proceeding by
26 attorney Sara Hersh, whose address is 11835 West Olympic Blvd., Suite 900, Los Angeles,
27 California 90064.

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1 DISCIPLINARY ORDER

2 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A113632 issued
3 to Respondent Ryan Matthew Spivak, M.D. is revoked. However, the revocation is stayed and
4 Respondent is placed on probation for seven (7) years on the following terms and conditions.

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

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

26 In formulating his opinion as to whether Respondent is safe to return to either part-time or
27 full-time practice and what restrictions or recommendations should be imposed, including
28 participation in an inpatient or outpatient treatment program, the evaluator shall consider the

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

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

12 The Board shall review the clinical diagnostic evaluation report within five (5) business
13 days of receipt to determine whether Respondent is safe to return to either part-time or full-time
14 practice and what restrictions or recommendations shall be imposed on Respondent based on the
15 recommendations made by the evaluator. Respondent shall not be returned to practice until he
16 has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating
17 that he has not used, consumed, ingested, or administered to himself a prohibited substance, as
18 defined in section 1361.51, subdivision (e), of Title 16 of the California Code of 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 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 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 2. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent shall not
5 order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by
6 the California Uniform Controlled Substances Act, except in the perioperative setting when
7 Respondent is acting as surgeon where the patient will only use such controlled substances at the
8 location of the procedure (i.e., the foregoing exception shall not apply to any controlled
9 substances that are used outside of such perioperative setting). Perioperative setting is defined as
10 immediately prior to surgery, during surgery or immediately after surgery.

11 Respondent shall not issue an oral or written recommendation or approval to a patient or a
12 patient's primary caregiver for the possession or cultivation of marijuana for the personal medical
13 purposes of the patient within the meaning of Health and Safety Code section 11362.5. If
14 Respondent forms the medical opinion, after an appropriate prior examination and medical
15 indication, that a patient's medical condition may benefit from the use of marijuana, Respondent
16 shall so inform the patient and shall refer the patient to another physician who, following an
17 appropriate prior examination and medical indication, may independently issue a medically
18 appropriate recommendation or approval for the possession or cultivation of marijuana for the
19 personal medical purposes of the patient within the meaning of Health and Safety Code section
20 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that
21 Respondent is prohibited from issuing a recommendation or approval for the possession or
22 cultivation of marijuana for the personal medical purposes of the patient and that the patient or
23 the patient's primary caregiver may not rely on Respondent's statements to legally possess or
24 cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully
25 document in the patient's chart that the patient or the patient's primary caregiver was so
26 informed. Nothing in this condition prohibits Respondent from providing the patient or the
27 patient's primary caregiver information about the possible medical benefits resulting from the use
28 of marijuana.



1 Throughout his term of probation, Respondent shall provide to his practice monitor, as
2 described below: (a) copies of all records of controlled substances ordered, prescribed, dispensed,
3 administered, or possessed by Respondent (collectively, the "CS Records"); and (b) copies of his
4 surgery records, including drug logs, for each patient that he provides care to in the perioperative
5 setting (collectively, the "Surgery Records"). Perioperative setting is defined as immediately
6 prior to surgery, during surgery or immediately after surgery.

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

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

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

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

1 If Respondent has a confirmed positive biological fluid test for any substance (whether or
2 not legally prescribed) and has not reported the use to the Board or its designee, Respondent
3 shall receive a notification from the Board or its designee to immediately cease the practice of
4 medicine. Respondent shall not resume the practice of medicine until the final decision on an
5 accusation and/or a petition to revoke probation is effective. An accusation and/or petition to
6 revoke probation shall be filed by the Board within thirty (30) days of the notification to cease
7 practice.

8 If Respondent requests a hearing on the accusation and/or petition to revoke probation, the
9 Board shall provide Respondent with a hearing within thirty (30) days of the request, unless
10 Respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge
11 alone, he or she shall forward a Proposed Decision to the Board within fifteen (15) days of
12 submission of the matter. Within fifteen (15) days of receipt by the Board of the Administrative
13 Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be
14 shown for the delay. If the case is heard by the Board, the Board shall issue its decision within
15 fifteen (15) days of submission of the case, unless good cause can be shown for the delay. Good
16 cause includes, but is not limited to, non-adoption of the proposed decision, request for
17 reconsideration, remands and other interlocutory orders issued by the Board. The cessation of
18 practice shall not apply to the reduction of the probationary time period.

19 If the Board does not file an accusation or petition to revoke probation within thirty (30)
20 days of the issuance of the notification to cease practice or does not provide Respondent with a
21 hearing within thirty (30) days of a such a request, the notification of cease practice shall be
22 dissolved.

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

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

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

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

- 14 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry
15 Association or have completed the training required to serve as a collector for the United
16 States Department of Transportation.
- 17 (b) Its specimen collectors conform to the current United States Department of
18 Transportation Specimen Collection Guidelines.
- 19 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published
20 by the United States Department of Transportation without regard to the type of test
21 administered.
- 22 (d) Its specimen collectors observe the collection of testing specimens.
- 23 (e) Its laboratories are certified and accredited by the United States Department of Health
24 and Human Services.
- 25 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business
26 day of receipt and all specimens collected shall be handled pursuant to chain of custody
27 procedures. The laboratory shall process and analyze the specimens and provide legally
28 defensible test results to the Board within seven (7) business days of receipt of the

1 specimen. The Board will be notified of non-negative results within one (1) business day
2 and will be notified of negative test results within seven (7) business days.

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

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

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

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

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

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

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

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

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

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

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

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

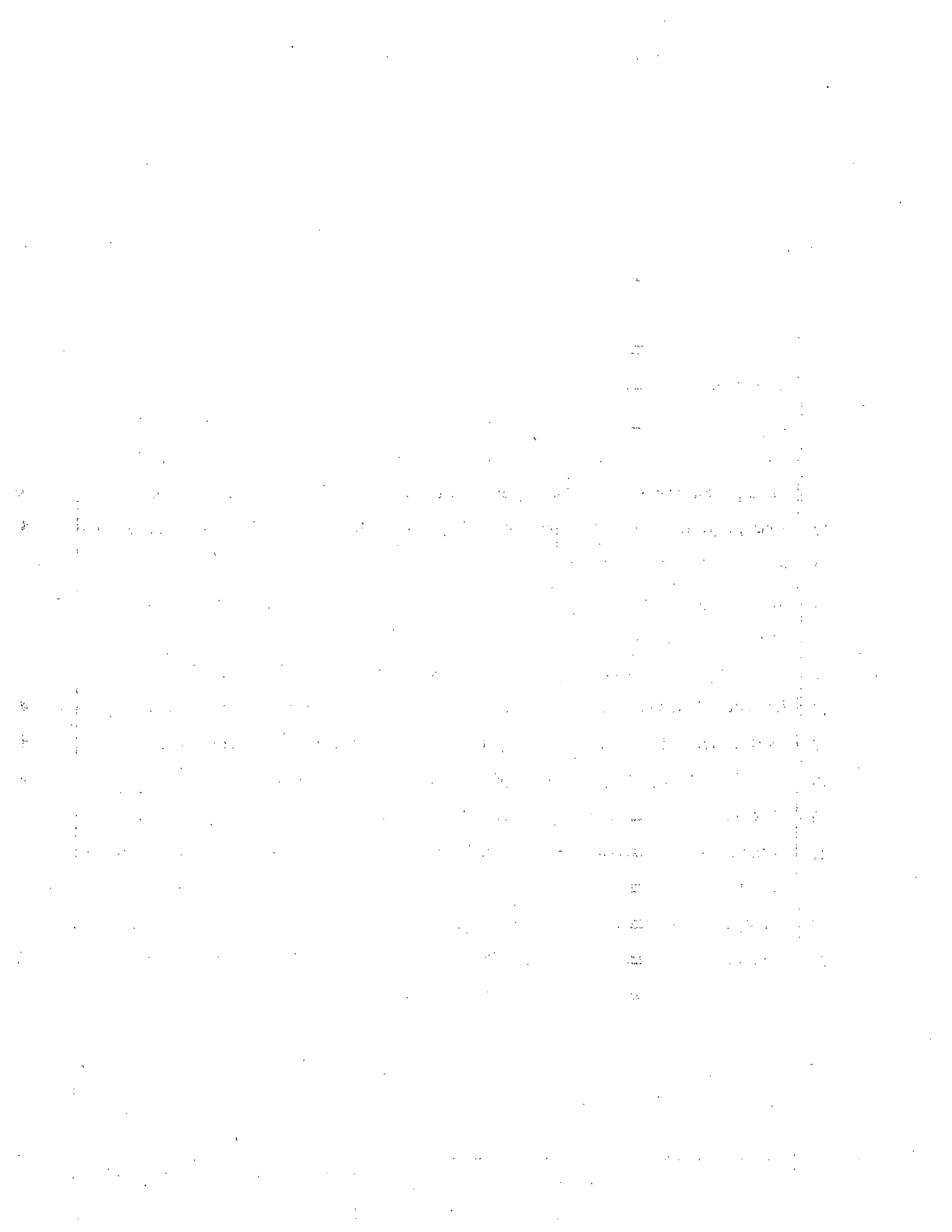
10 After the issuance of a cease-practice order, the Board shall determine whether the
11 positive biological fluid test is in fact evidence of prohibited substance use by consulting with the
12 specimen collector and the laboratory, communicating with the licensee, his treating physician(s),
13 other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

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

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

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

25 6. COMMUNITY SERVICE - FREE SERVICES. Within sixty (60) calendar days of
26 the effective date of this Decision, Respondent shall submit to the Board or its designee for prior
27 approval a community service plan in which Respondent shall within the first two (2) years of
28 probation, provide forty (40) hours of free non-medical services to a community or non-profit



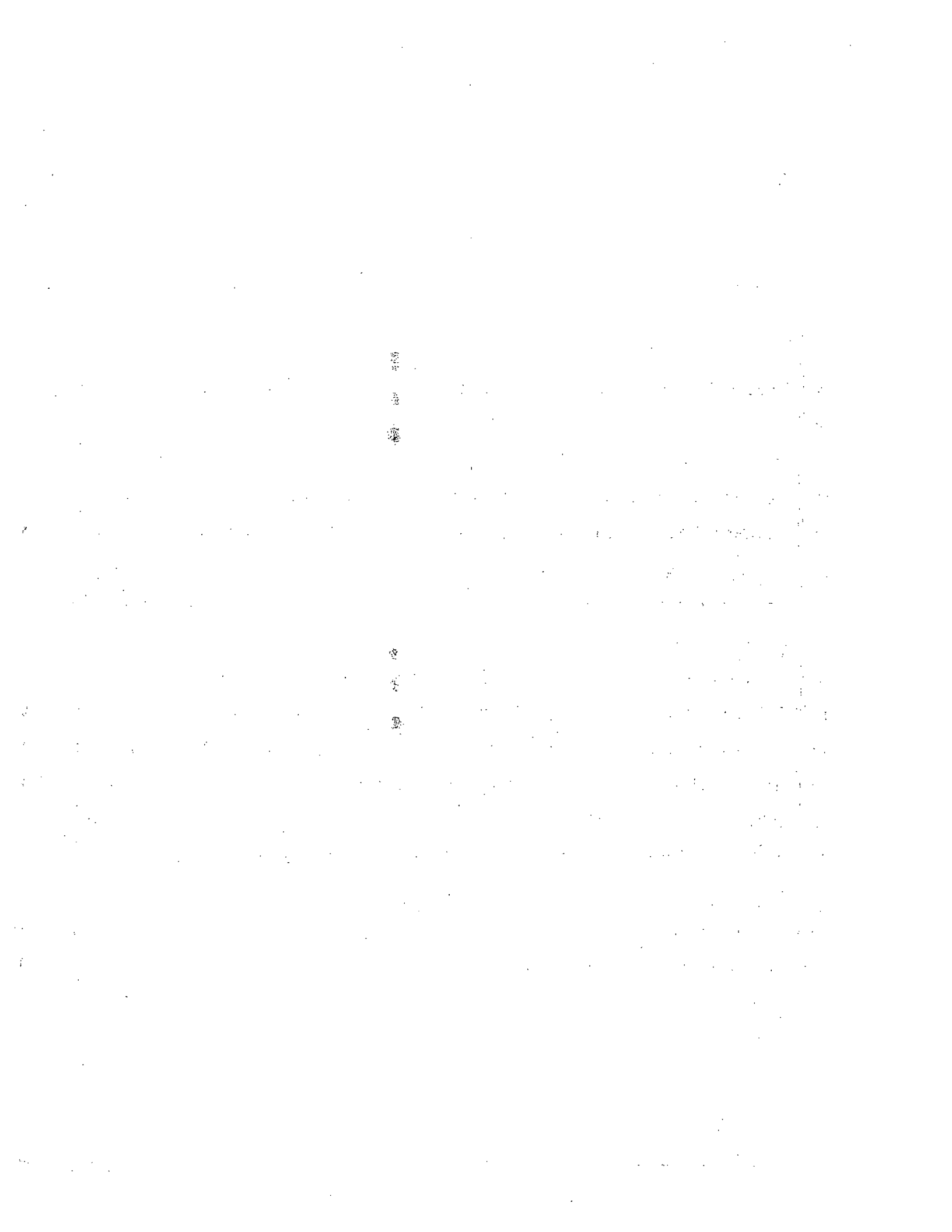
1 organization. Prior to engaging in any community service, Respondent shall provide a true copy
2 of the Decision to the chief of staff, director, office manager, program manager, officer, or the
3 chief executive officer at every community or non-profit organization where Respondent provides
4 non-medical community service and shall submit proof of compliance to the Board or its designee
5 within fifteen (15) calendar days. This condition shall also apply to any change(s) in community
6 service.

7 Community service performed prior to the effective date of the Decision shall not be
8 accepted in fulfillment of this condition.

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

19 8. PRESCRIBING PRACTICES COURSE. Within sixty (60) calendar days of the
20 effective date of this Decision, Respondent shall enroll in a course in prescribing practices
21 approved in advance by the Board or its designee. Respondent shall provide the approved course
22 provider with any information and documents that the approved course provider may deem
23 pertinent. Respondent shall participate in and successfully complete the classroom component of
24 the course not later than six (6) months after Respondent's initial enrollment. Respondent shall
25 successfully complete any other component of the course within one (1) year of enrollment. The
26 prescribing practices course shall be at Respondent's expense and shall be in addition to the
27 Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

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

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

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

26 10. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
27 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
28 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
2 provide any information and documents that the program may deem pertinent. Respondent shall
3 successfully complete the classroom component of the program not later than six (6) months after
4 Respondent's initial enrollment, and the longitudinal component of the program not later than the
5 time specified by the program, but no later than one (1) year after attending the classroom
6 component. The professionalism program shall be at Respondent's expense and shall be in
7 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

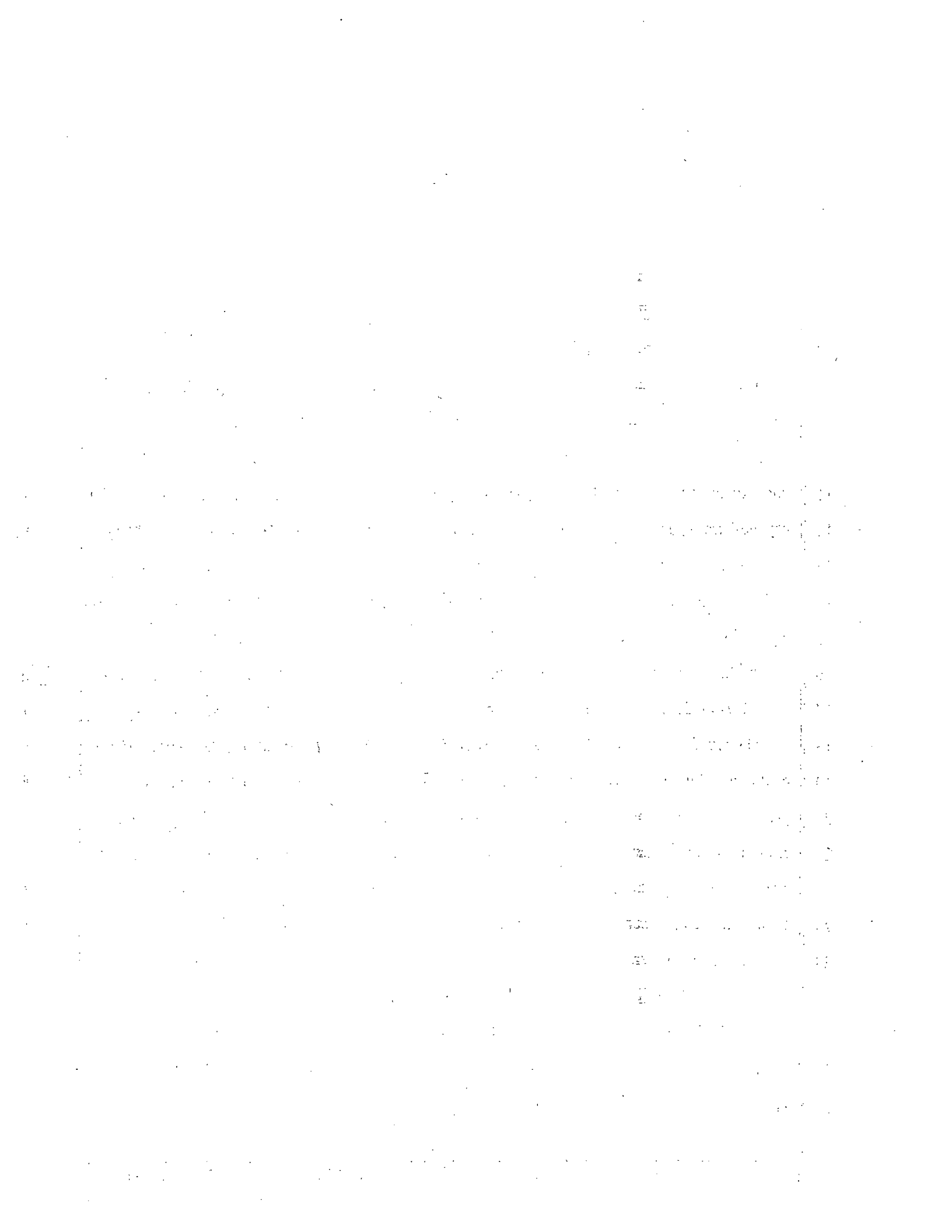
8 A professionalism program taken after the acts that gave rise to the charges in the
9 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
10 or its designee, be accepted towards the fulfillment of this condition if the program would have
11 been approved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

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

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

21 Respondent shall pay all substance abuse support group meeting costs.

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



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

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

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

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

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

25 13. MEDICAL EVALUATION AND TREATMENT. Within thirty (30) calendar days
26 of the effective date of this Decision, and on a periodic basis thereafter as may be required by the
27 Board or its designee, Respondent shall undergo a medical evaluation by a Board-appointed
28 physician who shall consider any information provided by the Board or designee and any other

1 information the evaluating physician deems relevant and shall furnish a medical report to the
2 Board or its designee. Respondent shall provide the evaluating physician any information and
3 documentation that the evaluating physician may deem pertinent.

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

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

18 If, prior to the completion of probation, Respondent is found to be physically incapable of
19 resuming the practice of medicine without restrictions, the Board shall retain continuing
20 jurisdiction over Respondent's license and the period of probation shall be extended until the
21 Board determines that Respondent is physically capable of resuming the practice of medicine
22 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

23 14. MONITORING – PRACTICE. Within thirty (30) calendar days of the effective date
24 of this Decision, Respondent shall submit to the Board or its designee for prior approval as a
25 practice monitor, the name and qualifications of one or more licensed physicians and surgeons
26 whose licenses are valid and in good standing, and who are preferably American Board of
27 Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or
28 personal relationship with Respondent, or other relationship that could reasonably be expected to

1 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
2 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
3 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

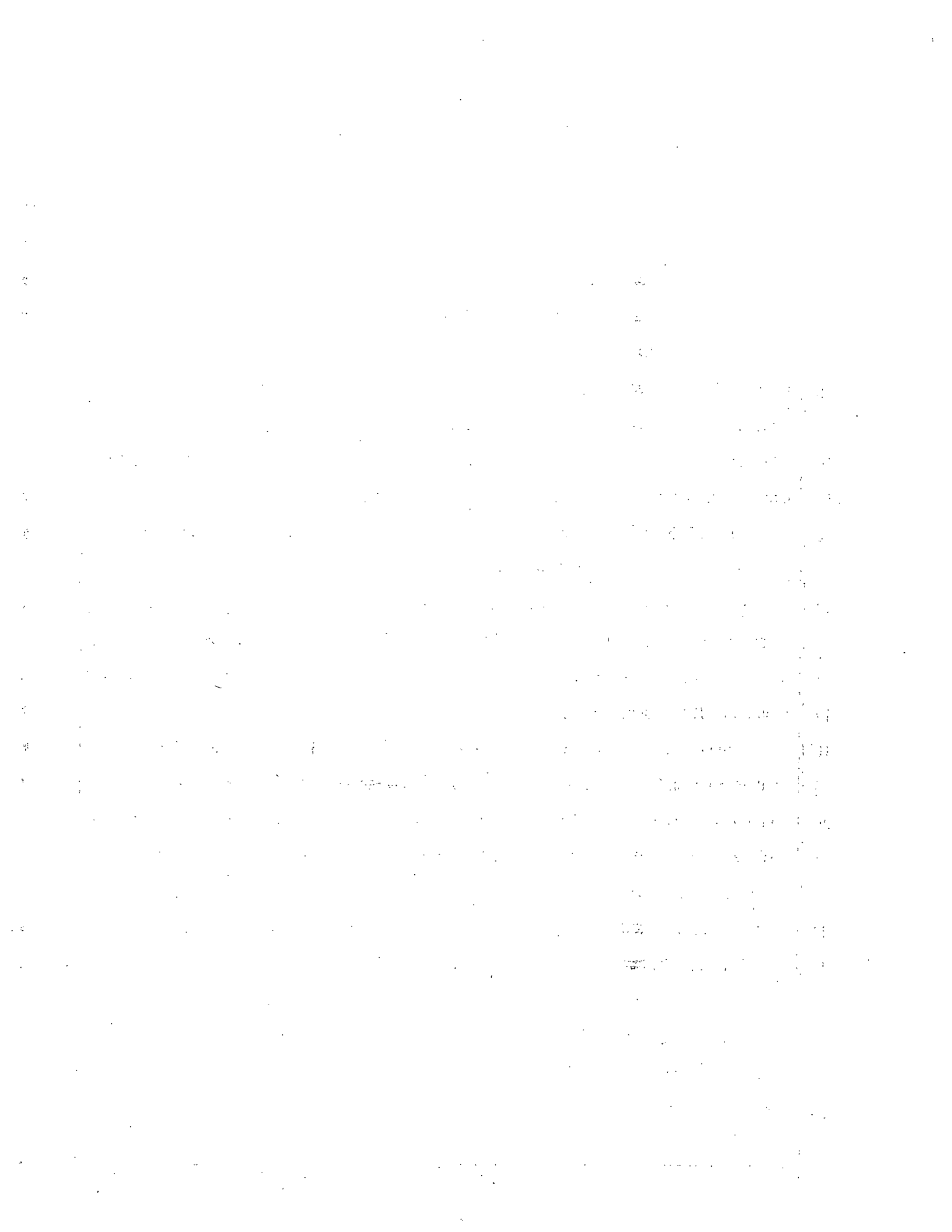
4 The Board or its designee shall provide the approved monitor with copies of the Decision
5 and Accusation, and a proposed monitoring plan. Within fifteen (15) calendar days of receipt of
6 the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed
7 statement that the monitor has read the Decision and Accusation, fully understands the role of a
8 monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
9 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
10 signed statement for approval by the Board or its designee.

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

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

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

27 If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar
28 days of such resignation or unavailability, submit to the Board or its designee, for prior approval,



1 the name and qualifications of a replacement monitor who will be assuming that responsibility
2 within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor
3 within sixty (60) calendar days of the resignation or unavailability of the monitor, Respondent
4 shall receive a notification from the Board or its designee to cease the practice of medicine within
5 three (3) calendar days after being so notified Respondent shall cease the practice of medicine
6 until a replacement monitor is approved and assumes monitoring responsibility.

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

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

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

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

1 a basis as determined by the Board or its designee, but not less than once per week; interview
2 other staff in the office regarding Respondent's behavior, if requested by the Board or its
3 designee; and review Respondent's work attendance. The worksite monitor shall verbally report
4 any suspected substance abuse to the Board and Respondent's employer or supervisor within one
5 (1) business day of occurrence. If the suspected substance abuse does not occur during the
6 Board's normal business hours, the verbal report shall be made to the Board or its designee within
7 one (1) hour of the next business day. A written report that includes the date, time, and location
8 of the suspected abuse; Respondent's actions; and any other information deemed important by the
9 worksite monitor shall be submitted to the Board or its designee within forty-eight (48) hours of
10 the occurrence.

11 The worksite monitor shall complete and submit a written report monthly or as directed by
12 the Board or its designee which shall include the following: (1) Respondent's name and
13 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)
14 the worksite monitor's license number, if applicable; (4) the location or location(s) of the
15 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the
16 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;
17 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can
18 lead to suspected substance abuse by Respondent. Respondent shall complete any required
19 consent forms and execute agreements with the approved worksite monitor and the Board, or its
20 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.
21 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)
22 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior
23 approval, the name and qualifications of a replacement monitor who will be assuming that
24 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a
25 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the
26 monitor, Respondent shall receive a notification from the Board or its designee to cease the
27 practice of medicine within three (3) calendar days after being so notified. Respondent shall

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

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

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

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

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

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

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

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

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

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

20 (3) Refer Respondent for further disciplinary action, such as suspension,
21 revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, §
22 1361.52, subd. (b).)

23 B. If Respondent commits a minor violation of probation as defined by section
24 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
25 one or more of the following actions:

26 (1) Issue a cease-practice order;

27 (2) Order practice limitations;

28 (3) Order or increase supervision of Respondent;



- 1 (4) Order increased documentation;
- 2 (5) Issue a citation and fine, or a warning letter;
- 3 (6) Order Respondent to undergo a clinical diagnostic evaluation to be
- 4 conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California
- 5 Code of Regulations, at Respondent's expense;

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

7 Code Regs., tit. 16, § 1361.52, subd. (d).)

8 C. Nothing in this Decision shall be considered a limitation on the Board's authority

9 to revoke Respondent's probation if he has violated any term or condition of probation. (See Cal.

10 Code Regs., tit. 16, § 1361.52, subd. (e).) If Respondent violates probation in any respect, the

11 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and

12 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke

13 Probation, or an Interim Suspension Order is filed against Respondent during probation, the

14 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall

15 be extended until the matter is final.

16 19. NOTIFICATION. Within seven (7) days of the effective date of this Decision,

17 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the

18 Chief Executive Officer at every hospital where privileges or membership are extended to

19 Respondent, at any other facility where Respondent engages in the practice of medicine,

20 including all physician and locum tenens registries or other similar agencies, and to the Chief

21 Executive Officer at every insurance carrier which extends malpractice insurance coverage to

22 Respondent. Respondent shall submit proof of compliance to the Board or its designee within

23 fifteen (15) calendar days.

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

25 20. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE

26 NURSES. During probation, Respondent is prohibited from supervising physician assistants and

27 advanced practice nurses.

28 ///

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

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

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

9 23. GENERAL PROBATION REQUIREMENTS.

10 Compliance with Probation Unit

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

12 Address Changes

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

18 Place of Practice

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

22 License Renewal

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

25 Travel or Residence Outside California

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

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

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

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

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

27 Respondent's period of non-practice while on probation shall not exceed two (2) years.
28 Periods of non-practice will not apply to the reduction of the probationary term.

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

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

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

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

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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: 5-12-17

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General



REBECCA L. SMITH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation Case No. 800-2016-020767

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO September 29 20 16
BY R. Firdaus ANALYST

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

11 In the Matter of the Accusation Against:
12 **RYAN MATTHEW SPIVAK, M.D.**
13 **2200 West Third Street, Suite 120A**
Los Angeles, California 90057
14 Physician's and Surgeon's Certificate
15 No. A113632,
16 Respondent.

Case No. 800-2016-020767

ACCUSATION

18 Complainant alleges:

19 **PARTIES**

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

23 2. On August 11, 2010, the Board issued Physician's and Surgeon's Certificate Number
24 A113632 to Ryan Matthew Spivak, M.D. ("Respondent"). That license was in full force and
25 effect at all times relevant to the charges brought herein and will expire on August 31, 2018,
26 unless renewed.

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1 JURISDICTION

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

5 4. Section 2004 of the Code states:

6 "The board shall have the responsibility for the following:

7 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
8 Act.

9 "(b) The administration and hearing of disciplinary actions.

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

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

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

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

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

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

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

21 5. Section 2227 of the Code states:

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

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

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

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

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

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

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

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

17 7. Section 2234 of the Code, states:

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

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

23 “(b) Gross negligence.

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

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

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

6 “(d) Incompetence.

7 “(e) The commission of any act involving dishonesty or corruption which is substantially
8 related to the qualifications, functions, or duties of a physician and surgeon.

9 “(f) Any action or conduct which would have warranted the denial of a certificate.

10 “(g) The practice of medicine from this state into another state or country without meeting
11 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
12 apply to this subdivision. This subdivision shall become operative upon the implementation of
13 the proposed registration program described in Section 2052.5.

14 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
15 participate in an interview by the board. This subdivision shall only apply to a certificate holder
16 who is the subject of an investigation by the board.”

17 8. Section 2021 of the Code states:

18 “...

19 “(b) Each licensee shall report to the board each and every change of address within 30 days
20 after each change, giving both the old and new address. If an address reported to the board at the
21 time of application for licensure or subsequently is a post office box, the applicant shall also
22 provide the board with a street address. If another address is the licensee's address of record, he
23 or she may request that the second address not be disclosed to the public.

24 “(c) Each licensee shall report to the board each and every change of name within 30 days
25 after each change, giving both the old and new names.

26 “...”

27 //

28 //

1 12. Section 4324 of the Code states:

2 “(a) Every person who signs the name of another, or of a fictitious person, or falsely makes,
3 alters, forges, utters, publishes, passes or attempts to pass, as genuine, any prescription for any
4 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment pursuant
5 to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail for not
6 more than one year.

7 “(b) Every person who has in his or her possession any drugs secured by a forged
8 prescription shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the
9 Penal Code, or by imprisonment in the county jail of not more than one year.”

10 13. Health and Safety Code section 11153 states in pertinent part:

11 “(a) A prescription for a controlled substance shall only be issued for a legitimate medical
12 purpose by an individual practitioner acting in the usual course of his or her professional
13 practice...

14 “(b) Any person who knowingly violates this section shall be punished by imprisonment in
15 the state prison or in a county jail not exceeding one year, or by a fine not exceeding twenty
16 thousand (\$20,000), or by both that fine and imprisonment...”

17 14. Health and Safety Code section 11157 states:

18 “‘No person shall issue a prescription that is false or fictitious in any respect.”

19 15. Health and Safety Code section 11170 states:

20 “‘No person shall prescribe, administer, or furnish a controlled substance for himself.”

21 16. Health and Safety Code section 11173, subdivision (a), states:

22 “‘No person shall obtain or attempt to obtain controlled substances, or procure or attempt to
23 procure the administration of or prescription for controlled substances by (1) fraud, deceit,
24 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

25 17. Health and Safety Code section 11175 states:

26 “‘No person shall obtain or possess a prescription that does not comply with his division, nor
27 shall any person obtain a controlled substance by means of a prescription which does not comply
28 with this division or possess a controlled substance obtained by such a prescription.”

1 18. Health and Safety Code section 11368 states:

2 "Every person who forges or alters a prescription or who issues or utters an altered
3 prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any
4 narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or altered prescription,
5 or who has in possession any narcotic drug secured by a forged, fictitious, or altered prescription,
6 shall be punished by imprisonment in the county jail for not less than six months nor more than
7 one year, or in the state prison."

8 **DRUGS INVOLVED**

9 19. Eszopiclone, also known by the trade name Lunesta, is a Schedule IV controlled
10 substance as defined by section 11057, subdivision (d), of the Health and Safety Code and is a
11 dangerous drug as defined in Section 4022 of the Code. Eszopiclone is a sedative and is used to
12 treat insomnia.

13 20. Phentermine is a Schedule IV controlled substance as defined by section 11057,
14 subdivision (f)(4), of the Health and Safety Code and is a dangerous drug as defined in Section
15 4022 of the Code. It is a stimulant.

16 21. Metformin is an oral diabetes medicine that helps control blood sugar levels. It is
17 a dangerous drug as defined in Section 4022 of the Code.

18 **FACTUAL SUMMARY**

19 22. On February 26, 2016, the Central Complaint Unit ("CCU") of the Board received a
20 complaint dated February 22, 2016 by Dr. M.R. alleging that Respondent used her Drug
21 Enforcement Administration ("DEA") license number to obtain prescriptions in his name.

22 23. Investigation by the Health Quality Investigations Unit of the Department of
23 Consumer Affairs revealed that Respondent had falsely and fraudulently obtained prescriptions
24 for phentermine in his name using the names and DEA licenses of Dr. M.R., Dr. J.C., and Dr.
25 R.B.
26

27 24. Dr. M.R. reviewed the California Department of Justice Controlled Substance
28 Utilization Review and Evaluation System (CURES) report setting forth her prescribing history in

1 California from March 22, 2015 through March 22, 2016 and noted that it inaccurately reflects
2 that she prescribed medications to Respondent during the timeframe of June 2015 through
3 December 2015. More specifically:

4 a. Dr. M.R. did not prescribe or authorize the prescription for Eszopiclone 3 mg
5 tablets that Respondent filled on June 4, 2015.

6 b. Dr. M.R. did not prescribe or authorize the prescription for additional
7 Eszopiclone 3 mg tablets that Respondent filled on June 4, 2015.

8 c. Dr. M.R. did not prescribe or authorize the prescription for Eszopiclone 3 mg
9 tablets that Respondent filled on June 29, 2015.

10 d. Dr. M.R. did not prescribe or authorize the prescription for additional
11 Eszopiclone 3 mg tablets that Respondent filled on June 29, 2015.

12 e. Dr. M.R. did not prescribe or authorize the prescription for Eszopiclone 3 mg
13 tablets that Respondent filled on August 28, 2015.

14 f. Dr. M.R. did not prescribe or authorize the prescription for Eszopiclone 3 mg
15 tablets that Respondent filled on October 12, 2015.

16 25. Dr. M.R. reviewed a prescription that she purportedly issued to Respondent dated
17 June 3, 2015 for thirty (30) Eszopiclone 3 mg tablets with four (4) refills. Dr. M.R. declared
18 under the penalty of perjury that the prescription was not ordered, prescribed, written, issued or
19 authorized by her; and, the signature at the bottom of the prescription was not written by her.

20 26. Dr. J.C., an Assistant Professor of Surgery in the Division of Plastic and
21 Reconstructive Surgery at the University of Southern California (USC), Keck School of Medicine
22 and an attending physician at USC Hospital, last had contact with Respondent in approximately
23 June 2015, at the time of Respondent's graduation from the plastic and reconstructive surgery
24 residency program at USC. Respondent was never one of Dr. J.C.'s patients, Dr. J.C. never
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1 treated Respondent for any medical conditions, and Dr. J.C. never prescribed any medications to
2 Respondent.

3 27. Dr. J.C. reviewed a prescription he purportedly issued to Respondent dated June
4 12, 2015 for sixty (60) Phentermine HCL 15 mg tablets with no refills. Dr. J.C. declared under
5 penalty of perjury that the prescription was not ordered, prescribed, written or authorized by him;
6 and, the signature at the bottom of the prescription was not written by him.
7

8 28. Dr. J.C. reviewed another prescription he purportedly issued to Respondent dated
9 June 12, for thirty (30) Lunesta or Eszopiclone 3 mg tablets with no refills. Dr. J.C. declared
10 under penalty of perjury that the prescription was not ordered, prescribed, written or authorized by
11 him; and, the signature at the bottom of the prescription was not written by him.
12

13 29. Dr. R.B. is Program Director for Micrographic Surgery and Dermatologic
14 Oncology with the Accreditation Counsel for Graduate Medical Education and the American
15 Board of Dermatology. He provides a fellowship training program at his office. Respondent was
16 a research fellow in Micrographic Surgery at Dr. R.B.'s office for approximately five months in
17 late 2015 through approximately February 2016. In approximately February 2016, Dr. R.B.
18 terminated Respondent from the training program when he became aware that Respondent was
19 using Dr. R.B.'s name and DEA license to write prescriptions for himself.
20

21 30. Dr. R.B. obtained the California Department of Justice Controlled Substance
22 Utilization Review and Evaluation System (CURES) report for Respondent's prescribing history
23 from January 27, 2015 through January 27, 2016 and noted that it inaccurately reflects that Dr.
24 R.B. prescribed medications to Respondent during the timeframe of October 2015 through
25 December 2015. More specifically:
26

27 a. Dr. R.B. did not prescribe or authorize the prescription for Phentermine
28 HCL 15 mg capsules that Respondent filled on October 1, 2015.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(False/Fictitious Prescriptions)**

3 42. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's
4 license is subject to disciplinary action pursuant to Health and Safety Code section 11157 for
5 issuing false/fictitious prescriptions for controlled substances.

6 43. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above,
7 whether proven individually, jointly, or in any combination thereof, constitute issuing
8 false/fictitious prescriptions for controlled substances in violation of Health and Safety Code
9 section 11157. Therefore, cause for discipline exists.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(Obtaining Prescriptions by Fraud/Deceit)**

12 44. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's
13 license is subject to disciplinary action pursuant to Health and Safety Code sections 11173 and
14 11175 for obtaining/procuring prescriptions for controlled substances by fraud/deceit.

15 45. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above,
16 whether proven individually, jointly, or in any combination thereof, constitute obtaining/procuring
17 prescriptions for controlled substances by fraud/deceit in violation of Health and Safety Code
18 sections 11173 and 11175. Therefore, cause for discipline exists.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(Making or Signing False Documents)**

21 46. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's
22 license is subject to disciplinary action pursuant to section 2261 of the Code for knowingly
23 making or signing documents directly or indirectly related to the practice of medicine which
24 falsely represented the existence or nonexistence of a state of facts.

25 47. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above,
26 whether proven individually, jointly, or in any combination thereof, constitute knowingly making
27 or signing documents directly or indirectly related to the practice of medicine which falsely

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1 represented the existence or nonexistence of a state of facts in violation of section 2261 of the
2 Code. Therefore, cause for discipline exists.

3 **EIGHTH CAUSE FOR DISCIPLINE**

4 **(Forging Prescriptions for Self-Use)**

5 48. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's
6 license is subject to disciplinary action pursuant to section 4324 of the Code and Health and
7 Safety Code sections 11170 and 11368 for forging prescriptions for self-use.

8 49. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above,
9 whether proven individually, jointly, or in any combination thereof, constitute forging
10 prescriptions for self-use in violation of section 4324 of the Code and Health and Safety Code
11 sections 11170 and 11368. Therefore, cause for discipline exists.

12 **NINTH CAUSE FOR DISCIPLINE**

13 **(Failure to Report Change of Address)**

14 50. By reason of the facts set forth above in paragraph 33, Respondent's license is subject
15 to disciplinary action pursuant to section 2021, subdivisions (b) and (c), of the Code for failing to
16 report his changes of address.

17 51. Respondent's acts and/or omissions set forth in paragraph 33 above, whether proven
18 individually, jointly, or in any combination thereof, constitutes a failure to report his change of
19 address in violation of section 2021, subdivisions (b) and (c), of the Code. Therefore, cause for
20 discipline exists.

21 **TENTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct)**

23 52. By reason of the facts set forth above in paragraphs 22 through 51, Respondent's
24 license is subject to disciplinary action pursuant to section 2234 of the Code for engaging in
25 unprofessional conduct.

26 53. Respondent's acts and/or omissions set forth in paragraphs 22 through 51 above,
27 whether proven individually, jointly, or in any combination thereof, constitute unprofessional
28 conduct in violation of section 2234 of the Code. Therefore, cause for discipline exists.

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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 Number A113632, issued to Ryan Matthew Spivak, M.D.;
2. Prohibiting him from supervising physician assistants;
3. If placed on probation, ordering him to pay the Medical Board of California the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: September 29, 2016



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

Complainant

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