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

In the Matter of the Accusation Against: Lori Ann Hergan, M.D. Physician's and Surgeon's Certificate No. A 86666 Respondent.	Case No. 800-2019-052968

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 December 11, 2020.

IT IS SO ORDERED: November 12, 2020.

MEDICAL BOARD OF CALIFORNIA

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

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

In the Matter of the Accusation Against: **LORI ANN HERGAN, M.D.** **4905 Juneberry Ct.** **San Diego, CA 92123-6434** **Physician's and Surgeon's Certificate No. A86666,** Respondent.	Case No. 800-2019-052968 OAH No. 2020050115 **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 Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). Christine J. Lally[1] brought this action solely in her official capacity, as the Interim Executive Director of the Board. They have been represented in this matter by Xavier

[1] On October 28, 2019, Christine J. Lally became the Interim Executive Director of the Medical Board when former Executive Director, Kimberly Kirchmeyer, became the Director of the Department of Consumer Affairs. On June 15, 2020, William Prasifka became the Executive Director of the Medical Board.

Becerra, Attorney General of the State of California, by Karolyn M. Westfall, Deputy Attorney General.

2. Respondent Lori Ann Hergan, M.D. (Respondent) is represented in this proceeding by attorney David M. Balfour Esq., whose address is: 1925 Palomar Oaks Way, Suite 220, Carlsbad, CA 92008.

3. On or about April 8, 2004, the Board issued Physician's and Surgeon's Certificate No. A86666 to 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. 800-2019-052968, and will expire on January 31, 2022, unless renewed.

4. On or about February 11, 2020, an Interim Order of Suspension was issued by the Office of Administrative Hearings, immediately suspending Physician's and Surgeon's Certificate No. A86666, and prohibiting Respondent from practicing medicine in the State of California. The Interim Order of Suspension remains in full force and effect as of the effective date of this Stipulated Settlement and Disciplinary Order.

JURISDICTION

5. Accusation No. 800-2019-052968 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 2, 2020. Respondent timely filed her Notice of Defense contesting the Accusation.

6. A copy of Accusation No. 800-2019-052968 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2019-052968. Respondent has also carefully read, fully discussed with her counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of her 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 her; the right to present evidence and to testify on her 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.

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

CULPABILITY

10. 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 No. 800-2019-052968, and agrees that she has thereby subjected her Physician's and Surgeon's Certificate No. A86666 to disciplinary action.

11. Respondent further agrees that if she ever petitions for modification or early termination of probation, or if an accusation and/or petition to revoke probation is filed against her before the Medical Board of California, all of the charges and allegations contained in Accusation No. 800-2019-052968, 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.

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

13. Respondent agrees that her Physician's and Surgeon's Certificate No. A86666 is subject to discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

14. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated

Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

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

ADDITIONAL PROVISIONS

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

17. The parties agree that copies of this Stipulated Settlement and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies and signatures shall have the same force and effect as originals.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A86666 issued to Respondent, Lori Ann Hergan, M.D., is revoked. However, the revocation is stayed on the following terms and conditions:

1. ACTUAL SUSPENSION. Respondent is suspended from the practice of medicine for one (1) year beginning on the effective date of this Decision.

2. PROBATION: Respondent is placed on probation for six (6) years from the completion date of her actual suspension from the practice of medicine. This shall be identified as her "period of probation."

3. CONTROLLED SUBSTANCES - SURRENDER OF DEA PERMIT. Within fifteen (15) days of the effective date of this Decision, Respondent shall provide documentary proof to the Board or its designee that Respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any state prescription forms and all controlled substances order forms. During the period of her actual suspension from the practice of medicine for one year, 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 reapply for a new DEA permit until the completion of her actual suspension from the practice of medicine for one year, except with the prior written consent of the Board or its designee.

4. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. During her period of probation, Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedules IV and V of the Act. Respondent may reapply for a new DEA permit limited to those Schedules authorized by this order. Within 15 calendar days after the effective date of issuance of a new DEA permit, Respondent shall submit a true and correct copy

of the permit to the Board or its designee.

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.

5. PROHIBITED PRACTICE. During her period of probation, Respondent is prohibited from prescribing 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, to herself or her family members.

6. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. During her period of probation, 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.

7. ALCOHOL - ABSTAIN FROM USE. During her period of probation, Respondent shall abstain completely from the use of products or beverages containing alcohol.

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

9. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of her period of probation, 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 her period of probation 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 her period of probation.

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

10. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of her period of probation, 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 her period of probation 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 her period of probation.

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 her period of probation, whichever is later.

11. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of her period of probation, and on whatever periodic basis thereafter may be required by the Board or its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist,

who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of her period of probation 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.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that Respondent is mentally fit to practice medicine safely. The period of time that Respondent is not practicing medicine shall not be counted toward completion of the term of probation.

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

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

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

period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of medicine without restrictions.

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

13. MONITORING - PRACTICE. Within 30 calendar days of the effective date of her period of probation, 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 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 60 calendar days of the effective date of her period of probation, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

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

responsibility.

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

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

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

14. SOLO PRACTICE PROHIBITION. During her period of probation, 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 her probation, 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, Respondent shall notify the Board or its designee within five (5) calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume practice until an appropriate practice setting is established.

15. PATIENT DISCLOSURE. During her period of probation, Respondent shall provide a separate disclosure to each of Respondent's patients, or their guardians or health care surrogates, before each patient's first visit following the effective date of her period of probation.

The disclosure shall include all of the following information:

(a) Respondent's probationary status,

(b) The length of Respondent's probation,

(c) Respondent's probation end date,

(d) All practice restrictions placed on Respondent ordered by the Board,

(e) The Medical Board of California's telephone number, and

(f) Information regarding how to access and obtain more information regarding Respondent's probation through Respondent's profile page on the Medical Board of California website.

Respondent shall maintain a separate signed copy of this disclosure, signed by the patient, the patient's guardian or health care surrogate.

Respondent is not required to provide this disclosure under the following circumstances:

(a) Patient is unconscious or otherwise unable to comprehend the disclosure and sign a copy of the disclosure, and the patient's guardian or health care surrogate is unavailable to comprehend and sign the disclosure,

(b) Patient visit occurs in the emergency room or at an urgent care facility or the visit is unscheduled, including inpatient consultations,

(c) Respondent providing treatment to a patient, but is not known to the patient until immediately prior to the start of the visit, or

(d) Respondent does not have a direct treatment relationship with the patient.

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

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

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

During the first year of probation, Respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five (5) years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no

positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

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

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

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

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

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

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

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

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

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

(i) It maintains testing sites located throughout California.

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

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

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

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

Prior to changing testing locations for any reasón, 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 or her treating physician(s), other health care provider, or group facilitator, as applicable.

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

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

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

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

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

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

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

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

Respondent shall pay all worksite monitoring costs.

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

The worksite monitor shall verbally report any suspected substance abuse to the Board and Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected

substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; Respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

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

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

20. <u>VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING LICENSEES</u>. 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 or she 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 or she has violated any term or condition of probation. If

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

21. NOTIFICATION. Within seven (7) days of the effective date of her period of probation, 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.

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

23. 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.

24. QUARTERLY DECLARATIONS. During her period of probation, 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.

25. 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 30 calendar days prior to the dates of departure and return.

26. 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.

27. NON-PRACTICE WHILE ON PROBATION. During her period of 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' 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. Non-practice exceeding two (2) years shall be considered a violation of probation.

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.

28. 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.

29. 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.

30. 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.

31. 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.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, David M. Balfour Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. 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: 9/29/2020 Lori Ann Hergan MD

LORI ANN HERGAN, M.D.
Respondent

I have read and fully discussed with Respondent, Lori Ann Hergan, 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: 9/29/2020 David M Balfour

DAVID M. BALFOUR ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: 9/30/20

Respectfully submitted,

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

KAROLYN M. WESTFALL
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2019-052968

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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: **LORI ANN HERGAN, M.D.** **4905 Juneberry Ct.** **San Diego, CA 92123-6434** **Physician's and Surgeon's Certificate No. A 86666,** Respondent.	Case No. 800-2019-052968 **ACCUSATION**

PARTIES

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

2. On or about April 8, 2004, the Medical Board issued Physician's and Surgeon's Certificate No. A 86666 to Lori Ann Hergan, 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 January 31, 2022, unless renewed.

3. On or about February 11, 2020, an Interim Order of Suspension was issued by the Office of Administrative Hearings, immediately suspending Physician's and Surgeon's

Certificate No. A 86666, and prohibiting Respondent from practicing medicine in the State of California. As a result, Respondent remains suspended from the practice of medicine pending the issuance of a final decision after an administrative hearing on the Accusation.

JURISDICTION

4. 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.

5. Section 822 of the Code states:

> If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:
>
> (a) Revoking the licentiate's certificate or license.
>
> (b) Suspending the licentiate's right to practice.
>
> (c) Placing the licentiate on probation.
>
> (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.
>
> The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

6. Section 2227 of the Code states, in pertinent part:

> (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.

...

7. Section 2234 of the Code, states, in pertinent part:

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.

...

(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.

...

8. 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 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.

9. 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.

10. Section 2239 of the Code states, in pertinent part:

(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.

...

11. Section 2242 of the Code states, in pertinent part:

(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

...

12. 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.

13. Section 2262 of the Code states, in pertinent part:

Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

...

14. Section 2280 of the Code states:

No licensee shall practice medicine while under the influence of any narcotic drug or alcohol to such extent as to impair his or her ability to conduct the practice of medicine with safety to the public and his or her patients. Violation of this section constitutes unprofessional conduct and is a misdemeanor.

15. Section 11170 of the Health and Safety Code states: No person shall prescribe, administer, or furnish a controlled substance for himself.

16. Section 11173 of the Health and Safety Code states, in pertinent part:

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

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

...

17. Section 11350 of the Health and Safety Code states, in pertinent part:

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance ...specified in subdivision (b) or (c) of Section 11055...or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist,

or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

...

18. Section 11352 of the Health and Safety Code states, in pertinent part:

(a) Except as otherwise provided in this division, ever person who transports, imports in this state, sells, furnishes, administers, or gives away...(2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.

FIRST CAUSE FOR DISCIPLINE

(Prescribing or Administering a Controlled Substances to Herself)

19. Respondent has subjected her Physician's and Surgeon's Certificate No. A 86666 to disciplinary action under sections 2227, and 2234, as defined by section 2239, subdivision (a), of the Code, in that she has administered controlled substances to herself, as more particularly alleged hereinafter:

20. Respondent has a long documented history of drug and alcohol dependence. In and around 2013, Respondent began abusing prescription medications, including controlled substances. Between 2016 and 2017, Respondent was prescribed controlled substances from multiple treating physicians, including but not limited to oxycodone-HCL-acetaminophen,[1] carisprodol,[2] Lyrica,[3] eszopiclone,[4] and zolpidem tartrate.[5] Respondent eventually began using

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[1] Oxycodone with acetaminophen (brand name Percocet) is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022. It is an opioid medication used to treat pain.

[2] Carisprodol (brand name Soma) is a muscle relaxant medication, a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

[3] Lyrica (brand name for pregabalin) is pain medication, a Schedule V controlled substance pursuant to Health and Safety Code section 11058, and a dangerous drug pursuant to Business and Professions Code section 4022.

[4] Eszopiclone (brand name Lunesta) is a sedative that is used to treat insomnia. It is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, and a dangerous drug pursuant to Business and Professions Code section 4022.

[5] Zolpidem tartrate (brand name Ambien) is a sedative that is used to treat insomnia. It is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, and a dangerous drug

more medications than prescribed, including while working as a urologist treating patients. Respondent used these controlled substances for pain management, but also for weight loss and mood management.

21. While receiving valid prescriptions from her own medical providers, between in or around 2014 and 2016, Respondent prescribed approximately 158 prescriptions of oxycodone-HCL-acetaminophen and carisprodol to her husband, for her own use.

22. In or around 2017, Respondent was also binge drinking, consuming an entire bottle of wine three to four times each week. During this same time period, Respondent was self-prescribing various non-controlled medications, including Robaxin.[6] Over time, her use of Robaxin increased to the point she was consuming twenty (20) 750mg pills per day.

23. On or about October 2, 2017, Respondent filled a 30-day prescription for 90 tabs of carisprodol 350mg. Over the course of the next day, Respondent consumed approximately 27 tabs – nine (9) times the maximum daily dose prescribed.

24. On or about October 3, 2017, Respondent went to work despite having consumed large amounts of carisprodol that morning and the night before. Respondent consumed more carisprodol while at work. At approximately 5:00 p.m., Respondent was driving home and crashed into a parked vehicle. Police officers were called to the scene and upon speaking with Respondent, they noted she exhibited signs of impairment, including a glazed look and slurred speech. Respondent was eventually transported to the hospital. A blood sample was collected from Respondent that was later tested and revealed positive results for carisprodol and cyclobenzaprine.[7] Respondent was subsequently charged in San Diego Superior Court Case No. M241991 with misdemeanor driving under the influence of drugs, in violation of Vehicle Code

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pursuant to Business and Professions Code section 4022.

[6] Robaxin (brand name for methocarbamol) is a muscle relaxant and a dangerous drug pursuant to Business and Professions Code section 4022.

[7] Cyclobenzaprine (brand name Flerxeril) is a muscle relaxant and a dangerous drug pursuant to Business and Professions Code section 4022.

section 23152, subd. (f). On or about December 13, 2018, Respondent plead guilty to that single charge and was sentenced to 5 years of probation subject to various terms and conditions.

25. On or about October 5, 2017, Respondent appeared to be under the influence at work. When confronted by her employer, Respondent chose to take a leave of absence to seek medical care.

26. Between on or about November 6, 2017, and on or about December 22, 2017, Respondent received treatment at the Hazelden Betty Ford Program for severe opioid dependence, adverse effects of carisprodol, depressive disorder, and anxiety disorder. While in treatment, she tested positive for alcohol.

27. Between in or around November 2017 and in or around May 2019, Respondent filled approximately 204 prescriptions for non-controlled medications at CVS pharmacy. Of the 204 prescriptions, approximately 156 were self-prescribed, including approximately 40 prescriptions for clonidine,[8] for a total of approximately 6,654 pills; 19 prescriptions of gabapentin,[9] for a total of approximately 4,680 pills; 20 prescriptions of meloxicam,[10] for a total of 2,280 pills; and 41 prescriptions of methocarbamol, for a total of approximately 8,888 pills.

28. Between in or around February 2018, and in or around September 2019, Respondent received weekly or bi-weekly therapy from multiple psychologists.

29. In or around March 2018, Respondent was permitted to return to work under conditions that included monitoring with the Well Being Committee and submitting to urine drug screening.

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[8] Clonidine is a medication that is used to treat high blood pressure, attention deficit hyperactivity disorder, anxiety disorders, tic disorders, withdrawal, migraine, menopausal flushing, diarrhea, and certain pain conditions. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[9] Gabapentin (brand name Neurontin) is an anticonvulsant medication used to treat partial seizures, neuropathic pain, hot flashes, and restless legs syndrome. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[10] Meloxicam is a nonsteroidal anti-inflammatory drug (NSAID) used to treat pain and inflammation. It is a dangerous drug pursuant to Business and Professions Code section 4022.

30. In or around December 2018, Respondent tested positive for alcohol on approximately three occasions. Respondent did not inform the Well Being Committee that she had resumed consuming alcohol until they learned of her positive urine screens.

31. On or about February 5, 2019, Respondent's employer summarily suspended her privileges as a result of her positive urine screens.

32. Throughout 2019, Respondent received intensive treatment at Sharp McDonald Center and Sharp Mesa Vista, where she was treated for alcohol use disorder, opiate use disorder, major depressive disorder, and an eating disorder. While in treatment, Respondent continued to drink alcohol and self-prescribe and abuse medications, including but not limited to, trazodone,[11] vistaril,[12] and clonidine. Respondent did not disclose and/or minimized her self-prescribing to her treatment team.

33. Between on or about September 26, 2019, and on or about November 8, 2019, Respondent received treatment at Sharp McDonald Center for detoxification from clonidine. Upon her release from the program, Respondent was provided 30-day prescriptions plus refills for all necessary medications, including Neurontin.

34. On or about November 27, 2019, Respondent attempted to fill a prescription of Neurontin that she had self-prescribed.

35. On or about December 20, 2019, Respondent voluntarily submitted to a psychiatric evaluation from Board-appointed psychiatrist, S.O. (Dr. S.O.). During her interview with Dr. S.O., Respondent was dishonest and/or minimized the extent of her drug dependence. After an extensive review of records, a lengthy examination, and an interview of Respondent, Dr. S.O. concluded, among other things, that Respondent suffers from (1) Alcohol and polysubstance use disorder including opioids, clonidine, antihistamines, and muscle relaxants, in remission; (2) Substance-induced mood and anxiety disorder, in remission; (3) Bulimia nervosa, active; and (4)

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[11] Trazodone is an antidepressant that belongs to a group of drugs called selective serotonin reuptake inhibitors (SSRIs) that is used to treat major depressive disorder. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[12] Vistaril is an antihistamine drug used to treat allergic reactions, anxiety, tension, nausea, vomiting, and alcohol withdrawal. It is a dangerous drug pursuant to Business and Professions Code section 4022.

Mixed personality disorder with borderline, antisocial, and self-defeating traits. Dr. S.O. further opined that Respondent's ability to practice medicine safely is impaired, and permitting her to engage in the unrestricted practice of medicine will endanger the public health, safety, and welfare.

SECOND CAUSE FOR DISCIPLINE

(Use of Dangerous Drugs to an Extent, or in a Manner, as to be Dangerous to Herself, to Others, or to the Public)

36. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 86666 to disciplinary action under sections 2227, and 2234, as defined by section 2239, subdivision (a), of the Code, in that she has used dangerous drugs to an extent, or in a manner, as to be dangerous or injurious to herself, to another person, or to the public, as more particularly alleged in paragraphs 19 through 35 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Prescribing, Dispensing, or Furnishing Dangerous Drugs without Prior Examination and Medical Indication)

37. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 86666 to disciplinary action under sections 2227, and 2234, as defined by section 2242, subdivision (a), of the Code, in that she has prescribed, dispensed, or furnished dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, as more particularly alleged in paragraphs 19 through 35 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

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

38. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 86666 to disciplinary action under sections 2227 and 2234, as defined by section 2238, of the Code, in that she has violated a state law or laws regulating dangerous drugs and/or controlled substances, as more particularly alleged hereinafter:

A. Paragraphs 19 through 35 above, are hereby incorporated by reference and realleged as if fully set forth herein;

B. Respondent has repeatedly used dangerous drugs and controlled substances, to the extent, or in such a manner as to be dangerous or injurious to herself, or to another person, or the public in violation of section 2339, subdivision (a), of the Code;

C. Respondent has repeatedly administered controlled substances to herself, in violation of Health and Safety Code section 11170, and section 2339, subdivision (a), of the Code;

D. Respondent was convicted of a charge of violating a statute or regulation of the state, regulating dangerous drugs, in violation of section 2237, subdivision (a), of the Code;

E. Respondent has repeatedly obtained controlled substances by (1) fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety Code section 11170, subdivision (a);

F. Respondent has repeatedly made a false statement on a prescription, order, report, or record, in violation of Health and Safety Code section 11170, subdivision (b);

G. Respondent has repeatedly possessed a controlled substance ...specified in subdivision (b) or (c) of Section 11055...or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, that was not properly written by a physician licensed to practice in this state, in violation of Health and Safety Code section 11350, subdivision (a); and

H. Respondent repeatedly imported in this state, sold, furnished, administered, or gave away...(2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, that was not a properly written prescription of a physician licensed to practice in this state, in violation of Health and Safety Code section 11352, subdivision (a).

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FIFTH CAUSE FOR DISCIPLINE

(Dishonesty or Corruption)

39. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 86666 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (e), of the Code, in that she has committed an act or acts of dishonesty or corruption, as more particularly alleged in paragraphs 19 through 35, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(False Representations)

40. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 86666 to disciplinary action under sections 2227 and 2234, as defined by section 2261, of the Code, in that she has knowingly made or signed a certificate or document directly or indirectly related to the practice of medicine which falsely represented the existence or nonexistence of a state of facts, as more particularly alleged in paragraphs 19 through 35, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

SEVENTH CAUSE FOR DISCIPLINE

(Creation of False Medical Records, with Fraudulent Intent)

41. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 86666 to disciplinary action under sections 2227 and 2234, as defined by section 2262, of the Code, in that she created false medical records with fraudulent intent, as more particularly alleged in paragraphs 19 through 35, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

EIGHTH CAUSE FOR DISCIPLINE

(Practice Under the Influence of Narcotic)

42. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 86666 to disciplinary action under sections 2227 and 2234, as defined by section 2280, of the Code, in that she practiced medicine while under the influence of a narcotic drug to such an extent as to impair her ability to conduct the practice of medicine safely to the public and her

patients, as more particularly alleged in paragraphs 19 through 35, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

NINTH CAUSE FOR DISCIPLINE

(Conviction of a Charge Violating any Statute or Regulation of the State Regulating Dangerous Drugs or Controlled Substances)

43. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 86666 to disciplinary action under sections 2227 and 2234, as defined by section 2237, in that she has been convicted of a charge violating any statute or regulation of this state, regulating dangerous drugs or controlled substances, as more particularly alleged in paragraphs 19 through 35, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

SECTION 822 CAUSE FOR ACTION

(Mental Illness and/or Physical Illness Affecting Competency)

44. Respondent is subject to action under section 822 of the Code in that her ability to practice medicine safely is impaired due to a mental illness and/or physical illness affecting competency, as more particularly alleged in paragraphs 19 through 35, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate NO. A 86666, issued to Respondent, Lori Ann Hergan, M.D.;

2. Revoking, suspending or denying approval of Respondent, Lori Ann Hergan, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent, Lori Ann Hergan, M.D., if placed on probation, to pay the Board the costs of probation monitoring;

4. Ordering Respondent, Lori Ann Hergan, M.D., if placed on probation, to disclose the disciplinary order to patients pursuant to section 2228.1 of the Code;

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

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

DATED: APR 0 2 2020

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

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