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

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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. P.O. Box 46666 Los Angeles, CA 90046 Physician's and Surgeon's Certificate No. A 113632, Respondent.	Case No. 800-2019-061086 OAH No. 2020020350 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

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

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2. Respondent Ryan Matthew Spivak, M.D. ("Respondent") is represented in this proceeding by attorneys Sara E. Hersh and Sarvnaz R. Mackin, whose address is: 1100 Glendon Avenue, 14th Floor, Los Angeles, CA 90024.

3. On or about August 11, 2010, the Board issued Physician's and Surgeon's Certificate No. A 113632 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation and Petition to Revoke Probation No. 800-2019-061086, and will expire on August 31, 2020, unless renewed.

JURISDICTION

4. Accusation and Petition to Revoke Probation No. 800-2019-061086 was filed before the Board, and is currently pending against Respondent. The Accusation and Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on January 16, 2020. Respondent timely filed his Notice of Defense contesting the Accusation and Petition to Revoke Probation.

5. A copy of Accusation and Petition to Revoke Probation No. 800-2019-061086 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation and Petition to Revoke Probation No. 800-2019-061086. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation and Petition to Revoke Probation No. 800-2019-061086 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation and Petition to Revoke Probation No. 800-2019-061086 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

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

CONTINGENCY

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

13. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the

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

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

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

DISCIPLINARY ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

accepted in fulfillment of this condition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) It maintains testing sites located throughout California.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respondent shall pay all substance abuse support group meeting costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respondent shall pay all worksite monitoring costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Increase the frequency of biological fluid testing.

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

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

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

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

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

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

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

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

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

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

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

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

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

22. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation and Petition to Revoke Probation No. 800-2019-061086 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

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

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Jan. 16 2020
BY A. Cebrania ANALYST

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. P.O. Box 46666 Los Angeles, CA 90046 Physician's and Surgeon's Certificate No. A 113632, Respondent.	Case No. 800-2019-061086 **ACCUSATION AND PETITION TO REVOKE PROBATION**

PARTIES

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

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

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3. In a matter entitled *In the Matter of the Accusation against Ryan Matthew Spivak, M.D.*, Medical Board Case No. 800-2016-020767, the Board, issued a decision, effective May 31, 2017, in which Respondent's Physician's and Surgeon's Certificate was revoked, for dishonest acts, violation of drug statutes, misuse of controlled substances, illegitimate prescriptions, false/fictitious prescriptions, obtaining prescriptions by fraud/deceit, making or signing false documents, forging prescriptions for self-use, failure to report change of address, as well as unprofessional conduct. However, the revocation was stayed and Respondent was placed on seven years of probation, together with a partial restriction on prescribing controlled substances, as well as the mandatory conditions applying to a substance abusing licensee and other standard terms and conditions. A copy of that Decision is attached as Exhibit A and is incorporated herein by this reference.

JURISDICTION

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

5. Pursuant to Code section 2001.1, the Board's highest priority is public protection.

6. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

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

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

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

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

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

"..."

7. Section 2227 of the Code states:

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

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

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

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

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

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

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

8. Section 2234 of the Code, states:

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

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

"..."

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9. Section 2236 of the Code states:

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

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

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

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

10. Section 2237 of the Code states:

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

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

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

11. Section 490 of the Code states:

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

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

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

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

12. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"..."

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

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

CONTROLLED SUBSTANCES/DANGEROUS DRUGS

14. Code section 4021 states:

"'Controlled substance' means any substance listed in chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

15. Code section 4022 provides:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only' or words of similar import.

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

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

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

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

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

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

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

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

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

23. Tramadol is a Schedule IV controlled substance as defined by section 11057, subdivision (c), of the Health and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

24. Respondent is subject to disciplinary action under section 2234, subdivision (a), section 2236, subdivision (a), and section 490 of the Code and California Code of Regulations, title 16, section 1360, in that he has been convicted of a crime substantially related to the qualifications, function, or duties of a physician and surgeon. The circumstances are as follows:

25. On July 18, 2017, in proceedings entitled *The People of the State of California v. Ryan M. Spivak*, case number BA459131 in the Los Angeles County Superior Court, a felony complaint was filed against Respondent charging him with five counts of obtaining prescriptions for controlled substances by fraud in violation of Health and Safety Code sections 11173, subdivision (a) and 11371.1. On April 16, 2018, the complaint was amended adding a sixth count of obtaining or possessing a controlled substance obtained by a nonconforming prescription in violation of Health and Safety Code section 11180, a misdemeanor.

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

27. Respondent's acts and/or omissions as set forth in paragraphs 24 through 26 above, whether proven individually, jointly, or in any combination thereof, constitute a conviction of a crime substantially related to the qualifications, function, or duties of a physician and surgeon pursuant to section 2234, subdivision (a), section 2236, subdivision (a), and section 490 of the Code and California Code of Regulations, title 16, section 1360. Therefore, cause for discipline exists.

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FIRST CAUSE TO REVOKE PROBATION

(Failure to Comply with Probation Condition Number 2: Controlled Substances – Partial Restriction)

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

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

"Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. If Respondent forms the medical opinion, after an appropriate prior examination and medical indication, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on Respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was

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

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

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

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

31. In July 2017, Respondent prescribed the following:

a. On July 22, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 1;[1]

b. On July 25, 2017, Respondent prescribed at least 5 Norco tablets (325 mg) to Patient 2.

c. On July 27, 2017, Respondent prescribed at least 5 Norco tablets (325 mg) to Patient 3.

d. On July 27, 2017, Respondent prescribed at least 5 Norco tablets (325 mg) to Patient 4.

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

e. On July 31, 2017, Respondent prescribed 10 Norco tablets (325 mg) to Patient 5.

32. In August 2017, Respondent prescribed the following:

a. On August 1, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 6.

b. On August 2, 2017, Respondent prescribed 12 Norco tablets (325 mg) to Patient 7.

c. On August 3, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 8.

d. On August 3, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 9.

e. On August 3, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 10.

f. On August 5, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 11.

g. On August 5, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 12.

h. On August 5, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 13.

i. On August 10, 2017, Respondent prescribed 20 Tylenol with Codeine tablets (30 mg) to Patient 14.

j. On August 10, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 15.

k. On August 11, 2017, Respondent prescribed 20 Tylenol with Codeine tablets (30 mg) to Patient 16.

l. On August 11, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 17.

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m. On August 15, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 18.

n. On August 15, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 19.

o. On August 16, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 20.

p. On August 16, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 21.

q. On August 17, 2017, Respondent prescribed 15 Norco tablets (325 mg) to Patient 22.

r. On August 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 23.

s. On August 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 24.

t. On August 21, 2017, Respondent prescribed 10 Norco tablets (325 mg) to Patient 25.

u. On August 24, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 26.

v. On August 24, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 27.

w. On August 31, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 28.

33. In September 2017, Respondent prescribed the following:

a. On September 2, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 29.

b. On September 2, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 30.

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c. On September 2, 2017, Respondent prescribed an additional 20 Norco tablets (325 mg) to Patient 27.

d. On September 5, 2017, Respondent prescribed 20 Percocet tablets (325 mg) to Patient 31.

e. On September 6, 2017, Respondent prescribed 30 Norco tablets (325 mg) to Patient 32.

f. On September 11, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 33.

g. On September 11, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 34.

h. On September 14, 2017, Respondent prescribed 20 Percocet tablets (325 mg) to Patient 35.

i. On September 14, 2017, Respondent prescribed 30 Percocet tablets (325 mg) to Patient 36.

j. On September 14, 2017, Respondent prescribed 30 Percocet tablets (325 mg) to Patient 37.

k. On September 15, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 38.

l. On September 15, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 39.

m. On September 19, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 40.

n. On September 20, 2017, Respondent prescribed 30 Norco tablets (325 mg) to Patient 36.

o. On September 23, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 41.

p. On September 25, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 42.

q. On September 27, 2017, Respondent prescribed 10 Norco tablets (325 mg) to Patient 43.

34. In October 2017, Respondent prescribed the following:

a. On October 2, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 40.

b. On October 4, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 44.

c. On October 7, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 45.

d. On October 7, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 46.

e. On October 7, 2017, Respondent prescribed 35 Norco tablets (325 mg) to Patient 47.

f. On October 9, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 48.

g. On October 11, 2017, Respondent prescribed 25 Norco tablets (325 mg) to Patient 21.

h. On October 11, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 36.

i. On October 17, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 49.

j. On October 17, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 50.

k. On October 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 51.

l. On October 18, 2017, Respondent prescribed 30 Norco tablets (325 mg) to Patient 52.

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m. On October 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 36.

n. On October 21, 2017, Respondent prescribed 30 Norco tablets (325 mg) to Patient 53.

o. On October 27, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 54.

p. On October 31, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 55.

35. In November 2017, Respondent prescribed the following:

a. On November 1, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 56.

b. On November 1, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 57.

c. On November 2, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 58.

d. On November 6, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 59.

e. On November 6, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 60.

f. On November 10, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 61.

g. On November 13, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 62.

h. On November 16, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 21.

i. On November 18, 2017, Respondent prescribed 20 Percocet tablets (325 mg) to Patient 24.

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j. On November 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 63.

k. On November 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 64.

l. On November 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 65.

m. On November 20, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 59.

n. On November 22, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 66.

o. On November 29, 2017, Respondent prescribed 30 Norco tablets (325 mg) to Patient 67.

36. In December 2017, Respondent prescribed the following:

a. On December 2, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 48.

b. On December 2, 2017, Respondent prescribed 30 Percocet tablets (325 mg) to Patient 68.

c. On December 6, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 69.

d. On December 14, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 70.

e. On December 16, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 71.

f. On December 18, 2017, Respondent prescribed 30 Norco tablets (325 mg) to Patient 72.

g. On December 18, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 73.

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h. On December 21, 2017, Respondent prescribed 20 Norco tablets (325 mg) to Patient 74.

37. In January 2018, Respondent prescribed the following:

a. On January 4, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 75.

b. On January 4, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 76.

c. On January 4, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 2.

d. On January 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 77.

e. On January 11, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 78.

f. On January 13, 2018, Respondent prescribed 10 Norco tablets (325 mg) to Patient 79.

g. On January 18, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 80.

h. On January 18, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 81.

i. On January 19, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 82.

j. On January 19, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 83

k. On January 22, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 84.

l. On January 22, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 82.

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m. On January 23, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 85.

n. On January 23, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 86.

o. On January 25, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 82.

p. On January 29, 2018, Respondent prescribed 15 Norco tablets (325 mg) to Patient 87.

38. In February 2018, Respondent prescribed the following:

a. On February 12, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 88.

b. On February 12, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 89.

c. On February 14, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 21.

d. On February 17, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 90.

e. On February 19, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 91.

f. On February 19, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 92.

g. On February 21, 2018, Respondent prescribed 25 Percocet tablets (325 mg) to Patient 93.

h. On February 21, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 94.

i. On February 21, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to Patient 95.

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j. On February 22, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 96.

k. On February 22, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 97.

l. On February 24, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 98.

m. On February 24, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 99.

n. On February 26, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 100.

o. On February 26, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 101.

p. On February 28, 2018, Respondent prescribed 40 Percocet tablets (325 mg) to Patient 102.

39. In March 2018, Respondent prescribed the following:

a. On March 1, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 103.

b. On March 1, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 104.

c. On March 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 105.

d. On March 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 106.

e. On March 11, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 107.

f. On March 12, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 108.

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g. On March 14, 2018, Respondent prescribed 10 Norco tablets (325 mg) to Patient 109.

h. On March 15, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 110.

i. On March 16, 2018, Respondent prescribed 15 Norco tablets (325 mg) to Patient 111.

j. On March 19, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 112.

k. On March 21, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to Patient 113.

l. On March 23, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 98.

m. On March 26, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 114.

n. On March 26, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 115.

o. On March 28, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 98.

40. In April 2018, Respondent prescribed the following:

a. On April 2, 2018, Respondent prescribed 15 Norco tablets (325 mg) to Patient 116.

b. On April 2, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 117.

c. On April 2, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 118.

d. On April 5, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 119.

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e. On April 9, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 33.

f. On April 9, 2018, Respondent prescribed 10 Percocet tablets (325 mg) to Patient 120.

g. On April 9, 2018, Respondent also prescribed 20 Norco tablets (325 mg) to Patient 120.

h. On April 10, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 121.

i. On April 11, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 34.

j. On April 12, 2018, Respondent prescribed 25 Percocet tablets (325 mg) to Patient 121.

k. On April 13, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to Patient 83.

l. On April 13, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to Patient 122.

m. On April 13, 2018, Respondent also prescribed 40 Norco tablets (325 mg) to Patient 122.

n. On April 17, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 123.

o. On April 17, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 124.

p. On April 18, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 125.

q. On April 18, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 126.

r. On April 18, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 127.

s. On April 20, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 128.

t. On April 20, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 97.

u. On April 20, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 123.

v. On April 23, 2018, Respondent prescribed 50 Percocet tablets (325 mg) to Patient 129.

w. On April 24, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 126.

x. On April 26, 2018, Respondent prescribed 40 Percocet tablets (325 mg) to Patient 130.

y. On April 26, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 65.

z. On April 26, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 131.

aa. On April 28, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 132.

bb. On April 30, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 133.

41. In May 2018, Respondent prescribed the following:

a. On May 3, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 134.

b. On May 3, 2018, Respondent prescribed 40 Percocet tablets (325 mg) to Patient 130.

c. On May 4, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 135.

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d. On May 4, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 136.

e. On May 7, 2018, Respondent prescribed 40 Norco tablets (325 mg) to Patient 137.

f. On May 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 138.

g. On May 9, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 139.

h. On May 23, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 140.

i. On May 23, 2018, Respondent prescribed 50 Percocet tablets (325 mg) to Patient 102.

j. On May 25, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 141.

k. On May 25, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 142.

l. On May 25, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 143.

m. On May 25, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 144.

42. In June 2018, Respondent prescribed the following:

a. On June 1, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 61.

b. On June 1, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 145.

c. On June 4, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 146.

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d. On June 9, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 147.

e. On June 13, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 148.

f. On June 13, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 149.

g. On June 14, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 150.

h. On June 14, 2018, Respondent prescribed 25 Percocet tablets (325 mg) to Patient 151.

i. On June 15, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 152.

j. On June 18, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 153.

k. On June 20, 2018, Respondent prescribed 40 Percocet tablets (325 mg) to Patient 154.

l. On June 23, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 155.

m. On June 28, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 156.

n. On June 29, 2018, Respondent prescribed an additional 25 Norco tablets (325 mg) to Patient 155.

o. On June 29, 2018, Respondent prescribed 10 Norco tablets (325 mg) to Patient 157.

43. In July 2018, Respondent prescribed the following:

a. On July 2, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 158.

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b. On July 5, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 159.

c. On July 5, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 155.

d. On July 6, 2018, Respondent prescribed 40 Percocet tablets (325 mg) to Patient 102.

e. On July 7 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 160.

f. On July 11, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 161.

g. On July 12, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 162.

h. On July 12, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 163.

i. On July 15, 2018, Respondent prescribed 40 Norco tablets (325 mg) to Patient 164.

j. On July 18, 2018, Respondent prescribed 35 Norco tablets (325 mg) to Patient 165.

k. On July 18, 2018, Respondent prescribed 40 Norco tablets (325 mg) to Patient 166.

l. On July 18, 2018, Respondent prescribed 10 Norco tablets (325 mg) to Patient 167.

m. On July 19, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 168.

n. On July 20, 2018, Respondent prescribed 5 Norco tablets (325 mg) to Patient 169.

o. On July 20, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 102.

p. On July 22, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 170.

q. On July 23, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 18.

r. On July 23, 2018, Respondent prescribed 6 Norco tablets (325 mg) to Patient 171.

s. On July 23, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 172.

t. On July 25, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to Patient 173.

u. On July 26, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 174.

v. On July 26, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to Patient 175.

w. On July 30, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 176.

x. On July 30, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 177.

y. On July 30, 2018, Respondent prescribed 15 Norco tablets (325 mg) to Patient 178.

z. On July 31, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 179.

44. In August 2018, Respondent prescribed the following:

a. On August 3, 2018, Respondent prescribed 30 Dilaudid tablets (2 mg) to Patient 180.

b. On August 5, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 181.

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c. On August 8, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 182.

d. On August 8, 2018, Respondent prescribed 15 Norco tablets (325 mg) to Patient 66.

e. On August 8, 2018, Respondent prescribed 6 Norco tablets (325 mg) to Patient 183.

f. On August 9, 2018, Respondent prescribed 10 Norco tablets (325 mg) to Patient 184.

g. On August 9, 2018, Respondent prescribed 10 Norco tablets (325 mg) to Patient 185.

h. On August 16, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 186.

i. On August 16, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 187.

j. On August 18, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to Patient 188.

k. On August 18, 2018, Respondent prescribed 10 Tylenol with Codeine tablets (30 mg) to Patient 189.

l. On August 20, 2018, Respondent prescribed 10 Norco tablets (325 mg) to Patient 190.

m. On August 20, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 191.

n. On August 22, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 192.

o. On August 23, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 193.

p. On August 25, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 194.

q. On August 27, 2018, Respondent again prescribed 20 Norco tablets (325 mg) to Patient 194.

r. On August 29, 2018, Respondent prescribed 40 Norco tablets (325 mg) to Patient 186.

s. On August 29, 2018, Respondent also prescribed 40 Percocet tablets (10 mg) to Patient 186.

t. On August 31, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to Patient 195.

45. In September 2018, Respondent prescribed the following:

a. On September 7, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 196.

b. On September 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 98.

c. On September 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 197.

d. On September 12, 2018, Respondent prescribed 10 Norco tablets (325 mg) to Patient 198.

e. On September 12, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 140.

f. On September 13, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 199.

g. On September 14, 2018, Respondent prescribed 20 Vicodin tablets (500 mg) to Patient 200.

h. On September 14, 2018, Respondent also prescribed 20 Norco tablets (325 mg) to Patient 200.

i. On September 17, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 201.

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j. On September 22, 2018, Respondent prescribed 15 Percocet tablets (325 mg) to Patient 202.

k. On September 22, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 24.

l. On September 27, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 203.

m. On September 27, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 204.

n. On September 28, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 205.

o. On September 29, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 206.

46. In October 2018, Respondent prescribed the following:

a. On October 3, 2018, Respondent prescribed 35 Norco tablets (325 mg) to Patient 207.

b. On October 4, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 84.

c. On October 5, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 152.

d. On October 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 208.

e. On October 10, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 209.

f. On October 11, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 210.

g. On October 13, 2018, Respondent prescribed 40 Norco tablets (325 mg) to Patient 209.

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h. On October 17, 2018, Respondent prescribed 40 Norco tablets (325 mg) to Patient 211.

i. On October 20, 2018, Respondent prescribed 20 Norco tablets (325 mg)to Patient 212.

j. On October 20, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 213.

k. On October 20, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 214.

l. On October 24, 2018, Respondent prescribed 10 Norco tablets (325 mg) to Patient 215.

m. On October 26, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 216.

n. On October 26, 2018, Respondent prescribed an additional 20 Norco tablets (325 mg) to Patient 216.

o. On October 31, 2018, Respondent prescribed 15 Norco tablets (325 mg) to Patient 217.

p. On October 31, 2018, Respondent prescribed 40 Percocet tablets (325 mg) to Patient 218.

47. In November 2018, Respondent prescribed the following:

a. On November 1, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 219.

b. On November 3, 2018, Respondent prescribed 10 Norco tablets (325 mg) to Patient 220.

c. On November 7, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 207.

d. On November 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 221.

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e. On November 9, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 222.

f. On November 12, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 223.

g. On November 13, 2018, Respondent prescribed 6 Norco tablets (325 mg) to Patient 224.

h. On November 13, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 140.

i. On November 14, 2018, Respondent prescribed 9 Norco tablets (325 mg) to Patient 225.

j. On November 15, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 226.

k. On November 15, 2018, Respondent prescribed 15 Tylenol with Codeine tablets (30 mg) to Patient 227.

l. On November 16, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 228.

m. On November 17, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 229.

n. On November 19, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 230.

o. On November 19, 2018, Respondent prescribed 30 Percocet tablets (325 mg) to Patient 231.

p. On November 20, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 232.

q. On November 21, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 224.

r. On November 26, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 233.

s. On November 29, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 234.

t. On November 29, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 235.

48. In December 2018, Respondent prescribed the following:

a. On December 3, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 236.

b. On December 5, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 224.

c. On December 6, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 237.

d. On December 6, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 238.

e. On December 7, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 239.

f. On December 8, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 46.

g. On December 10, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 146.

h. On December 10, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 240.

i. On December 12, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 241.

j. On December 12, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 242.

k. On December 13, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 243.

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l. On December 13, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 105.

m. On December 14, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 244.

n. In December 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 245.

o. On December 18, 2018, Respondent prescribed 25 Norco tablets (325 mg) to Patient 246.

p. On December 19, 2018, Respondent prescribed 30 Norco tablets (325 mg) to Patient 247.

q. On December 19, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 148.

r. On December 20, 2018, Respondent prescribed 10 Norco tablets (325 mg) to Patient 248.

s. On December 21, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 249.

t. On December 22, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 250.

u. On December 22, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 251.

v. On December 28, 2018, Respondent prescribed 20 Norco tablets (325 mg) to Patient 252.

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

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

SECOND CAUSE TO REVOKE PROBATION

(Failure to Comply with Probation Condition Number 3: Controlled Substances-Maintain Records and Access to Records and Inventories)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 270.

b. Twenty tablets of Tramadol (50 mg) to Patient 60.

c. Forty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient 271.

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

a. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient 272.

b. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 273.

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

a. Eight tablets of Alprazolam (1 mg) to Patient 105.

b. Twenty tablets of acetaminophen-codeine phosphate to Patient 105.

c. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 274.

d. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient 275.

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

a. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 96.

b. Ten tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 276.

c. 20 tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient 277.

d. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 278.

e. Thirty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient 279.

f. Forty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 280.

g. Twenty-five tablets of oxycodone HCL-acetaminophen (325 mg) to Patient 281.

h. Ten tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient 282.

i. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient 283.

j. Twenty tablets of hydrocodone bitartrate-acetaminophen (325 mg) to Patient 284.

k. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 285.

l. Ten tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 286.

m. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 287.

n. Twenty tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 288.

o. Twenty-four tablets of acetaminophen-hydrocodone bitartrate (325 mg) to Patient 289.

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

a. Ten tablets of tramadol HCL to Patient 290.

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

a. Ten tablets of tramadol HCL to Patient 291.

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THIRD CAUSE TO REVOKE PROBATION

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

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

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

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

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

FOURTH CAUSE TO REVOKE PROBATION

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

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

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

"..."

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

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

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administrative action to revoke probation and carry out the Decision that was stayed." [emphasis in original.]

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

DISCIPLINARY CONSIDERATIONS

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

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

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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.	)	Case No. 800-2016-020767
Physician's and Surgeon's Certificate No. A 113632	)	
Respondent	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on June 30, 2017.

IT IS SO ORDERED: May 31, 2017.

MEDICAL BOARD OF CALIFORNIA

Michelle Anne Bholat MD

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

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
REBECCA L. SMITH
Deputy Attorney General
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California Department of Justice
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Attorneys for Complainant

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

In the Matter of the Accusation Against: RYAN MATTHEW SPIVAK, M.D. 2200 West Third Street, Suite 120A Los Angeles, California 90057 Physician's and Surgeon's Certificate No. A113632, Respondent.	Case No. 800-2016-020767 OAH No. 2016100666 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

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

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

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3. On or about August 11, 2010, the Board issued Physician's and Surgeon's Certificate No. A113632 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-020767, and will expire on August 31, 2018, unless renewed.

JURISDICTION

4. Accusation No. 800-2016-020767 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 29, 2016. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2016-020767 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-020767. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2016-020767, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

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

CONTINGENCY

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

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

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

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DISCIPLINARY ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) It maintains testing sites located throughout California.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.

Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

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

Respondent shall pay all substance abuse support group meeting costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Increase the frequency of biological fluid testing.

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

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

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

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

(7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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

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

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

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

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

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

23. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

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

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

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

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

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

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

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

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

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

ACCEPTANCE

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

DATED: 5/5/2017

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: 5/5/2017

SARA HERSH
Attorney for Respondent

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

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Attorneys for Complainant

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

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.** **2200 West Third Street, Suite 120A** **Los Angeles, California 90057** Physician's and Surgeon's Certificate No. A113632, Respondent.	Case No. 800-2016-020767 **ACCUSATION**

Complainant alleges:

PARTIES

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

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

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JURISDICTION

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

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

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

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

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

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

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

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

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

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

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

5. Section 2227 of the Code states:

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

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

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

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

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

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

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

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

7. Section 2234 of the Code, states:

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

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

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

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

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

8. Section 2021 of the Code states:

"...

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

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

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9. Section 2261 of the Code states:

"Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

DRUG LAWS

10. Section 2238 of the Code states:

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

11. Section 2239 of the Code states:

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

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

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12. Section 4324 of the Code states:

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

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

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

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

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

14. Health and Safety Code section 11157 states:

"No person shall issue a prescription that is false or fictitious in any respect."

15. Health and Safety Code section 11170 states:

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

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

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

17. Health and Safety Code section 11175 states:

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

18. Health and Safety Code section 11368 states:

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

DRUGS INVOLVED

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

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

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

FACTUAL SUMMARY

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

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

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

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

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

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

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

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

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

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

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

26. Dr. J.C., an Assistant Professor of Surgery in the Division of Plastic and Reconstructive Surgery at the University of Southern California (USC), Keck School of Medicine and an attending physician at USC Hospital, last had contact with Respondent in approximately June 2015, at the time of Respondent's graduation from the plastic and reconstructive surgery residency program at USC. Respondent was never one of Dr. J.C.'s patients, Dr. J.C. never

treated Respondent for any medical conditions, and Dr. J.C. never prescribed any medications to Respondent.

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

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

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

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

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

b. Dr. R.B. did not prescribe or authorize the prescription for Eszopiclone 3 mg tablets that Respondent filled on November 23, 2015.

c. Dr. R.B. did not prescribe or authorize the prescription for Eszopiclone 3 mg tablets that Respondent filled on December 3, 2015.

31. Dr. R.B. reviewed a prescription he purportedly issued to Respondent dated December 2, 2015 for sixty (60) Phentermine HCL 15 mg tablets with four (4) refills and sixty (60) Metformin 500 mg tablets with four (4) refills. Dr. R.B. declared, under penalty of perjury, that the prescription was not ordered, prescribed, written or authorized by him; and, the signature at the bottom of the prescription was not written by him.

32. Respondent admits that he improperly wrote several prescriptions for his own use on the prescription pads of Drs. M.S., J.C. and R.B.

33. As of August 23, 2016, Respondent changed his address of record with the Board from Graduate Medical Education Los Angeles County-USC Medical Center, located at 1200 North State Street, Suite A7D, Los Angeles, California 90033, to 2200 West Third Street, Suite 120A, Los Angeles, California 90057. Respondent completed his educational program at Los Angeles County-USC Medical Center in June of 2015.

FIRST CAUSE FOR DISCIPLINE

(Dishonest Acts)

34. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's license is subject to disciplinary action pursuant to section 2234, subdivision (e), of the Code for dishonest acts.

35. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above, whether proven individually, jointly, or in any combination thereof, constitute dishonest acts in violation of section 2234, subdivision (e), of the Code. Therefore, cause for discipline exists.

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SECOND CAUSE FOR DISCIPLINE

(Violation of Drug Statutes)

36. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's license is subject to disciplinary action pursuant to section 2238 of the Code for violating drug statutes.

37. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above, whether proven individually, jointly, or in any combination thereof, constitute drug statute violations in violation of section 2238. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Misuse of Controlled Substances)

38. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's license is subject to disciplinary action pursuant to section 2239, subdivision (a), of the Code for the misuse of controlled substances.

39. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above, whether proven individually, jointly, or in any combination thereof, constitute misuse of controlled substances in violation of section 2239, subdivision (a), of the Code. Therefore, cause for discipline exists.

FOURTH CAUSE FOR DISCIPLINE

(Illegitimate Prescriptions)

40. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's license is subject to disciplinary action pursuant to Health and Safety Code section 11153 for prescribing illegitimate prescriptions for controlled substances.

41. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above, whether proven individually, jointly, or in any combination thereof, constitute prescribing illegitimate prescriptions for controlled substances in violation of Health and Safety Code section 11153. Therefore, cause for discipline exists.

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FIFTH CAUSE FOR DISCIPLINE

(False/Fictitious Prescriptions)

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

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

SIXTH CAUSE FOR DISCIPLINE

(Obtaining Prescriptions by Fraud/Deceit)

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

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

SEVENTH CAUSE FOR DISCIPLINE

(Making or Signing False Documents)

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

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

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

EIGHTH CAUSE FOR DISCIPLINE

(Forging Prescriptions for Self-Use)

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

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

NINTH CAUSE FOR DISCIPLINE

(Failure to Report Change of Address)

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

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

TENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

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

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

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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