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

In the Matter of the Accusation Against: Habib Dalhoumi, M.D. Physician's and Surgeon's Certificate No. A 82095 Respondent.	Case No.: 800-2017-034936

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 October 8, 2021.

IT IS SO ORDERED: September 9, 2021.

MEDICAL BOARD OF CALIFORNIA

Laurie Rose Lubiano, J.D., Chair
Panel A

ROB BONTA
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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: **HABIB DALHOUMI, M.D.** **10330 Friars Road, Suite 119** **San Diego, CA 92120-2300** **Physician's and Surgeon's Certificate No. A 82095,** Respondent.	Case No. 800-2017-034936 OAH No. 2020100630 **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). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Rosemary F. Luzon, Deputy Attorney General.

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2. Respondent Habib Dalhoumi, M.D. (Respondent) is represented in this proceeding by attorneys Nicole T. Irmer, Esq., and Kimberly J. Elkin, Esq., whose address is: Law Office of Nicole Irmer, 2550 Fifth Avenue, Suite 1060, San Diego, CA 92103.

3. On or about February 28, 2003, the Board issued Physician's and Surgeon's Certificate No. A 82095 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. 800-2017-034936, and will expire on September 30, 2022, unless renewed.

JURISDICTION

4. On or about July 20, 2020, Accusation No. 800-2017-034936 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 or about July 20, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A true and correct copy of Accusation No. 800-2017-034936 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-034936. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; 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, having been fully advised of same by his attorneys, Nicole T. Irmer, Esq., and Kimberly J. Elkin, Esq.

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

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2017-034936, and Respondent hereby gives up his right to contest those charges. Respondent further agrees that he has thereby subjected his Physician's and Surgeon's Certificate No. A 82095 to disciplinary action.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2017-034936 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.

10. Respondent agrees that his Physician's and Surgeon's Certificate No. A 82095 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

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 or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. 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.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 82095 issued to Respondent Habib Dalhoumi, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years from the effective date of the Decision on the following terms and conditions:

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

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

2. COMMUNITY SERVICE - FREE SERVICES. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval a community service plan in which Respondent shall, within the first 2 years of probation, provide eighty (80) hours of free services (e.g., medical or nonmedical) to a community or non-profit organization.

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

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

3. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 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.

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

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

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

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

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

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

6. 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.

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

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), 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 this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

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

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

8. 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.

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

10. 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.

11. 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.

12. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

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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.

13. 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.

14. 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' 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..

15. 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.

16. 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.

17. 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.

18. 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.

19. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2017-034936 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorneys Nicole T. Irmer, Esq., and Kimberly J. Elkin, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A 82095. 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: 06/16/2021

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HABIB DALHOUMI, M.D.
Respondent

I have read and fully discussed with Respondent Habib Dalhoumi, 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: 06/16/2021

DocuSigned by:
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NICOLE T. IRMER, ESQ.
KIMBERLY J. ELKIN, ESQ.
Attorneys for Respondent

ENDORSEMENT

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

DATED: 6/21/2021

Respectfully submitted,

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

ROSEMARY F. LUZON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-034936

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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: **Habib Dalhoumi, M.D.** **10330 Friars Road, Suite 119** **San Diego, CA 92120-2300** **Physician's and Surgeon's Certificate No. A 82095,** Respondent.	Case No. 800-2017-034936 **A C C U S A T I O N**

PARTIES

1. William Prasifka (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about February 28, 2003, the Medical Board issued Physician's and Surgeon's Certificate No. A 82095 to Habib Dalhoumi, 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 September 30, 2020, unless renewed.

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JURISDICTION

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

4. Section 2220 of the Code states:

> Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. . .

5. Section 2227 of the Code states:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.
>
> . . .

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.

. . .

7. Section 725 of the Code states:

(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon . . .

8. Section 2266 of the Code states:

The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

9. Section 2236 of the Code states:

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

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

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

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

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10. Section 2239[1] of the Code states:

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

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

11. 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.

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

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[1] There is a nexus between a physician's use of alcoholic beverages and his or her fitness to practice medicine, established by the Legislature in section 2239, "in all cases where a licensed physician used alcoholic beverages to the extent or in such a manner as to pose a danger to himself or others." (*Watson v. Superior Court (Medical Board)* (2009) 176 Cal.App.4th 1407, 1411.)

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

13. Respondent has subjected his Physician's and Surgeon's Certificate No. A 82095 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patients A,[2] B, and C, as more particularly alleged hereinafter:

Patient A

14. Between on or about September 28, 2015, and May 22, 2018, Patient A was treated at Respondent's weight loss clinic.

15. During the initial visit, which took place on or about September 28, 2015, Patient A was noted to be taking Abilify, Suboxone, Adderall, Contrave, and clonazepam. Patient A's past medical history was not documented, however, based on the list of medications, Patient A's past medical history appears to have included bipolar disorder, chronic pain/substance use disorder, attention deficit disorder, and anxiety and eating issues. Patient A's height and weight were noted to be 62.25 inches and 115 pounds, respectively, and her Body Mass Index (BMI) was 20.94.

16. According to the notes for this visit, a physical examination of Patient A was performed, including general appearance, head and neck, lungs, cardiovascular, abdomen, neurologic, and mental status. Patient A's weight was "[n]ormal" with elevated body fat percentage. Respondent discussed off label use of medication with Patient A. Respondent prescribed phentermine[3] 30 mg daily, #7 tablets to Patient A, along with recommendations for a meal plan, fitness plan, and motivational plan. Respondent recommended that Patient A return in one week for follow-up.

17. Following the initial visit, until or about May 22, 2018, Patient A was seen at Respondent's clinic on approximately 100 visits. During this timeframe, Respondent

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[2] References to "Patient A," "Patient B," and "Patient C" herein are used to protect patient privacy.

[3] Phentermine is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (f), and a dangerous drug pursuant to Business and Professions Code section 4022.

continuously prescribed phentermine to Patient A, with Patient A's daily intake ranging from one to four tablets.

18. Respondent continued to prescribe phentermine to Patient A, notwithstanding his discussions with Patient A about the need for tapering off phentermine, including on or about February 1, 2016, July 21, 2016, and September 27, 2016. After each of these visits, however, Respondent continued to prescribe phentermine to Patient A.

19. Between on or about September 28, 2015, to May 22, 2018, with the exception of the initial September 2015, visit, Respondent did not document any physical examination of Patient A. In addition, most of Respondent's notes were template notes with limited updated information regarding patient history, status, progress, assessment, or plan.

20. Respondent committed gross negligence in his care and treatment of Patient A, which included, but was not limited to, the following:

A. Respondent improperly prescribed controlled substances to Patient A by prescribing excessive amounts of phentermine to Patient A on a prolonged basis and without an appropriate clinical indication.

Patient B

21. Between on or about September 14, 2013, and May 1, 2020, Patient B was treated at Respondent's weight loss clinic for weight management.

22. On or about February 20, 2014, Patient B was started on phentermine. Patient B's height and weight were noted to be 60 inches and 122 pounds, respectively, and her BMI was 23.82. According to the notes for this visit, a physical examination was performed, including general appearance, head and neck, lungs, cardiovascular, abdomen, extremities, neurologic, and mental status. The diagnosis was "Normal Weight." Respondent prescribed phentermine 37.5 mg, #4 tablets to Patient B, with instructions to take half a tablet daily for the first week. Respondent also recommended a meal plan, movement plan, and motivation plan for Patient B and instructed her to return to the clinic in one week for follow-up.

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23. Between on or about September 14, 2013, and May 1, 2020, Patient B was seen at Respondent's clinic on over approximately 100 visits. During this timeframe, Respondent continuously prescribed phentermine to Patient B.

24. Respondent continued to prescribe phentermine to Patient B, notwithstanding his discussions with Patient B about the need for tapering off phentermine, including on or about May 8, 2014, and April 1, 2015. After each of these visits, however, Respondent continued to prescribe phentermine to Patient B.

25. Between on or about September 14, 2013, and May 1, 2020, with the exception of the February 20, 2014, visit, Respondent did not document any physical examination of Patient B. In addition, most of Respondent's notes were template notes with limited updated information regarding patient history, status, progress, assessment, or plan.

26. Between in or about October 2018, and May 1, 2020, Respondent did not document that he checked the Controlled Substance Utilization Review and Evaluation System (CURES) to review and assess Patient B's controlled substances history.

27. Respondent committed gross negligence in his care and treatment of Patient B, which included, but was not limited to, the following:

A. Respondent improperly prescribed controlled substances to Patient B by prescribing excessive amounts of phentermine to Patient B on a prolonged basis.

Patient C

28. Between on or about February 26, 2015, and May 13, 2020, Patient C was treated at Respondent's weight loss clinic for weight management.

29. During the initial visit, which took place on or about February 26, 2015, a detailed history of Patient C was taken but no physical examination was documented. In addition, no assessment, plan, or diagnosis were documented. Patient C's height and weight were noted to be 62 inches and 133 pounds, respectively, and her BMI was 24.4. Respondent prescribed phentermine 37.5 mg to Patient C, with instructions to take half a tablet daily.

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30. Between on or about February 26, 2015, and May 13, 2020, Patient C was seen at Respondent's clinic on over approximately 60 visits. During this timeframe, Respondent continuously prescribed phentermine to Patient C.

31. Between on or about February 26, 2015, and May 13, 2020, Respondent did not document any physical examination of Patient C. In addition, most of Respondent's notes were template notes with limited updated information regarding patient history, status, progress, assessment, or plan.

32. Between in or about October 2018, and May 13, 2020, Respondent did not document that he checked CURES to review and assess Patient C's controlled substances history.

33. Respondent committed gross negligence in his care and treatment of Patient C, which included, but was not limited to, the following:

A. Respondent improperly prescribed controlled substances to Patient C by prescribing excessive amounts of phentermine to Patient C on a prolonged basis.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

34. Respondent has subjected his Physician's and Surgeon's Certificate No. A 82095 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patients A, B, and C, as more particularly alleged hereinafter:

Patient A

35. Paragraphs 14 through 20, above, are hereby incorporated by reference and re-alleged as if fully set forth herein.

36. Respondent committed further repeated negligent acts in his care and treatment of Patient A, which included, but were not limited to, the following:

A. With the exception of the September 28, 2015, visit, Respondent failed to document an appropriate physical examination of Patient A.

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Patient B

37. Paragraphs 21 through 27, above, are hereby incorporated by reference and re-alleged as if fully set forth herein.

38. Respondent committed further repeated negligent acts in his care and treatment of Patient B, which included, but were not limited to, the following:

A. With the exception of the February 20, 2014, visit, Respondent failed to document an appropriate physical examination of Patient B.

B. Between in or about October 2018, and May 1, 2020, Respondent did not document that he checked CURES to review and assess Patient B's controlled substances history.

Patient C

39. Paragraphs 28 through 33, above, are hereby incorporated by reference and re-alleged as if fully set forth herein.

40. Respondent committed further repeated negligent acts in his care and treatment of Patient C, which included, but were not limited to, the following:

A. Respondent failed to document any appropriate physical examination of Patient C.

B. Between in or about October 2018, and May 13, 2020, Respondent did not document that he checked CURES to review and assess Patient C's controlled substances history.

THIRD CAUSE FOR DISCIPLINE

(Excessive Prescribing of Controlled Substances)

41. Respondent has subjected his Physician's and Surgeon's Certificate No. A 82095 to disciplinary action under sections 2227 and 2234, as defined by section 725, subdivision (a), of the Code, in that he committed repeated acts of clearly excessive prescribing of controlled substances to Patients A, B, and C, as more particularly alleged in paragraphs 14 through 33, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

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FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

42. Respondent has subjected his Physician's and Surgeon's Certificate No. A 82095 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that he failed to maintain adequate and accurate records regarding his care and treatment of Patients A, B, and C, as more particularly alleged in paragraphs 14 through 40, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Use of Alcoholic Beverages to the Extent, or in a Manner, as to be Dangerous to Respondent, Another Person or the Public)

43. Respondent has subjected his Physician's and Surgeon's Certificate No. A 82095 to disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a), of the Code, in that he has used, or administered to himself, alcoholic beverages to the extent, or in such a manner, as to be dangerous or injurious to himself, another person, or the public, as more particularly alleged hereinafter:

A. On or about August 10, 2017, at approximately 8:22 p.m., Respondent was stopped by Officer B.J. of the San Diego Police Department in the downtown area of San Diego, California. Officer B.J. observed Respondent driving approximately 52 miles per hour in a 25 mile per hour zone, with numerous vehicles and pedestrians in the area. Officer B.J. also observed Respondent making a lane change without a signal.

B. During the stop, Respondent told Officer B.J. that he was an "E.R. Doctor" and was on his way home. Officer B.J. observed that Respondent had red, bloodshot eyes. When asked if he had consumed any alcohol, Respondent responded that he had consumed alcohol hours earlier.

C. Officer J.P. arrived at the scene at approximately 8:45 p.m. In addition to Officer B.J., Officer I.S. was also present. Officer J.P. observed that Respondent's eyes were droopy, glassy, bloodshot, and watery. Respondent repeated to Officer J.P.

that he was an "E.R. Doctor." Respondent told Officer J.P. that he had one alcoholic beverage earlier at a medical conference. Officer J.P. observed a lack of smooth pursuit of Respondent's eyes and distinct Horizontal Gaze Nystagmus (HGN) in both eyes. Officer J.P. conducted an interview of Respondent outside of his vehicle, during which he smelled the odor of an alcohol beverage on Respondent's breath.

D. Respondent agreed to submit to Standardized Field Sobriety Tests (FSTs), which Respondent performed poorly on. Officer J.P. placed Respondent under arrest for driving under the influence of alcohol. Respondent provided two breath samples, the results of which showed a blood alcohol concentration (BAC) level of 0.106% and 0.111%, respectively. During this time, Respondent repeated to Officer J.P. that he was an "E.R. Doctor."

E. On or about September 15, 2017, a criminal complaint was filed against Respondent in the matter of *The People of the State of California v. Habib Dalhoumi*, San Diego County Superior Court, Case No. M237350. Count One of the complaint charged Respondent with driving under the influence of alcohol, in violation of California Vehicle Code section 23152(a), a misdemeanor. Count Two of the complaint charged Respondent with driving while having a BAC of 0.08% or more, in violation of California Vehicle Code section 23152(b), a misdemeanor.

F. On or about November 1, 2017, Respondent was convicted upon his plea of guilty to Vehicle Code section 23103 [Reckless Driving], a lesser included offense of Count Two of the complaint. As part of his guilty plea, Respondent admitted that he "drove a motor vehicle in a reckless manner with alcohol in my system." On or about the same date, the Superior Court sentenced Respondent to probation for three years and ordered Respondent to pay fines and complete a three-month First Conviction Program and the MADD Program.

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SIXTH CAUSE FOR DISCIPLINE

(Conviction of a Crime Substantially Related to the Qualifications, Functions, or Duties of a Physician and Surgeon)

44. Respondent has subjected his Physician's and Surgeon's Certificate No. A 82095 to disciplinary action under sections 2227 and 2234, as defined by section 2236, of the Code, in that he has been convicted of a crime substantially related to the qualifications, functions, or duties of a physician, as more particularly alleged in paragraph 43, above, which is hereby incorporated by reference as if fully set forth herein.

SEVENTH CAUSE FOR DISCIPLINE

(Violating or Attempting to Violate Any Provision of the Medical Practice Act)

45. Respondent has subjected his Physician's and Surgeon's Certificate No. A 82095 to disciplinary action under sections 2227 and 2234, subdivision (a), of the Code, in that he has violated or attempted to violate, directly or indirectly, provisions or terms of the Medical Practice Act, as more particularly alleged in paragraphs 14 through 44, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

EIGHTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

46. Respondent has subjected his Physician's and Surgeon's Certificate No. A 82095 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 14 through 45, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. A 82095, issued to Respondent Habib Dalhoumi, M.D.;

2. Revoking, suspending or denying approval of Respondent Habib Dalhoumi, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice nurses;

3. Ordering Respondent Habib Dalhoumi, 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: JUL 20 2020

WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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