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

In the Matter of the Petition to Revoke Probation and Accusation Against: Ivan Burgos, M.D. Physician's and Surgeon's Certificate No. A 60370 Respondent.	Case No. 800-2019-060679

DECISION

The attached Proposed Decsision 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 October 16, 2020.

IT IS SO ORDERED September 17, 2020.

MEDICAL BOARD OF CALIFORNIA

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

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

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

IVAN BURGOS, M.D., Respondent

Agency Case No. 800-2019-060679

OAH No. 2019120109

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on May 27, 2020. Christine Lally (Complainant) was represented by Edward Kim, Deputy Attorney General. Ivan Burgos, M.D. (Respondent) represented himself.

At the hearing, the ALJ was provided with Exhibit G, which contained confidential information protected from disclosure to the public. Redaction of the document to obscure this information was not practicable and would not provide adequate privacy protection. In order to prevent the disclosure of confidential information, concurrent with the issuance of this Proposed Decision the ALJ issued a Protective Order providing that the Exhibit G shall be placed under seal following its use in preparation of the Proposed Decision. This exhibit shall remain under seal and

shall not be opened, except by order of the Board, by OAH, or by a reviewing court. A reviewing court, parties to this matter, their attorneys, or a government agency decision maker or designee, under Government Code section 11517, may review the documents subject to this order provided that such documents are protected from release to the public.

Testimony and documentary evidence was received. The record was closed and the matter was submitted for decision on May 27, 2020.

FACTUAL FINDINGS

Jurisdiction and Pleading Amendment

1. On October 30, 2019, Complainant filed a Petition to Revoke Probation and Accusation while acting in her official capacity as the Deputy Director of the Medical Board of California (Board), Department of Consumer Affairs.

2. On November 12, 2019, Respondent filed a Notice of Defense requesting a hearing on the Petition to Revoke Probation and Accusation. The matter was set for hearing based on Complainant's Request to Set, listing the parties' mutually-available/unavailable dates for the hearing that were more than 30 days after the Notice of Defense was submitted.

3. On the hearing date, by written addendum (Exhibit 10), Complainant amended the Second Cause to Revoke Probation. Additionally, Exhibit 10 was amended by interlineation, at page 1, line 22, paragraph 2, subparagraph C, to add the date "May 17, 2020" after "May 2, 2020."

License and Substance Use History; Probation Order

4. On June 21, 1996, the Board issued Physician's and Surgeon's Certificate Number A 60370 (license) to Respondent. That license is scheduled to expire on November 30, 2021.

5. In a Decision and Order (Probation Order), effective January 9, 2019, adopting a Stipulated Settlement and Disciplinary Order signed in October 2018, the Board revoked Respondent's license, stayed the revocation, and placed Respondent on probation for four years on specified terms and conditions. The terms of the Probation Order included: abstaining from the use of controlled substances (Condition 1); abstaining from the use of products or beverages containing alcohol (Condition 2); submitting to biological fluid testing (Condition 3); completing an ethics course (Condition 4); undergoing a psychiatric evaluation (Condition 5); prohibition of solo practice (Condition 6); and prohibition of supervising physician assistants and advanced practice nurses (Condition 8).

6A. The Probation Order was based on Respondent's admitted unprofessional conduct as set forth in an April 10, 2018 Accusation. Respondent's unprofessional conduct included: violating federal statutes regulating controlled substances by possessing and being under the influence of methamphetamine; and violating the Business and Professions Code by using a controlled substance in a manner dangerous to himself and the public, and by incurring a misdemeanor conviction resulting from his use of that controlled substance.

//

//

6B. The circumstances surrounding Respondent's illegal use of methamphetamine and subsequent criminal conviction are as follows:

(1). On November 15, 2016, while at a friend's home, Respondent smoked marijuana and also snorted methamphetamine, incorrectly believing it was cocaine. Later that night, he also consumed at least one beer. At approximately 2:00 a.m., on November 16, 2016, police officers stopped Respondent as he was driving his vehicle. During the stop, Respondent displayed symptoms of drug intoxication, including red, watery, bloodshot eyes with slightly dilated pupils, an unsteady gait, and profuse sweating. He also emitted a strong odor of marijuana from his body. Respondent failed field sobriety tests, and he was arrested. During a subsequent search, officers found a clear plastic bindle of methamphetamine in Respondent's pants pocket and a small quantity of marijuana in the rear of the vehicle. Respondent provided a blood sample that later tested positive for methamphetamine and marijuana.

(2). On March 24, 2017, Respondent pled guilty to misdemeanor use and possession of a controlled substance. However, the court granted him deferred entry of judgment (DEJ) which was conditioned on his completion of a counseling program. In about April 2017, Respondent began his DEJ program which included attending Alcoholics Anonymous (AA) meetings. Respondent completed the DEJ program on January 9, 2018. The court later dismissed his criminal case.

7A. In an August 2, 2017 interview with Board investigators, Respondent provided some of his drug use history. He informed investigators that he had tried marijuana and experimented with cocaine in college. He admitted he used methamphetamine and cocaine "just a few times . . . about three to four times" in the prior five years. (Exhibit 16, p. 21, lines 11-15.) Respondent last used cocaine in about

October 2016. There is no evidence that he has used methamphetamine since November 16, 2016.

7B. Respondent revealed to Board investigators that he smoked marijuana to help with nausea, vomiting and loss of appetite when he was undergoing chemotherapy and radiation for lymphoma in about 2011. He also admitted that, after his November 2016 arrest, he continued to use marijuana every two to three months.

8A. Laboratory records for Respondent's biological fluid testing from 2018 through early 2019 showed no evidence of methamphetamine or cocaine use during that time. Those laboratory records also confirmed that Respondent continued to use marijuana intermittently after completing his DEJ program and until just before the Probation Order took effect. Specifically:

(1). Respondent's urine specimen collected on June 29, 2018, was positive for marijuana metabolites at 102 ng/mL, with a screening cutoff of 50 ng/mL. The prior day's testing had been negative for marijuana metabolites. The specimen collected on June 30, 2018, was positive for marijuana at 81 ng/mL, and the specimen collected on July 5, 2018 returned negative results. This indicated Respondent's marijuana use in June 2018.

(2). Respondent's specimen collected on October 9, 2018, was positive for marijuana metabolites at 62 ng/mL. This indicated Respondent's marijuana use in October 2018.

(3). Respondent's specimen collected on November 29, 2018, was positive for marijuana metabolites at 57 ng/mL. This indicated Respondent's marijuana use in November 2018.

(4). Respondent's specimen collected on December 15, 2018 was positive for marijuana metabolites at 81 ng/mL. The specimen collected on December 20, 2018, was positive for marijuana at 77 ng/mL, and the specimen collected on December 30, 2018 returned negative results. This indicated Respondent's marijuana use in December 2018.

8B. The test results above indicate that Respondent's marijuana use continued after filing of the Accusation leading to the Probation Order and after Respondent signed the Stipulated Settlement and Disciplinary Order, agreeing to the Probation Order. However, after the Probation Order and its biological fluid testing mandate became effective on January 9, 2019, Respondent incurred no positive test results for marijuana use. Additionally, his 2018 marijuana use occurred after the legalization of recreational marijuana use.

9A. Respondent maintains that he does not suffer from any substance use disorder. Prior to and after the effective date of the Probation Order, Respondent underwent separate psychiatric evaluations. Neither evaluator diagnosed Respondent with a substance use disorder, corroborating Respondent's assertion.

9B. On January 30, 2018, John M. Greene, M.D., conducted a psychiatric evaluation of Respondent. Respondent agreed to submit to the evaluation as part of the Board's investigation prior to the filing of the Accusation giving rise to the Probation Order. Dr. Greene found that Respondent suffered from mild to moderate depression but did not meet the criteria for a diagnosis of alcohol use disorder, stimulant use disorder, cannabis use disorder, or any other diagnosis set forth in the

Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).[1] Dr. Greene concluded that Respondent did not pose a danger to the public health, safety or welfare and that he was able to practice medicine safely without restrictions. However, in order to minimize the risk of Respondent using stimulants, alcohol, cocaine, or marijuana in the future, Dr. Greene recommended that Respondent attend at least one AA meeting per week for nine months beginning February 2018.

9C. The evidence did not reveal whether Respondent followed Dr. Greene's recommendation for how to minimize the risk of substance use. Instead, as indicated by the lab results in Factual Finding 8, Respondent continued to use marijuana.

9D. After the Probation Order took effect, and pursuant to Probation Condition 5, Tim Botello, M.D., M.P.H., conducted another psychiatric evaluation of Respondent on February 2, 2019. Dr. Botello diagnosed Respondent with Major Depressive Disorder, in partial remission due to psychiatric treatment and medication (Zoloft, an antidepressant, and Lunesta, a sleep medication), in conjunction with psychotherapy. Dr. Botello opined that Respondent did not meet the DSM-5 criteria for a diagnosis of amphetamine use disorder. He also concluded that Respondent was not a danger to himself or others and that he was able to practice medicine safely, as long as he continued psychiatric treatment, psychotherapy, and random drug testing.

---

[1] The ALJ took official notice of the DSM-5 as a generally accepted tool for diagnosing mental disorders.

Probation Violations

10. On January 17, 2019, Respondent met with his Board probation monitor to review the terms of the Probation Order. Respondent signed an "Acknowledgment of Decision" affirming that he received a copy of the Probation Order, that the probation monitor explained all of the probationary terms and conditions, and that Respondent understood what was required of him under the Probation Order.

11. Condition 2 of the Probation Order provides, in pertinent part:

> ALCOHOL – ABSTAIN FROM USE. Respondent shall abstain completely from the use of products or beverages containing alcohol.
>
> If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. . . .

(Exhibit 4.)

12. Condition 3 of the Probation Order provides, in pertinent part:

> 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. 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. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours 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.

(Exhibit 4.)

13. As part of the Probation Order's biological fluid testing requirement, Respondent is required to check in daily with First Source Solution, the biological fluid testing service, between 12:00 a.m. and 5:00 p.m., either on the testing service's website or by telephone, to ascertain whether he must submit to testing that day. If selected, Respondent must submit a sample that day for testing.

14. Respondent was selected to provide a biological fluid sample for testing on September 26, 2019. The results of that test were positive for alcohol, indicating that Respondent had consumed alcohol in violation of the Probation Order, Condition 2.

15A. On September 30, 2019, the Board sent Respondent a letter instructing him to provide a written explanation for the positive test results by October 2, 2019. When Respondent did not provide any response, his Board probation monitor, Elena Contreraz, contacted Respondent by telephone. He told her that he had consumed a margarita on September 25, 2019.

15B. On October 8, 2019, Respondent sent Ms. Contreraz an email stating:

> Sorry for the late reply to your request to explain why I had a positive alcohol metabolite test, this last September the 26th. As per our telephone conversation, the night before, on the 25th, I had a margarita drink during a family dinner gathering at a restaurant with some of my siblings. I'm surprise[d] that the following day the urine test was positive, but I'm sure that the levels must have been very low. Today, I was selected for a blood alcohol test and I'm most certain that it will be negative since I rarely ever have an alcoholic drink, and have never been and [*sic*] alcoholic. Moving forward, I will certainly avoid any alcohol so that this won't happen again.

(Exhibit 5.)

15C. On November 19, 2019, Respondent's sister sent Complainant's counsel a letter mirroring Respondent's explanation for his positive alcohol test. Specifically, her letter stated:

> The [night of September 25, 2019], several family members gathered together for dinner at a restaurant. . . . During this

> event, each of us had an alcoholic drink with our dinner. My brother had only one margarita. . . . This incident was purely a mistake on his part by an unfortunate, and an isolated case of not being vigilant about his probation terms, while experiencing hard times that occupied his mind. . . .

(Exhibit 9.)

15D. On November 29, 2019, Respondent's brother also sent Complainant's counsel a letter mirroring Respondent's explanation for his positive alcohol test. Specifically, his letter stated:

> At the restaurant we each ordered food and a drink to accompany our dinner. Both my brother and I had a margarita. I honestly don't think that at the time my brother thought much about being [*sic*] an alcoholic drink. We all knew of his probation, but having left my mom's house, and under the circumstances, we did not give much consideration to it, either.

(Exhibit J.)

16. On October 11, 2019, the Board issued a Cease Practice Order to Respondent stating, "Respondent has failed to obey Probationary Condition No. 2 as ordered in the above Decision, by testing positive for the metabolites of alcohol. Accordingly, Respondent . . . is prohibited from engaging in the practice of medicine. Respondent shall not resume the practice of medicine until a final decision has been issued on an accusation and/or a petition to revoke probation filed pursuant to this matter." (Exhibit 8.)

17. Prior to his violation of Condition 2, on March 17, 2019, Respondent failed to submit to biological fluid testing when selected. On May 3, 2019, the Board issued a Citation Order to Respondent based on his violation of Probation Condition 3 for failing to submit to testing.

18A. After his violation of Condition 2, from January through May 2020, Respondent missed checking in with the biological fluid testing service six times: on January 22, 2020; January 24, 2020; March 28, 2020; April 16, 2020; May 2, 2020; and May 17, 2020.

18B. After Respondent's failure to check in on January 22 and 24, 2020, Ms. Contreraz sent Respondent a non-compliance letter, dated March 26, 2020, stating:

> As you are aware, you are required to submit to biological fluid testing as a condition of your probation. [¶] Upon enrollment with FirstSource, you were provided information on how to "check in" with the FirstSource system daily, either by phone, mobile app, or website, to determine if you are selected for testing. You must check-in daily during the program hours of 12:00 a.m. and 5:00 p.m. to avoid receiving a missed check-in violation and being unable to receive your testing notification.
>
> You failed to check in with FirstSource on the following date[s]: January 22, 2020 and January 24, 2020.
>
> Failure to cooperate in the random biological fluid testing is considered a violation of probation. This letter serves as notice that you are in violation of the biological fluid testing

> requirement of your probation order and continued failure to cooperate with the biological fluid testing requirement could constitute grounds to issue a citation and fine.

(Exhibit 12.)

18C. Following the March 26, 2020 letter, Respondent failed to check in again on March 28, 2020. On April 1, 2020, Ms. Contreraz sent another non-compliance letter to Respondent with language virtually identical to her March 26, 2020 letter. The April 1, 2020 letter noted that Respondent had failed to check in with FirstSource on March 28, 2020. (Exhibit 12.)

18D. Following the April 1, 2020 letter, Respondent failed to check in again on April 16, 2020, and May 2, 2020.

18E. On May 14, 2020, the Board issued a Citation Order to Respondent based on his violation of Probation Condition 3 for failing to check in with First Source on: January 22, 2020, January 24, 2020, March 28, 2020, April 16, 2020, and May 2, 2020.[2]

18F. After the issuance of the May 14, 2020 Citation Order, Respondent failed to check in with First Source on May 17, 2020.

---

[2] Since the time for appeal of the citation had not run as of this hearing, the May 14, 2020 Citation was admitted solely to establish its issuance as notice to Respondent regarding his violations, but not to prove the alleged violations.

18G. On May 22, 2020, Ms. Contreraz sent another non-compliance letter to Respondent with language virtually identical to her March 26 and April 1, 2020 letters. The May 22, 2020 letter noted that Respondent had failed to check in with FirstSource on May 17, 2020. (Exhibit 19.)

19. Respondent's failure to check in with FirstSource on January 22, 2020, January 24, 2020, March 28, 2020, April 16, 2020, May 2, 2020, and May 17, 2020 constitutes six separate violations of Condition 3 of his Probation Order.

Alleged Additional Probation Violation - Unproven

20. In the Second Cause to Revoke Probation, as set forth in the amendment to the Petition to Revoke Probation (Exhibit 10), Complainant alleges that Respondent violated Condition 13 (non-practice while on probation) of the Probation Order. Condition 13 requires Respondent to notify the Board in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. (Exhibit 1.) The provisions of Condition 13 relieve Respondent of the responsibility to comply with specified probationary terms during periods of non-practice while residing out-of-state. However, Respondent must continue to comply with all terms of probation during periods of non-practice while residing in California. In support of the allegation that Respondent violated Condition 13, Complainant alleges the same facts and circumstances pertaining to Respondent's violation of Condition 3 (failure to check in for biological fluid testing). However, Complainant does not allege any additional facts to support the allegation that Respondent failed to comply with Condition 13, nor did Complainant present any additional evidence at hearing to prove the alleged violation of Condition 13.

Respondent's Explanation for Probation Violation

21. Respondent testified at the administrative hearing. His tone was professional and cooperative.

22. Respondent explained his violation of Condition 2, mirroring the explanation he provided to the Board in October 2019. (See Factual Finding 15.) He noted that he had been caring for his terminally ill mother and had been personally undergoing treatment for recurrent lymphoma. Respondent again pointed out that he had "only one drink" and had not been "excessively drinking." However, the amount of Respondent's alcohol consumption does not excuse his violation, since Condition 2 requires him to "abstain completely" from alcohol consumption.

23. Respondent admitted that he failed to check in with FirstSource for testing on six separate occasions. He attempted to explain his violations of Condition 3, stating that his omissions were "not intentional," and noting that he was dealing with "significant issues" including divorce proceedings and the Petition to Revoke Probation. Acknowledging that it was "not an excuse," Respondent asserted that he "simply forgot" to check in and that his omissions "represent only a small number of failures in [his] obligation to check daily, six out of 510 times." He understands that he "should be more conscientious," and assured the Board that he has now "set up daily alerts [on his] phone to correct these errors." Respondent did not explain why he did not seek to previously correct his failure to check-in, given the Board's written notifications of his non-compliance. (See Factual Finding 18.) As noted in Factual Findings 12 and 13, Respondent is required to check in with FirstSource every day. He missed six check-ins during the four months prior to the hearing without sufficient excuse for his failures to check-in.

24. Respondent acknowledged that the impetus for his Probation Order was his arrest for possession and use of illegal drugs. However, he noted that the criminal case against him was dismissed following his completion of the DEJ program. Nevertheless, he understands that his possession and use of illegal drugs were the basis of the Probation Order and that the Board was concerned about his ability to practice medicine safely. Respondent stated that he does "want to minimize the seriousness of that offense," but pointed out that it "took place at a time of significant stress in [his family] life" when he was suffering from depression. Respondent recalled that he "lost control" of himself, drove while under the influence (DUI), put himself and others in danger, and "risked losing all that [he] had accomplished professionally." He admitted that he engaged in poor judgment and expressed his regret. However, he maintained that his arrest was an "isolated case and the only time in [his] life that he [incurred] a DUI charge." He also assured the Board that, with psychotherapy, he has "learned better coping mechanisms" for dealing with stress.

25. Although he readily admitted his past drug use, Respondent insisted he is "not an alcoholic and not a drug addict." He asserted that he has never gone to work drunk or under the influence of drugs and that, as an emergency medicine physician, he would not have been able to function in the professional setting if he had suffered from a substance use disorder. Nevertheless, Respondent acknowledged that he has been legally "deemed as a substance-abusing licensee."

26. Respondent expressed his hope that the Board would not revoke his license and that he would be allowed to continue practicing emergency medicine.

27A. Respondent is willing to accept an extension of his probation, but wishes to limit the probationary terms imposed. The current Probation Order does not include the probationary terms set forth in the Uniform Standards for Substance-Abusing

Licensees, effective 2015. Although Respondent does not oppose increased alcohol and drug testing or continuing under the care of a psychiatrist and psychotherapist, Respondent objects to some of the standard probationary terms set forth in the Uniform Standards for Substance-Abusing Licensees. Respondent argued that some of the conditions are "very restrictive," "too difficult to comply with," and, "if imposed, would impede [his] ability to practice emergency medicine." The terms to which he objects are attending support group meetings and employing a worksite monitor.

27B. Respondent argued that he has been undergoing psychotherapy since 2017, that he "already attended AA meetings" in compliance with the DEJ program, and that support group attendance places an unnecessary burden on him. He noted that emergency medicine involves a "variable work schedule" over which he has no control, and he asserted that "the uncertainty of the work schedule makes it difficult to regularly attend support group meetings that meet on certain times and days." Respondent presented no evidence that he would be unable to obtain time off on specific days to attend support group meetings.

27C. Respondent argued that a required worksite monitor would make it "hard for an employer to consider [him] for employment." He noted that he must currently notify any employer about his probationary terms, "so they are vigilant of his performance." Respondent also asserted that, in emergency medicine, there is already a high level of scrutiny since he does "not work alone," but has constant interactions with nurses, physicians, and other medical providers such that "inappropriate conduct does not go unnoticed." Respondent contended "adding a worksite monitor is redundant, impractical, and difficult to facilitate."

27D. Respondent maintained that his objections did "not stem from an attempt to evade responsibility but from an honest concern that [he would] not be

able to obtain employment." He understands that he "deserve[s] to be under scrutiny and monitoring by the Board in order to ensure compliance." However, he believes that the "elements of probation should not be so restrictive as to become the equivalent of license revocation."

Character References

28. Respondent has the support of former colleagues, Raymond Dewri, MD, Jorge Vournas M.D., and Carrie Angelo, RN, who submitted character reference letters on his behalf.

LEGAL CONCLUSIONS

1. First Cause to Revoke Probation: Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with the Probation Order, Condition Number 2 (abstain from alcohol use), as set forth in Factual Findings 4 through 25.

2. Second Cause to Revoke Probation:

A. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with the Probation Order, Condition Number 3 (failure to check in daily for biological fluid testing), as set forth in Factual Findings 4 through 25.

B. Cause does not exist to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with the Probation Order, Condition Number 13 (Non-Practice While on Probation), as set forth in Factual Finding 20.

3. Accusation – Cause for Discipline: Cause does not exist to revoke or suspend Respondent's license, pursuant to Business and Professions Code section 2234, since Complainant did not prove by clear and convincing evidence that, in violating Condition 2 of his probation, Respondent engaged in unprofessional conduct as defined by Business and Professions Code section 2234.

4A. Respondent has been on probation since January 2019. Just over two months after the effective date of the Probation Order, Respondent failed to submit to testing, and was issued a citation. Six months later, and only eight months after the commencement of probation, Respondent consumed alcohol in violation of his probation. Respondent had no valid excuse and instead downplayed his violation, noting that he "only had one drink" and ignoring the requirement of complete abstinence from alcohol use. Additionally, four months after this probation violation, Respondent began failing to check in for biological fluid testing. Even the most diligent probationers may miss one or two check-ins. However, after the Petition to Revoke Probation was filed, Respondent should have been making an earnest effort to demonstrate strict compliance with his probationary terms. Instead, Respondent failed to check in six times within the four months leading up to this hearing. Despite his explanation that he "just forgot" to check in, Respondent was reminded several times in writing about his obligation to check in, and Respondent continued to disregard his obligation.

4B. Respondent sought to assure the Board that he is not a substance abuser and that he is not a danger to the public. However, the Board should not be left to rely on Respondent's assurances. It has the authority to monitor and verify his sobriety through the methods specified in the Probation Order. Respondent has not sufficiently respected the means through which the Board has chosen to monitor and confirm his

sobriety. Instead, he defied the Probation Order without excuse and minimized his violations. Additionally, when faced with revocation of his probation, and despite several written warnings, Respondent flouted his probationary obligations and demonstrated his lack of reliability as a probationer. This bodes poorly for Respondent's future compliance with and successful completion of his probation. Consequently, revocation of Respondent's license is necessary to protect the public health, safety and welfare.

ORDER

Physician's and Surgeon's Certificate Number A 60370, issued to Respondent, Ivan Burgos, M.D., is hereby revoked.

DATE: June 9, 2020

DocuSigned by:
Julie Cabos-Owen
JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Oct 30 2019
BY D. Richards ANALYST

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
EDWARD KIM
Deputy Attorney General
State Bar No. 195729
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6000
Facsimile: (213) 897-9395
Attorneys for Complainant

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

In the Matter of the Petition to Revoke Probation and Accusation Against: **IVAN BURGOS, M.D.** **757 Ocean Ave., Apt. 112** **Santa Monica, CA 90402** **Physician's and Surgeon's Certificate No. A 60370,** Respondent.	Case No. 800-2019-060679 **PETITION TO REVOKE PROBATION AND ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about June 21, 1996, the Board issued Physician's and Surgeon's Certificate number A 60370 to Ivan Burgos, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2019, unless renewed.

DISCIPLINARY HISTORY

3. In a disciplinary action entitled "In the Matter of the Accusation Against Ivan Burgos,

M.D.," Case No. 800-2016-028745, the Medical Board of California, issued a decision (2019 Decision), effective January 9, 2019, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of four (4) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Petition is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. 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.

6. 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."

PROBATION

7. At all times after the effective date of the 2019 Decision, Condition 15 of the Board's related disciplinary order stated, "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."

CEASE PRACTICE ORDER

8. On or about October 11, 2019, the Board issued a cease practice order (CPO) to Respondent prohibiting him from engaging in the practice of medicine and ordering him not to resume the practice of medicine until issuance of a final decision on an accusation and/or a petition to revoke probation filed pursuant to this matter. The CPO was based on his failure to obey Probationary Condition No. 2 as ordered in the 2019 Decision, by testing positive for the

metabolites of alcohol, as alleged below.

9. Respondent's probation is subject to revocation because he failed to comply with the terms and conditions of his probation. The facts and circumstances regarding his violations are as set forth below.

FIRST CAUSE TO REVOKE PROBATION

(Alcohol - Abstain From Use and Biological Fluid Testing)

10. Respondent's probation is subject to revocation because he failed to comply with Condition 2 of his probationary order in his 2019 Decision, referenced below. The facts and circumstances regarding this violation are as follows:

11. At all times after the effective date of the 2019 Decision, Condition 2 of the Board's related disciplinary order stated, in pertinent part: "ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the use of products or beverages containing alcohol."

12. At all times after the effective date of the 2019 Decision, Condition 3 of the Board's related disciplinary order stated, in pertinent part: "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. 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. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours 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."

13. On or about September 26, 2019, Respondent was randomly selected to provide a biological fluid sample. Respondent provided the sample on or about September 30, 2019, and the laboratory test results based upon that sample were positive for alcohol metabolites in violation of Condition 2 of the 2019 Decision.

14. On or about September 30, 2019, a Board employee sent a letter to Respondent, via email and US Mail, requesting an explanation for the positive test on September 26, 2019.

15. On or about October 8, 2019, after not receiving a response, a Board employee contacted Respondent, via telephone and email, following up on the Board's request for a response. On or about October 8, 2019, Respondent emailed the employee admitting that on September 25, 2019, the day before his positive biological fluid test, he had a margarita during dinner. He further stated he was surprised that by the next day the test was positive, and the blood test he submitted to would most likely be negative. Respondent stated he would avoid alcohol moving forward.

SECOND CAUSE TO REVOKE PROBATION

(Obey All Laws)

16. At all times after the effective date of the 2019 Decision, Condition 9 of the Board's related disciplinary order stated, "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."

17. Respondent has violated term and condition number 9 by engaging in unprofessional conduct. The circumstances are as follows:

18. The allegations of the First Cause to Revoke Probation are incorporated here by reference as if fully set forth.

19. The allegations of the Cause for Discipline below is incorporated here by reference as if fully set forth.

CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

20. Respondent is subject to disciplinary action under section 2234, in that his action(s) and/or inaction(s) represent unprofessional conduct, generally. The facts and circumstances regarding this violation are as follows:

21. The allegations of the First Cause to Revoke Probation, inclusive, are incorporated herein by reference as if fully set forth.

DISCIPLINE CONSIDERATIONS

22. To determine the degree of discipline to be imposed on Respondent, Complainant alleges that effective January 9, 2019, Respondent's license was placed on probation for seven years by the 2019 Decision for admitted allegations, including that he was convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon, namely possession of a controlled substance, methamphetamines, in violation of Health and Safety Code section 11550, subdivision (a), and that he used and was under the influence of, and possessed, methamphetamines in violation of Health and Safety Code sections 11150, subdivision (a), and 11377, subdivision (a). That decision is final and incorporated by reference as if fully set forth.

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 the Medical Board of California in Case No. 800-2016-028745 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. A 60370 issued to Ivan Burgos, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. A 60370, issued to Ivan Burgos, M.D.;

3. Revoking, suspending or denying approval of Ivan Burgos, M.D.'s authority to supervise any physician assistants or advanced practice nurses;

4. Ordering Ivan Burgos, M.D. to pay the Medical Board of California, if placed on probation, the costs of probation monitoring; and

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

DATED: October 30, 2019

CHRISTINE LALLY
Deputy Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

LA2019504656
53848005.docx

Exhibit A

Decision and Order

Medical Board of California Case No. 800-2016-028745

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

In the Matter of the Accusation Against:	)	
Ivan Burgos, M.D.	)	**Case No. 800-2016-028745**
Physician's and Surgeon's Certificate No. A 60370	)	
Respondent	)	

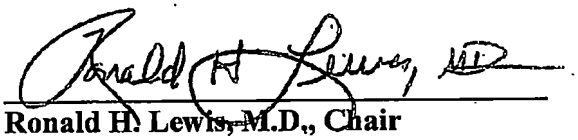
DECISION

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 January 9, 2019.

IT IS SO ORDERED: December 10, 2018.

MEDICAL BOARD OF CALIFORNIA



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

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
ALICE W. WONG
Deputy Attorney General
State Bar No. 160141
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3873
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against: **IVAN BURGOS, M.D.** **757 Ocean Avenue, #112** **Santa Monica, CA 90402** **Physician's and Surgeon's Certificate No. A 60370** Respondent.	Case No. 800-2016-028745 OAH No. 2018081110 **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 Alice W. Wong, Deputy Attorney General.

2. Respondent Ivan Burgos, M.D. (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about June 21, 1996, the Board issued Physician's and Surgeon's Certificate No. A 60370 to Ivan Burgos, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-028745, and will expire on November 30, 2019, unless renewed.

JURISDICTION

4. Accusation No. 800-2016-028745 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 April 10, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2016-028745 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Accusation No. 800-2016-028745. Respondent has also carefully read, 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 be represented by counsel at his own expense; 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 admits the truth of each and every charge and allegation in Accusation No. 800-2016-028745.

10. 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

11. 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. 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.

12. 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.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 60370 issued to Respondent Ivan Burgos, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

1. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not

apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.

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

If Respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the Respondent with a hearing within 30 days of the request, unless the 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 15 days of submission of the matter. Within 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 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, requests 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 30 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

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

If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the Respondent with a hearing within 30 days of the request, unless the 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 15 days of submission of the matter. Within 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 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, requests 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 30 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

3. 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. 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. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours 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 Respondent fails to cooperate in a random biological fluid testing program within the specified time frame, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the Respondent with a hearing within 30 days of the request, unless the 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 15 days of submission of the matter. Within 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 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, requests 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 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the

time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

5. PSYCHIATRIC EVALUATION. At the discretion of the Board, and on whatever periodic basis that may be required by the Board or its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

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

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

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision,

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

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

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

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

9. 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.

10. 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.

11. 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 30 calendar days prior to the dates of departure and return.

12. 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.

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

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

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

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

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

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

15. 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.

16. 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 or her 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.

17. 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 Stipulated Settlement and Disciplinary Order. 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: 10/03/2018

IVAN BURGOS, M.D.
Respondent

ENDORSEMENT

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

Dated: 10/5/2018

Respectfully submitted,

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

ALICE W. WONG
Deputy Attorney General
Attorneys for Complainant

SF2018400384

Exhibit A

Accusation No. 800-2016-028745

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 10 20 18
BY D. Richards ANALYST

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
ALICE W. WONG
Deputy Attorney General
State Bar No. 160141
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3873
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against: **Ivan Burgos, M.D.** **14265 Burns Way** **Saratoga, CA 95070** **Physician's and Surgeon's Certificate** **No. A 60370,** Respondent.	Case No. 800-2016-028745 **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 or about June 21, 1996, the Medical Board issued Physician's and Surgeon's Certificate Number A 60370 to Ivan Burgos, 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 November 30, 2019, unless renewed.

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 unless otherwise indicated.

4. Business and Professions Code section 2227 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.

5. Section 2234 of the Code provides: "The board shall take action against any licensee who is charged with unprofessional conduct."

6. 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."

7. Health and Safety Code section 11377, subdivision (a), provides:

"Except as authorized by law and otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054 , except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056 , (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054 , or (5) specified in subdivision (d) , (e) , or (f) of Section 11055 , unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year..."

8. Health and Safety Code section 11550, subdivision (a), provides: "A person shall not use, or be under the influence of any controlled substance that is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054 , specified in paragraph (14), (15), (21), (22) , or (23) of subdivision (d) of Section 11054 , specified in subdivision (b) or (c) of Section 11055 , or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055 , or (2) a narcotic drug classified in Schedule III, IV, or V,

except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances..."

9. Health and Safety Code section 11055, subdivision (d)(2), lists methamphetamine as a controlled substance for purposes of Health and Safety Code section 11377, subdivision (a) and section 11550, subdivision (a).

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 Division of Licensing[1] 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 2239 of the Code states:

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

[1] *See* Business and Professions Code section 2002.

(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 Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing 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."

12. Section 492 of the Code states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

"This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

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."

FIRST CAUSE FOR DISCIPLINE

(Violation of Statute Regulating Drugs)

14. Respondent Ivan Burgos, M.D. is subject to disciplinary action under sections 2227, 2234, 2238 and 2239, in that he engaged in unprofessional conduct for using and being under the influence of methamphetamine, in violation of Health and Safety Code section 11550, subdivision (a) and for possession of methamphetamine, in violation of Health and Safety Code section 11377, subdivision (a); and for using drugs in a manner dangerous to himself and others. The circumstances are as follows:

15. On November 16, 2016, at approximately 2:08 a.m., police officers from the Santa Clara Police Department made contact with Respondent during a vehicle stop. Respondent displayed objective symptoms of drug intoxication, including red, watery, and bloodshot eyes with slightly dilated pupils, sweating profusely, unsteady gait and a strong odor of marijuana emanating from Respondent.

16. Respondent failed a series of standardized field sobriety tests administered by the officers on scene.

17. During a subsequent search of Respondent, a clear plastic bindle containing a white, crystalline substance suspected to be methamphetamine was located in Respondent's right pant pocket. Officers also located a small quantity of suspected marijuana in the rear interior of the vehicle.

18. Respondent provided a blood sample which later tested positive for methamphetamine and THC.[2]

[2] THC (Tetrahydrocannabinol) is one of many compounds found in the resin secreted by glands of the marijuana plants and is the chemical responsible for most of marijuana's psychological effects.

19. The white crystalline substance found in Respondent's pocket was analyzed and determined to contain methamphetamine in a useable quantity.

20. During the investigation of this case by the Board, Respondent was interviewed and admitted he consumed alcohol and ingested methamphetamine before the vehicle stop.

21. Respondent's use and being under the influence, and possession of methamphetamine constituted unprofessional conduct, and cause for discipline.

SECOND CAUSE FOR DISCIPLINE

(Criminal Conviction)

22. Respondent Ivan Burgos, M.D. is subject to disciplinary action under sections 2227, 2234, 2237, 2239 and California Code of Regulations, title 16, section 1360, in that on or about March 24, 2017, in a criminal proceeding entitled *People of the State of California v. Ivan R. Burgos,* in the Santa Clara County Superior Court, Case Number C1754189, Respondent was convicted by his plea of "guilty" to violation of Health and Safety Code section 11377(a), possession of a controlled substance, methamphetamine, and violation of Health and Safety Code section 11550 (a), using or being under the influence of a controlled substance, methamphetamine.

23. Paragraphs 13 through 18 are incorporated herein.

24. Respondent's criminal conviction for using and being under the influence, and possession of methamphetamine constitute unprofessional conduct and cause for discipline.

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 A 60370, issued to Ivan Burgos, M.D.;

2. Revoking, suspending or denying approval of Ivan Burgos, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Ivan Burgos, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: April 10, 2018

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

SF2018400384