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

In the Matter of the Accusation Against: Malcolm Arthur Whitaker, Jr., M.D. Physician's and Surgeon's Certificate No. G 89131 Respondent.	Case No. 800-2020-067855

DECISION

The attached Proposed Decision 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 29, 2021.

IT IS SO ORDERED September 29, 2021.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, M.D., Chair
Panel B

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

In the Matter of the Accusation Against:

MALCOLM ARTHUR WHITAKER, JR., M.D.

Physician's and Surgeon's Certificate No. G 89131

Respondent.

Agency Case No. 800-2020-067855

OAH No. 2021030247

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on August 5, 2021, by videoconference.

Deputy Attorney General Hamsa M. Murthy represented complainant William Prasifka, Executive Director of the Medical Board of California.

Attorney Adam G. Slote represented respondent Malcolm Arthur Whitaker, Jr., M.D., who was present for the hearing.

The matter was submitted for decision on August 5, 2021.

FACTUAL FINDINGS

1. The Medical Board of California (California Board) issued Physician's and Surgeon's Certificate No. G 89131 to respondent Malcolm Arthur Whitaker, Jr., M.D., on March 30, 2012. At the time of the hearing this certificate was active and was scheduled to expire March 31, 2022.

2. Acting in his official capacity as Executive Director of the California Board, complainant William Prasifka filed an accusation against respondent on October 8, 2020. Respondent requested a hearing.

3. Complainant alleges that the Washington Medical Commission (Washington Commission) entered a disciplinary order against respondent in April 2020. Complainant alleges further that the Washington Commission took this action because of allegations that respondent was or might be unfit to practice, and that he had prescribed controlled substances for himself and for family members. Complainant characterizes this Washington Commission order as disciplinary action in another state on grounds that would justify disciplinary action in California, and asks the California Board to discipline respondent because of it.

Professional Experience

4. Respondent served in the Army Corps of Engineers for about five years before attending medical school. He graduated from medical school in 1992 and completed a residency in diagnostic radiology in 1997. Respondent completed a fellowship in neuroradiology in 2004.

5. Respondent practices both diagnostic and interventional radiology. He has been board-certified in radiology since 1997.

6. Until 2007, respondent practiced medicine in the United States Army. After he retired from the Army in 2007, respondent continued in private practice. Since 2018, respondent has worked approximately two weeks each month, in short-term assignments around the United States. He holds medical licenses in several states, including Washington (his long-term residence) and California (where he worked between 2014 and 2017).

Washington Commission Action

7. In November 2019, the Washington Commission's Executive Director issued a Statement of Allegations and Summary of Evidence against respondent. The allegations generally were that respondent was or might be unfit for practice, and that he had prescribed controlled substances for himself and other family members. An investigation ensued, which included a comprehensive diagnostic evaluation of respondent's health and fitness to practice medicine.

8. Upon respondent's stipulation and with his consent, the Washington Commission entered an order in April 2017 resolving the matter described in Finding 7. This order required respondent to refrain from prescribing, dispensing, or administering controlled substances to himself; to take a course regarding prescribing controlled substances; to pay a $2,000 fine; and to meet approximately annually with Washington Commission staff members to confirm his compliance with the order. According to the document memorializing the order, the order "is not formal disciplinary action and shall not be construed as a finding of unprofessional conduct or inability to practice."

9. The stipulation described in Finding 8 includes the Washington Commission's allegation that respondent prescribed testosterone, a controlled

substance, to himself between July 2011 and March 2019. The stipulation does not repeat any other allegation from the Statement of Allegations described in Finding 7. Specifically, the stipulation that followed the Washington Commission's investigation does not repeat the allegation that respondent was or might be unfit for practice, or the allegation that he prescribed controlled substances for family members.

10. Respondent stipulated before the Washington Commission that self-prescribing a controlled substance, as alleged, would violate Washington laws governing medical practice. He did not admit in that stipulation that this allegation was true.

11. In November 2020, respondent completed a 22.75-hour course on controlled substance prescribing through the University of Colorado Health Memorial Hospital. The Washington Commission deemed this course to have satisfied the requirement stated in Finding 8.

12. On May 14, 2021, by letter, the Washington Commission confirmed that respondent had satisfied the order described in Finding 8 and released him from further supervision by the Washington Commission.

Additional Evidence

13. In approximately 1999, respondent's personal endocrinologist diagnosed him with chronic hypogonadism. He has used testosterone supplementation, by prescription, ever since. He takes this hormone replacement drug biweekly by intramuscular injection.

14. On several occasions during the more than 20 years respondent has used testosterone as hormone replacement therapy, he has prescribed it to himself rather

than obtaining a prescription from his regular treating physician. Respondent testified credibly that he has maintained a regular relationship with a treating physician throughout this period, and prescribed for himself only when his travel schedule made him unable to meet with his physician for timely re-examination. Between May 2011 and May 2014 respondent wrote 11 testosterone prescriptions for himself; between March 2018 and March 2019 he wrote another four.

15. Testosterone is a controlled substance under both Washington and California law.

16. Respondent was aware at all times while using testosterone that this hormone was a prescription drug. Before the Washington Commission began the investigation that led to the Statement of Allegations described in Finding 7, however, respondent was not aware that it was a controlled substance.

References

17. Sanjeev Athale, M.D., testified about respondent's character and medical skill, and wrote a letter supporting him. Dr. Athale and respondent were colleagues in a hospital radiology department when respondent worked in California as described in Finding 6. Dr. Athale considers respondent an "excellent practitioner," who garnered respect from patients, other physicians, and non-physician hospital staff members.

18. Dana Woods, M.D., also testified about respondent's character, and provided a supporting letter. Dr. Woods is an ophthalmologist who has been respondent's friend since they were in high school together. He believes respondent to have good judgment and strong professional skills.

LEGAL CONCLUSIONS

1. "[R]evocation, suspension, or other discipline, restriction, or limitation" against a medical license respondent holds in another state, on grounds that would have been cause for discipline in California, is cause for discipline against respondent's California physician's and surgeon's certificate. (Bus. & Prof. Code, § 2305.) The out-of-state disciplinary order itself is "conclusive evidence" of the facts the order states. (*Id.*, § 141, subd. (a).) Clear and convincing evidence must prove any additional facts supporting California discipline.

2. Notwithstanding its disclaimer, the order described in Finding 8 constitutes a restriction or other limitation on respondent's Washington medical license. The matters stated in Findings 9, 10, and 14 confirm that the Washington Commission restricted respondent's Washington medical license because of controlled substance self-prescribing, in violation of Washington law.

3. Self-prescribing controlled substances is unprofessional conduct for a California physician. (Bus. & Prof. Code, § 2238, subd. (a); Health & Saf. Code, § 11170.) It is cause for discipline in California. (Bus. & Prof. Code, § 2234, subd. (a).)

4. The matters stated in Legal Conclusions 2 and 3 constitute cause for discipline in California against respondent.

5. According to the California Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines, 12th Edition 2016" (Cal. Code Regs., tit. 16, § 1361, subd. (a)), the minimum recommended discipline for self-prescribing controlled substances is a five-year period of probation.

6. The matters stated in Findings 13 and 14 show that respondent's violation related solely to his own health, and to a medication he took regularly under medical supervision by another physician. The matters stated in Finding 5 confirm that the violation does not relate to respondent's medical practice, which by all accounts is excellent. And the matters stated in Finding 6 show that respondent is unlikely to resume active medical practice in California.

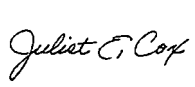
7. In light of these considerations, even the minimum recommended discipline is unnecessary in this matter. Monitoring respondent's probation would place burdens on both the California Board (despite respondent's obligation to pay probation costs) and on respondent, with no corresponding benefit to public safety. A public letter of reprimand (Bus. & Prof. Code, §§ 495, 2227, subd. (a)(4)) is appropriate.

8. This reprimand results solely from the Washington matters described in Findings 7 through 12, and not from any other unprofessional conduct.

ORDER

Physician and Surgeon's Certificate No. G 89131, issued to respondent Malcolm Arthur Whitaker, Jr., M.D., is hereby publicly reprimanded.

DATE: 08/23/2021



JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings

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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: **Malcolm Arthur Whitaker Jr., M.D.** **3700 Park East Dr. Ste. 450** **Beachwood OH 44122-4318** **Physician's and Surgeon's Certificate No. G 89131,** Respondent.	Case No. 800-2020-067855 **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 March 30, 2012, the Medical Board issued Physician's and Surgeon's Certificate Number G 89131 to Malcolm Arthur Whitaker Jr., 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 March 31, 2022, 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 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code provides that the Board shall take action against any licensee who is charged with "unprofessional conduct," which includes but is not limited to, "[v]iolating . . . any provision of this chapter."

6. Section 2305 of the Code provides, in pertinent part, that the revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California, shall constitute grounds for disciplinary action for unprofessional conduct.

7. Section 141 of the Code provides:

> (a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.
>
> (b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

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FIRST CAUSE FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Another State)

8. On April 17, 2020, the State of Washington Medical Quality Assurance Commission (Washington Commission) accepted a Stipulation to Informal Disposition (attached herewith as Exhibit A), regarding a Statement of Allegations and Summary of Evidence previously filed against Respondent (attached herewith as Exhibit B). The Washington Commission alleged that between July 2011 and March 2019, Respondent prescribed DEA Schedule II-IV controlled substances for himself, his wife, his daughter, and his mother-in-law. (Exhibit B at p.1.) Respondent was referred to the Washington Physician Health Program, but declined to follow its recommendation to undergo a Comprehensive Diagnostic Evaluation; accordingly, the Washington Physician Health Program was unable to endorse Respondent as able to practice with reasonable skill and safety. (*Ibid.*) Respondent and the Washington Commission then resolved the above-described matter by stipulation. (Exhibit A at p. 2.) Respondent agreed to a number of conditions, including: not prescribing any DEA Schedule I-IV controlled substances to himself during the duration of the stipulation; completing a physician controlled substance prescribing course; personally appearing before the Commission; and paying the Commission $2,000 as partial reimbursement of some of the costs of investigating and processing the matter against him. (*Id.* at pp. 2-3.) Under the terms of the stipulation, Respondent may petition the Washington Commission in writing to terminate the stipulation no sooner than April 17, 2021, and only after all the conditions in the stipulation have been met. (*Id.* at p. 5.)

9. Respondent's alleged conduct with respect to his prescribing of controlled substances, and the subsequent actions of the Washington Commission, as set forth in paragraph 8, above, and Exhibits A and B, attached, constitute cause for discipline, pursuant to section 2234 and/or section 2305 and/or section 141, subdivision (a) of the Code.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 89131, issued to Malcolm Arthur Whitaker Jr., M.D.;

2. Revoking, suspending or denying approval of Malcolm Arthur Whitaker Jr., M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Malcolm Arthur Whitaker Jr., 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: OCT 0 8 2020

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

Exhibit A

STATE OF WASHINGTON
WASHINGTON MEDICAL COMMISSION

In the Matter of the License to Practice as a Physician and Surgeon of:	No. M2019-1005
MALCOLM A. WHITAKER, MD License No. MD.MD.00047269 Respondent.	**STIPULATION TO INFORMAL DISPOSITION**

Pursuant to the Uniform Disciplinary Act, Chapter 18.130 RCW, the Washington Medical Commission (Commission) issued a Statement of Allegations and Summary of Evidence (Statement of Allegations) alleging the conduct described below. Respondent does not admit any of the allegations. This Stipulation to Informal Disposition (Stipulation) is not formal disciplinary action and shall not be construed as a finding of unprofessional conduct or inability to practice.

1. ALLEGATIONS

1.1 On October 31, 2006, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active. Respondent is board certified in diagnostic radiology.

1.2 Despite statements to the contrary, between the period of July 2011 and March 2019, Respondent prescribed [redacted] a DEA Schedule III controlled substance, for himself.

2. STIPULATION

2.1 The Commission alleges that the conduct described above, if proven, would constitute a violation of RCW 18.130.180(6) and (22).

2.2 The parties wish to resolve this matter by means of a Stipulation pursuant to RCW 18.130.172(1).

2.3 Respondent agrees to be bound by the terms and conditions of this Stipulation.

2.4 This Stipulation is of no force and effect and is not binding on the parties unless and until it is accepted by the Commission.

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2.5 If the Commission accepts the Stipulation it will be reported to the National Practitioner Data Bank (45 CFR Part 60), the Federation of State Medical Boards' Physician Data Center and elsewhere as required by law.

2.6 The Statement of Allegations and this Stipulation are public documents. They will be placed on the Department of Health web site, disseminated via the Commission's electronic mailing list, and disseminated according to the Uniform Disciplinary Act (Chapter 18.130 RCW). They are subject to disclosure under the Public Records Act, Chapter 42.56 RCW, and shall remain part of Respondent's file according to the state's records retention law and cannot be expunged.

2.7 The Commission agrees to forgo further disciplinary proceedings concerning the allegations.

2.8 Respondent agrees to successfully complete the terms and conditions of this informal disposition.

2.9 A violation of the provisions of Section 3 of this Stipulation, if proved, would constitute grounds for discipline under RCW 18.130.180 and the imposition of sanctions under RCW 18.130.160.

3. INFORMAL DISPOSITION

The Commission and Respondent stipulate to the following terms:

3.1 **Compliance Orientation.** Respondent shall complete a compliance orientation in person or by telephone within **sixty (60) days** of the effective date of this Stipulation. Respondent must contact the Compliance Unit at the Commission by calling (360) 236-2763, or by sending an email to: Medical.compliance@wmc.wa.gov within **twenty (20) days** of the effective date of this Stipulation. Respondent must provide a contact phone number where Respondent can be reached for scheduling purposes.

3.2 **Temporary Prescribing Restriction.** For the duration of this Stipulation, Respondent will not prescribe, dispense, or administer any DEA Schedule I-V controlled substances to himself. This requirement supplements and does not supersede any legal requirements concerning controlled substance prescribing that extend beyond the duration of this Stipulation.

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3.3 **Controlled Substance Prescribing Continuing Medical Education (CME).** Within **three (3) months** of the effective date of this Stipulation, Respondent must complete a physician controlled substance prescribing course. The course must be approved in advance by the Commission or its designee. Pre-approval may be obtained by contacting the Compliance Unit using the contact information in Section 3.1 above. The following courses are pre-approved: "Prescribing Controlled Drugs: Critical Issues and Pitfalls," CPEP[1] and "Physician Prescribing," PACE.[2] If continuing medical education credit is offered for the course, it must be in addition to mandatory continuing education hours required for license renewal. Within **one (1) month** of completion, Respondent must provide the Commission with proof of his completion of the course using the contact information in paragraph 3.1.

3.4 **Personal Appearances.** Respondent must personally appear at a date and location determined by the Commission in approximately **twelve (12) months** after the effective date of this Stipulation, or as soon thereafter as the Commission's schedule permits. Thereafter, Respondent must make personal appearances annually or as frequently as the Commission requires unless the Commission waives the need for an appearance. Respondent must participate in a brief telephone call with the Commission's Compliance Unit prior to the appearance. The purpose of appearances is to provide meaningful oversight over Respondent's compliance with the requirements of this Stipulation. The Commission will provide reasonable notice of all scheduled appearances.

3.5 **Cost Recovery**. Respondent must pay two thousand dollars ($2,000) to the Commission as partial reimbursement of some of the costs of investigating and processing this matter. Payment must be by certified or cashier's check made payable to the Department of Health and must be received within **ninety (90) days** of the effective date of this Stipulation. Respondent must send payment to:

Washington Medical Commission
Department of Health
P.O. Box 1099
Olympia, Washington 98504-1099

[1] https://www.cpepdoc.org/cpep-courses/prescribing-controlled-drugs/
[2] http://www.paceprogram.ucsd.edu/CPD/Prescribing.aspx

3.6 **Demographic Census.** Washington law requires physicians and physician assistants to complete a demographic census with their license renewal. RCW 18.71.080(1)(b) and 18.71A.020(4)(b). Respondent must submit a completed demographic census to the Commission within **thirty (30) days** of the effective date of this Stipulation. The demographic census can be found here: wmc.wa.gov/licensing/renewals/demographic-census.

3.7 **Self-Reporting.** Respondent shall report in writing, by email to medical.compliance@wmc.wa.gov, within **thirty (30) days** of the occurrence of any of the following events:

a. Denial, restriction, suspension or revocation of any healthcare-related license for the Respondent in another state;

b. Denial, restriction, suspension or revocation of privileges for the Respondent in any healthcare facility;

c. Any felony or gross misdemeanor charge against the Respondent; and

d. The filing of a complaint in superior court or federal district court against Respondent alleging negligence or request for mediation pursuant to chapter 7.70 RCW.

This requirement supplements and does not supersede the reporting obligations imposed by WAC 246-919-700, et seq. and WAC 246-16-230.

3.8 **Obey Laws.** Respondent must obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

3.9 **Costs.** Respondent must assume all costs that Respondent incurs in complying with this Stipulation.

3.10 **Violations.** If Respondent violates any provision of this Stipulation in any respect, the Commission may initiate further action against Respondent's license.

3.11 **Change of Address or Name.** Respondent must inform the Commission and the Adjudicative Clerk Office in writing of changes in Respondent's name and residential and/or business address within **thirty (30) days** of such change.

3.12 **Effective Date.** The effective date of this Stipulation is the date the Adjudicative Clerk Office places the signed Stipulation into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Stipulation.

3.13 **Termination of Stipulation**. Respondent may petition the Commission in writing to terminate this Stipulation no sooner than **one (1) year** from its effective date and only after all other conditions in this Stipulation are met. Upon a written request to terminate, Respondent must appear in person before the Commission at a date and location designated by the Commission unless an appearance is waived. An appearance on a request to terminate may be combined with a required annual personal appearance. The Commission will have full discretion to grant or deny the request. If the Commission denies the request, Respondent may request termination again annually.

4. COMPLIANCE WITH SANCTION RULES

4.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions, including stipulations to informal disposition under RCW 18.130.172. Tier A of the "Division of Controlled Substances or Legend Drugs" schedule, WAC 246-16-840, applies to cases where diversion resulted in no or minimal patient harm or risk of harm. Respondent unlawfully prescribed controlled substances for himself. However, it does not appear that any patient harm occurred as a result of this.

4.2 Tier A requires the imposition of sanctions ranging from zero to five years of oversight. Under WAC 246-16-800(3)(d), the starting point for the duration of the sanctions is the middle of the range. The Commission uses aggravating and mitigating factors to move towards the maximum or minimum ends of the range.

4.3 While the ultimate duration of this Stipulation is undetermined—giving the Commission the discretion to lengthen the period of oversight if protection of public health and safety requires—it may be terminated as soon as one year from the effective date. The aggravating and mitigating factors in this case, listed below, justify moving towards the lower end of the range. The sanctions in this case include a temporary restriction, a prescribing course, personal appearances, and other terms designed to protect the public.

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4.4 These sanctions are appropriate within the Tier A range given the alleged facts of the case and the following aggravating and mitigating factors. The Commission notes Respondent's previous disciplinary record, lack of patient care issues, and remorse concerning his conduct as mitigating factors. The Commission does not note any aggravating factors.

5. RESPONDENT'S ACCEPTANCE

I, MALCOLM A. WHITAKER, MD, Respondent, certify that I have read this Stipulation in its entirety; that my counsel of record, GERALD R. TARUTIS, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Commission without my appearance. If the Commission accepts the Stipulation, I understand that I will receive a signed copy.

MALCOLM A. WHITAKER, MD
RESPONDENT

18 March 2020
DATE

GERALD R. TARUTIS, WSBA NO. 4599
ATTORNEY FOR RESPONDENT

3/18/2020
DATE

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6. COMMISSION'S ACCEPTANCE

The Commission accepts this Stipulation. All parties shall be bound by its terms and conditions.

DATED: 4/17, 2020.

STATE OF WASHINGTON
WASHINGTON MEDICAL COMMISSION

PANEL CHAIR

PRESENTED BY:

TRISHA WOLF, WSBA NO. 48118
COMMISSION STAFF ATTORNEY

I certify that this is a true and correct copy of the original document on file with the Washington Department of Health

Michael J. Kramer

Date 6-9-20

Exhibit B

STATE OF WASHINGTON
WASHINGTON MEDICAL COMMISSION

FILED
APR 27 2020
Adjudicative Clerk Office

In the Matter of the License to Practice as a Physician and Surgeon of:	No. M2019-1005
MALCOLM A. WHITAKER, MD License No. MD.MD.00047269 Respondent.	**STATEMENT OF ALLEGATIONS AND SUMMARY OF EVIDENCE**

The Executive Director of the Washington Medical Commission (Commission), on designation by the Commission, makes the allegations below, which are supported by evidence contained in Commission file number 2019-8529.

1. ALLEGATIONS

1.1 On October 31, 2006, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active. Respondent is board certified in diagnostic radiology.

1.2 In May 2019, Respondent was referred to the Washington Physician Health Program (WPHP) due to concerns about his ability to practice medicine with reasonable skill and safety. Respondent completed an initial assessment with WPHP but has declined to follow WPHP's recommendation to undergo a Comprehensive Diagnostic Evaluation (CDE). Therefore, WPHP is unable to endorse Respondent as able to practice with reasonable skill and safety.

1.3 Despite statements to the contrary, between the period of July 2011 and March 2019, Respondent prescribed DEA Schedule II-IV controlled substances for himself, his wife, his daughter, and his mother-in-law.

2. SUMMARY OF EVIDENCE

2.1 Complaint dated June 21, 2019.

2.2 Respondent's statement dated August 27, 2019.

2.3 Prescription Monitoring Program report for Respondent as a prescriber.

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3. ALLEGED VIOLATIONS

3.1 The facts alleged in Section 1, if proven, would constitute unprofessional conduct in violation of RCW 18.130.170(1) and RCW 18.130.180(1), (22), and (23) which provide in part:

> **RCW 18.130.170 Capacity of license holder to practice—Hearing—Mental or physical examination—Implied consent.**
>
> (1) If the disciplining authority believes a license holder may be unable to practice with reasonable skill and safety to consumers by reason of any mental or physical condition, a statement of charges in the name of the disciplining authority shall be served on the license holder and notice shall also be issued providing an opportunity for a hearing. The hearing shall be limited to the sole issue of the capacity of the license holder to practice with reasonable skill and safety. If the disciplining authority determines that the license holder is unable to practice with reasonable skill and safety for one of the reasons stated in this subsection, the disciplining authority shall impose such sanctions under RCW 18.130.160 as is deemed necessary to protect the public.
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> ...
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> **RCW 18.130.180 Unprofessional conduct.** The following conduct, acts, or conditions constitute unprofessional conduct for any license holder under the jurisdiction of this chapter:
>
> (1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;
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> ...
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> (6) Except when authorized by *RCW 18.130.345, the possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;
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> ...

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(22) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the disciplining authority or its authorized representative, or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action, or by the use of financial inducements to any patient or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary proceeding;

...

(23) Current misuse of:

(b) Controlled substances;

...

4. NOTICE TO RESPONDENT

4.1 The Commission has determined that this case may be appropriate for resolution through a Stipulation to Informal Disposition (Stipulation) pursuant to RCW 18.130.172(2). A proposed Stipulation is attached, which contains the disposition the Commission believes is necessary to address the conduct alleged in this Statement of Allegations and Summary of Evidence.

4.2 If Respondent agrees that the disposition imposed by the Stipulation is appropriate, Respondent should sign and date the Stipulation and return it within **twenty-eight (28) days** to the Washington Medical Commission at P.O. Box 47866, Olympia, Washington 98504-7866.

4.3 If Respondent does not agree that the terms and conditions contained in the Stipulation are appropriate, Respondent should contact Trisha Wolf, Staff Attorney for the Washington Medical Commission, P.O. Box 47866, Olympia, Washington 98504-7866, (360) 236-2791 within **twenty-eight (28) days.**

4.4 If Respondent does not respond within **twenty-eight (28) days**, the Commission will assume Respondent has declined to resolve the allegations by means of a Stipulation.

4.5 If Respondent declines to resolve the allegations by means of a Stipulation pursuant to RCW 18.130.172(2), the Commission may proceed to formal disciplinary action against Respondent by filing a Statement of Charges, pursuant to RCW 18.130.172(3).

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4.6 The cover letter enclosed with this Statement of Allegations and Summary of Evidence was mailed to the name and address currently on file for Respondent's license. Respondent must notify, in writing, the Commission if Respondent's name and/or address changes.

DATED: November 4, 2019.

STATE OF WASHINGTON
WASHINGTON MEDICAL COMMISSION

MELANIE DE LEON
EXECUTIVE DIRECTOR

TRISHA WOLF, WSBA NO. 48118
COMMISSION STAFF ATTORNEY

I certify that this is a true and correct copy of the original document on file with the Washington Department of Health

Michael J. Kramer

Date 6-9-20

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