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

In the Matter of the First Amended Accusation Against: **Antonio Kobayashi Coirin, M.D.** **Physician's and Surgeon's Certificate No. G 59697** **Respondent.**	**Case No.: 800-2018-048670**

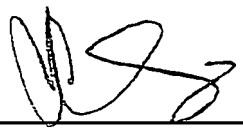
DECISION

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 February 18, 2022.

IT IS SO ORDERED: January 19, 2022.

MEDICAL BOARD OF CALIFORNIA



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

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

In the Matter of the First Amended Accusation Against:

ANTONIO KOBAYASHI COIRIN, M.D., Respondent

Agency Case No. 800-2018-048670

OAH No. 2021010827

PROPOSED DECISION

Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 11 through 13, 2021, from Sacramento, California.

Sarah Jacobs, Deputy Attorney General, represented William Prasifka (complainant), Executive Director, Medical Board of California (Board).

Dominique Pollara, Attorney at Law, represented Antonio Kobayashi Coirin, M.D. (respondent), who was also present.

Oral and documentary evidence was received at hearing, the record closed, and the matter submitted for decision on October 13, 2021.

FACTUAL FINDINGS

1. On March 9, 1987, the Board issued Physician's and Surgeon's Certificate No. G59697 (license) to respondent. The license will expire on April 30, 2022, unless renewed or revoked. On October 6, 2021, complainant, in his official capacity, made and served the First Amended Accusation seeking to discipline respondent's license for violating Business and Professions Code[1] sections 2234, 2236 (conviction of a substantially related crime), and 2239 (use of alcohol dangerous to the licensee or others), based on his 2019 conviction for driving under the influence.

Respondent

2. Since 1990, respondent has practiced as a general surgeon specializing in laparoscopic and bariatric surgery. Currently, he practices at Central California Bariatric Surgery Center in Modesto, along with Matthew Coates, M.D., and Patrick Coates, M.D. Respondent also holds hospital privileges at Doctors Hospital of Manteca, Doctors Hospital of Modesto, and Sutter Memorial Medical Center (formerly Memorial Hospital Association) in Modesto.

3. From 7:00 a.m. on September 27 to 7:00 a.m. on September 28, 2018, respondent was the on-call surgeon for the Center. After close of business, all calls to the Center are redirected to the Medical Exchange, a 24-hour call center with

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[1] All further statutory references are to the Business and Professions Code unless otherwise noted.

operators able to take messages and/or contact the on-call surgeon for advice or admission and emergency surgery.

CRIMINAL CONVICTION

4. On July 8, 2019, in Merced County Superior Court Case No. 18CR-06902, respondent pled no contest to, and was convicted of, violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content (BAC) greater than 0.08 percent), a misdemeanor. Imposition of sentence was suspended. Respondent was placed on conditional probation for three years, ending July 7, 2022. As part of his probation, respondent was ordered to complete a three-month driving under the influence (DUI) program and pay court fines and fees.

5. The circumstances underlying respondent's conviction occurred on September 27, 2018, at approximately 11:55 p.m. Sergeant Charles Wilson of the California Highway Patrol (CHP) initiated an enforcement stop after observing respondent's vehicle on a local highway driving approximately 77 miles per hour.

6. Sergeant Wilson approached respondent's driver side and spoke to respondent through the open driver's side window. He immediately detected the odor of alcohol. Respondent furnished his driver's license upon request, and stated he was traveling from Modesto to Los Banos. When Sergeant Wilson asked if respondent had been drinking, respondent initially denied it. He subsequently admitted to drinking one serving of Ketel One[2] and soda.

7. Sergeant Wilson asked respondent to exit his vehicle; respondent complied. In the process, Sergeant Wilson observed objective signs of intoxication

[2] Ketel One is a brand name of vodka.

including a strong and distinct odor of alcohol emanating from respondent's breath and person, red watery eyes, and slurred speech. Sergeant Wilson next administered a battery of field sobriety tests (FST), which respondent was unable to perform successfully. Respondent provided a breath sample for a preliminary alcohol-screening test, which indicated his BAC was 0.137 and 0.135 percent, respectively. Sergeant Wilson arrested respondent on suspicion of driving under the influence. A subsequent breath test measured respondent's BAC at 0.14 and 0.14 percent.

8. After his arrest, respondent requested permission to answer a telephone call he received from the Medical Exchange because he was the on-call surgeon that night. Sergeant Wilson permitted respondent to answer his telephone so he could instruct the Medical Exchange to contact the next on-call surgeon.

BACKGROUND

9. Respondent is 66 years old. He was born in Tokyo and raised by a single mother. At age 18, he immigrated to the United States and settled in San Diego. At that time, he was not fluent in English, though he could read and write some of it. Because of the language barrier, respondent was not accepted into a university program. Instead, he enrolled in a junior college before transferring to a four-year school. In 1978, he graduated from the University of California, San Diego with a bachelor of science degree in biology.

10. Respondent has always been interested in medicine. He was born with an atrial septal defect, a hole in the wall that divides the atria of the heart. His condition fueled his desire to study medicine. In 1985, he earned his doctorate from the University of California, Davis, School of Medicine. He then completed a one-year

internship at Mount Zion Hospital and Medical Center in San Francisco, followed by a four-year residency at San Joaquin General Hospital.

ALCOHOL USE

11. As a child and a young adult, respondent had little exposure to alcohol. He did not consume alcohol in college or medical school. He married his first wife in 1982, and they had three children together. They did not drink regularly, but enjoyed an occasional drink at home. In 2011, respondent married his second wife, and they frequently went to large family events where alcohol consumption was more common. On June 1, 2013, respondent's second wife died suddenly and unexpectedly. Her death had a profound impact on respondent, who became "very sad and lonely" and drank alcohol to deal with those feelings. In 2015, respondent married his third wife, Sheila. Sheila consumed alcohol regularly. The couple fought often. Sheila's drinking increased as the couple's fighting intensified, which further affected the marriage negatively. Ultimately, Shelia's drinking and their fighting lead to the decision to divorce after two years.

SEPTEMBER 27, 2018

12. On September 27, 2018, respondent saw patients from approximately 8:00 a.m. to 8:30 a.m. until approximately 4:30 p.m. to 5:00 p.m. Before going home, respondent stopped at a restaurant and had one or two drinks. On the drive home, respondent received a telephone call from Sheila who was upset about the amount of alimony she was receiving. The couple were yelling at one another by the end of the call. Respondent was frustrated by the call and still very upset when he arrived home, so he drank alcohol "to calm down" before retiring to bed. Respondent could not

recall how many drinks he consumed in total that night, but believed it was three or more.

13. As he laid in bed, respondent went over the telephone call in his head, which caused him to get "more angry [*sic*] and upset." He decided to take a drive to "cool off." Respondent admitted this was an egregious error in judgment.

14. Respondent acknowledged he was the on-call surgeon[3] on the night of his arrest and that he received a call from the Medical Exchange after his arrest. However, at that time, he did not know the purpose of the call. Respondent spent the night in jail and was released the next morning when his daughter picked him up. Respondent was "very ashamed" for having put himself in that situation.

15. Later that day, respondent met with Drs. M. and P. Coates and disclosed the details of the arrest. He also confirmed with them that the call from the Medical Exchange had not been an emergency. Respondent admitted he made a "very serious lapse of good judgment" and that he needed help.

16. Respondent next met with Robert Chen, M.D., the co-chair at Sutter Memorial Medical Center. He explained what had happened and asked for help. Dr. Chen recommended respondent meet with Francine Farrell, Licensed Marriage and Family Therapist (LMFT), of the Pacific Assistance Group (PAG), a statewide monitoring and support group for health care professionals.

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[3] The record reflected that respondent was the on-call surgeon from 7:00 a.m. on September 27, 2018, until 7:00 a.m. on September 28, 2018.

PACIFIC ASSISTANCE GROUP

17. On November 2, 2018, respondent met with Ms. Farrell and enrolled in a five-year monitoring program with PAG; the program is set to end on November 1, 2023. As part of the program, respondent is required to submit to testing via a Soberlink[4] breathalyzer four times per day, seven days a week. He is also subject to random biological fluid testing, including daily check-ins and approximately 16 random urinalyses and four blood draws per year. Between November 2, 2018, and the start of this hearing, respondent had submitted 4,000 Soberlink or biological fluid tests and has never tested positive for alcohol.

18. Additionally, as part of the PAG program, respondent has two work site monitors, one at Sutter Memorial Medical Group (Yahya John Talieh, M.D.) and one at Doctors Medical Center of Modesto (Dr. M. Coates), each of whom must submit quarterly reports regarding respondent's performance. Respondent also attends Alcoholics Anonymous (AA) meetings five days a week, and participates in a health professional support group twice a week.

19. Respondent no longer consumes alcohol. His sobriety date is November 2, 2018. Over the past three years, and through his participation in the PAG program, he has come to realize the awful mistake he made and vows never to repeat it. He has also learned more about himself and improved his relationships with others. He

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[4] Soberlink is a breathalyzer alcohol testing system. The breathalyzer has a built-in facial recognition device to reduce the risk that the user is obtaining an alternative source of air. The breathalyzer uses a cellular connection to send test results directly from the breathalyzer to a monitoring center.

described his current life as "cleaner and happier." He has not been tempted to drink alcohol and does not crave it.

20. Respondent loves being a physician and helping people. He noted that obesity is a serious problem and surgery can change a patient's life. He is happy that he can be a part of that journey towards a healthy life. Losing his license would have a serious impact on his ability to meet his financial obligations. He currently supports his ex-wife and children, as well as his 95-year old mother. In addition, the PAG program costs approximately $18,000 to $20,000 a year.

CHARACTER EVIDENCE

21. Respondent offered the testimony of three character witnesses. Charles Farrar worked at Summer Memorial Medical Center for 23 years. He started as a surgical technician, then worked as an anesthesia technician for the last 10 years. He retired on September 13, 2021. He has known respondent for over 20 years while working with him at Sutter Memorial Medical Center. Mr. Farrar was also respondent's patient when respondent removed his gall bladder. In addition to working together, Mr. Farrar and respondent spent time together socially, going backpacking and sharing their love for photography.

Respondent told Mr. Farrar about his DUI arrest and the steps he was undertaking to address it. Mr. Farrar believes respondent knew he had made a grave mistake and was committed to completing the PAG program successfully. Mr. Farrar has not noticed that the DUI or alcohol has negatively affected respondent's ability to perform his duties as a surgeon in any way. He has full faith in respondent's abilities and would entrust his family's and his close friends' lives in respondent's care.

22. Donald Paulsen has been licensed as a physician's assistant in California since 2001. He has worked with respondent for more than 18 years, both in the clinic and as his first assist in the operating room. Mr. Paulsen described respondent as a "very skilled" surgeon who likes to stay "on the cutting edge of new discoveries and new science." Mr. Paulsen also extolled respondent as "among the finest robotic surgeons in the United States," noting they have completed nearly 1,900 surgical cases together. Respondent also has excellent patient care, meeting his patients face-to-face both before and after surgery, when many surgeons leave that to a physician's assistant or nurse practitioner.

Respondent disclosed his arrest to Mr. Paulsen the day after it happened. Mr. Paulsen described respondent as upset and disappointed in himself. Since the incident three years ago, Mr. Paulsen has watched respondent be dedicated to his sobriety and in full compliance with the PAG program. Mr. Paulsen and respondent have gone out socially and respondent does not drink alcohol, even when others do.

23. Yahya John Talieh, M.D., is a board-certified thoracic surgeon licensed in California since 2000 and has practiced in Modesto since that time. He holds privileges at Doctors Medical Center of Modesto (since 2000) and Doctors Medical Center of Manteca (since approximately 2018). He is also the chief of surgery and operating room manager at Sutter Memorial Medical Center. Dr. Talieh has known respondent for approximately 20 years, when they began working together as colleagues. As head of surgery, he is familiar with respondent's performance as a surgeon.

Dr. Talieh also serves as one of respondent's work site monitors for the PAG program. He submits a quarterly report regarding respondent's behavior, appearance, and any abnormalities. Dr. Talieh sees respondent approximately four times a week and has observed his demeanor and practice to be "very efficient" and "business as

usual." Dr. Talieh has received no complaints regarding respondent's patient care. He has never observed respondent to appear to be impaired or under the influence of alcohol or other substance, either before or after becoming respondent's monitor; he has observed no conduct which causes him concern regarding respondent's ability to practice surgery safely.

24. Respondent also introduced a letter of support from his practice partner, Dr. M. Coates. Dr. M. Coates has known respondent for approximately 10 years. When Dr. M. Coates became aware of respondent's alcohol-related arrest, he was concerned and referred respondent to a local physician wellness committee. Since that time, Dr. M. Coates has observed respondent do "everything possible to reestablish himself as a safe, stable, and competent surgeon," including committing himself to a 12-step program and undergoing voluntary chemical testing to ensure abstinence. Dr. M. Coates averred respondent "is dedicated to his work as a surgeon and his patients." Dr. M. Coates interacts with respondent often and believes he is "upholding his professionalism and delivering excellent patient care."

Expert Witnesses

BAILEE WHEELER, DOJ CRIMINALIST

25. Ms. Wheeler is a Criminalist for the DOJ's Bureau of Forensic Services Fresno Laboratory. Currently, she works in the DOJ's BAC Analysis Unit and Portable Evidential Breath Testing (PEBT) program where her duties include analyzing BAC evidence and maintaining breath-testing instruments. Ms. Wheeler earned a bachelor of science in biology, with a minor in chemistry, from California State University (CSU) Fresno in 2013, and she has completed the DOJ's forensic alcohol analysis curriculum. She is an instructor for PBET operator training at the Fresno Police Academy as well as

other law enforcement agencies. She has also testified in court approximately 20 times concerning blood/breath alcohol analysis and interpreting the physiological effects of alcohol.

26. Complainant retained Ms. Wheeler to review and interpret the PEBT results from respondent's September 27, 2018 arrest. Ms. Wheeler reviewed the PEBT results, CHP report, and the First Amended Accusation. She authored a report summarizing her findings and testified at hearing consistent with her report.

27. Ms. Wheeler explained that a person with a BAC of 0.14 percent would have both mental and physical impairments. Mental impairments can include a reduced ability to perform divided attention tasks (such as driving), changes in reasoning and judgment, and altered perceptions of distance, speed and time. Physical impairments can include decreased balance and coordination, increased reaction times, and changes in vision, speech, and hearing. For respondent's arrest, Ms. Wheeler opined the PEBT used by Officer Wilson was functioning properly "based on maintenance records and accuracy checks before and after the date of the incident." She further opined that, with a BAC of 0.14 percent, respondent was both mentally and physically impaired at the time of the test.

FRANCINE FARRELL, MS, LMFT, CADC-II

28. Ms. Farrell is an LMFT. She earned a bachelor of science degree in psychology (1984) and a master of science degree in counseling (1986) from CSU Sacramento. She has also been a certified alcohol and drug counselor (CADC-II) since 1984. Currently, she is an Area Administrator for PAG in northern California.

29. Previously, Ms. Farrell facilitated groups for the Board's Diversion Program and other licensing boards for more than 24 years. When the diversion

program ended, Ms. Farrell and other facilitators founded PAG to provide monitoring and support for physicians and other health care professionals who have become potentially impaired due to a substance use disorder[5] or other mental health diagnosis. PAG's monitoring program is modeled after the Board's Diversion Program as well as other federal and state model programs, and includes random biological fluid testing and abstinence monitoring, counseling, and work site monitoring.

30. Ms. Farrell met with respondent in November 2018, at which time she recommended the most stringent level of monitoring which included: Soberlink testing four times a day; random biological fluid testing; work site monitoring; community-based self-help meetings (such as AA), and a health professional support group. Ms. Farrell explained her recommendation was based, in part, on the assumption that the Board would conduct an investigation into respondent's arrest.

31. Ms. Farrell has been actively involved in supporting and monitoring respondent's participation in PAG since he first began the program. She confirmed that respondent has participated in the program fully and "has demonstrated general compliance with his PAG program requirements." Respondent has been tested for alcohol use, through Soberlink and biological fluid testing, over 4,000 times and has not had a positive result. Additionally, respondent has been an active and positive participant in the health professional's support group and has received positive feedback from both work site monitors. Based thereon, Ms. Farrell opined that respondent has a "sincere and genuine commitment to a comprehensive lifestyle

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[5] Ms. Farrell explained that substance use disorder is a diagnosis with specified criteria listed in the Diagnostic and Statistics Manual V (DSM-V). The term "alcoholic" or "alcohol abuse" is not defined in the DSM-V.

change, in which abstinence from alcohol and other drugs is the cornerstone." Although respondent has not relapsed in three years, she nonetheless recommends he continue with the PAG program to finish the full five-year duration of his contract. She explained that there is a high rate of relapse without monitoring in the first year, approximately 85 percent. Research indicates that five years of sobriety is the equivalent to a "cure" such that further monitoring after that point is not necessary to maintain sobriety.

Analysis

32. The salient facts in this case are uncontroverted. Respondent operated a motor vehicle on a local highway while having a 0.14 percent BAC, for which he was convicted and placed on criminal probation. At all relevant times, respondent was the on-call surgeon and subject to respond to calls from the Medical Exchange. Respondent concedes this conduct constitutes unprofessional conduct, and thus subjects his license to discipline, because: (1) his conviction was for an offense that is substantially related to the qualifications, functions, and duties of a licensed physician; and (2) he used alcohol in a manner dangerous or injurious to himself or others.

Discipline

33. In *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, the court held that convictions involving the use of alcohol are substantially related to the practice of medicine. As the court explained:

> Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician's fitness and competence to practice medicine. Alcohol consumption quickly affects normal

> driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance.

(*Id.* at p. 770.)

34. The Board has adopted a Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th ed, 2016) ("Guidelines") setting forth recommended discipline based on specific violations. For conviction of a substantially related crime (§ 2236) and excessive use of alcohol (§ 2239), the Guidelines recommend a maximum penalty of revocation and a minimum penalty of stayed revocation with five years' probation. In addition to the standard terms and conditions, the Guidelines further recommend the following optional conditions for substance abuse: community service, actual suspension, ethics course, physical and mental evaluation, psychotherapy, abstinence from alcohol and controlled substances, random biological fluid testing, and practice monitoring.

35. Complainant argues that at a minimum, respondent's license should be placed on probation for five years with standard conditions and the substance abuse optional conditions, as well as be required to provide patient notification pursuant to section 2228.1. Respondent contends this is excessively punitive, asserting instead that a public letter of reprimand is appropriate and sufficient to ensure public safety. Alternatively, respondent argues if probation is ordered, it should be limited to two years, as respondent has already completed three years of the PAG program under

similar if not more stringent terms and conditions as those proposed in the Guidelines. Further, respondent argues that the standard condition prohibiting a probationer from supervising nurse practitioners and physician assistants should not be included as it is not supported by the evidence and would unfairly restrict respondent's ability to continue in his current practice.

36. On the night of September 27, 2018, respondent made a series of bad decisions that endangered himself and the public. After an upsetting argument with his ex-wife, he chose alcohol as a coping mechanism, even though he was the on-call surgeon. As a result, his drinking endangered every potential patient who might have needed a medical consultation, until 7:00 a.m. the next morning. Then, after he could not fall asleep, he made an even more egregious misjudgment when he elected to take a long drive to "cool off", notwithstanding having consumed at least three or more alcoholic drinks earlier that night. As a result, his driving endangered himself and the public.

37. Given these uncontroverted facts, a public letter of reprimand is insufficient, and at a minimum, respondent must be monitored. Therefore, probation is necessary to ensure public safety. Respondent has successfully completed three years of the five-year PAG program, which includes conditions which mirror or are substantially similar to those recommended in the Guidelines including: abstinence; random biological fluid testing; therapy; and work site monitoring. Respondent has two years remaining on his contract, has proven his ability to comply with its stringent terms, and has demonstrated a firm commitment to sobriety. It would be unduly punitive, therefore, to require respondent, in essence, to start over with a new five-year probationary term. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817 [the purpose of administrative discipline is public protection, not punishment].) Rather,

placing respondent on probation for two years is more than sufficient as it effectively ensures respondent will have been monitored for a total of five years, consistent with the Guidelines' recommendation.

TERMS AND CONDITIONS

38. Here, respondent's argument is persuasive, there is no public purpose served by restricting respondent's ability to supervise nurse practitioners and physician assistants. In fact, midlevel practitioners working alongside respondent would provide for another person to observe and monitor respondent. Furthermore, there was no evidence respondent has been impaired at work or otherwise unable to supervise appropriately. On the contrary, the overwhelming evidence established respondent is an outstanding surgeon who is well-respected by his colleagues, supervisees, and patients alike. Similarly, the facts of this case do not warrant the imposition of an actual suspension as it serves no public purpose.

PATIENT NOTIFICATION

39. Complainant seeks an order requiring patient notification in this case, because respondent violated section 2239 and used alcohol to the extent that it impaired his ability to practice safely. Respondent disagrees, arguing the plain language of sections 2228.1 ("alcohol abuse") and 2239 ("alcohol use") must be adhered to, and as such, no patient notification in this case is appropriate. Respondent also notes the legislative purpose of section 2228.1 was to address physician misconduct resulting in actual "harm to patient", which is not a factor in this case.

40. In 2018, the California Legislature enacted Section 2228.1 requiring patient notification of physician discipline when the discipline arose from certain misconduct. Subdivision (a) of the statute states, in pertinent part:

On and after July 1, 2019, ... the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board . . . . to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, in any of the following circumstances:

1) A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:

(A) The commission of any act of sexual abuse, misconduct, or relations with a patient or client as defined in Section 726 or 729.

(B) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.

(C) Criminal conviction directly involving harm to patient health.

(D) Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.

[¶] . . . [¶]

41. More specifically, complainant argues the plain language of section 2228.1, subdivision (a)(1)(B), applies to any use of alcohol which impairs a physician's ability to practice safely, and thus mandates patient notification as a condition of any license discipline in this case. Respondent contends that the plain meaning of section 2228.1 applies only to those instances where "alcohol abuse" has been established, and complainant has failed to prove one DUI equates to "alcohol abuse." Thus, a patient notification is not required in this case.

Statutory Construction

42. In interpreting statutory language, the fundamental rule is to determine the lawmakers' intent." (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) The key to statutory interpretation is applying the rules of statutory construction in their proper sequence: (1) plain meaning, (2) legislative history, and (3) reasonableness of a proposed construction. (*Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112, 122; *Riverview Fire Protection Dist. v. Workers' Comp. Appeals Bd.* (1994) 23 Cal.App.4th 1120, 1126.)

A. Plain Meaning

43. The Legislature's chosen language is the most reliable indicator of its intent, because "it is the language of the statute itself that has successfully braved the legislative gauntlet." (*California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 338.) The words of the statute must be given "a plain and commonsense meaning," unless the statute specifically defines the words to give them a special meaning. (*Flannery v. Prentice* (2001) 26 Cal.4th 572, 577.) "If the statutory language is clear and unambiguous, our task is at an end, for there is no need for judicial

construction." (*California School Employees Assn., supra*, 8 Cal.4th at p. 340.) "In such a case, there is nothing for the court to interpret or construe." (*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1239.)

> Nevertheless, the "plain meaning" rule does not prevent a court from determining whether the literal meaning of the statute comports with its purpose. (*California School Employees Assn., supra*, 8 Cal.4th at p. 340; *Katz v. Los Gatos–Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 54.) Thus, although the words used by the Legislature are the most useful guide to its intent, we do not view the language of the statute in isolation. (*Flannery, supra,* 26 Cal.4th at p. 578.) Rather, we construe the words of the statute in context, keeping in mind the statutory purpose. (*Delaney, supra*, 50 Cal.3d at p. 798, 268.) We will not follow the plain meaning of the statute "when to do so would 'frustrate[ ] the manifest purposes of the legislation as a whole or [lead] to absurd results.'" (*California School Employees Assn., supra*, 8 Cal.4th at p. 340, quoting *People v. Belleci* (1979) 24 Cal.3d 879, 884.) Instead, we will "'interpret legislation reasonably and . . . attempt to give effect to the apparent purpose of the statute.'" (*American Tobacco Co. v. Superior Court* (1989) 208 Cal.App.3d 480, 490, quoting *Zidell v. Bright* (1968) 264 Cal.App.2d 867, 869.)

(*MacIsaac v. Waste Management Collection and Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1079.)

44. Complainant reads sections 2228.1 and 2239 together: section 2228.2 states "alcohol abuse ... to the extent that such use impairs the ability of the licensee to practice safely"; and section 2239 states, "the use of ... alcoholic beverages ... to the extent that such use impairs the ability of the licensee to practice safely." Complainant thus argues respondent's use of alcohol on the night of September 27, 2018, impaired his ability to practice safely, and risked patient harm. According to complainant's reading, the patient notification requirement of section 2228.1 applies in every instance a licensee is found to have violated section 2339.

45. Conversely, respondent argues that the common use[6] of the phrase "alcohol abuse" in section 2228.1 connotes a chronic or habitual problem with alcohol, and not a single incident of excessive use. Whereas, section 2239 does not use the phrase "alcohol abuse" and requires only a single use of alcoholic beverages to violate the section. In other words, respondent contends that cause for discipline under section 2239 does not automatically mandate imposition of the patient notification requirements of section 2228.1.

46. The plain language of section 2228.1 is unclear. The positions of both parties are feasible interpretations of the plain meaning of the section. However, if the legislature had intended section 2228.1 to apply in every case where a violation of

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[6] This decision assumes a common use of the term alcohol abuse and not a medical diagnosis under the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM V).

section 2239 is found and probation imposed, it could have explicitly stated so. It did not. Similarly, if the legislature intended section 2228.1 not to apply to single instances of alcohol misuse, it could have so stated. It did not. Thus, it is appropriate to look at the legislative history of the statute.

B. Legislative History

47. Extrinsic aids, including the statute's legislative history, are used to assist in the interpretation of the statute. (*Flannery, supra*, 26 Cal.4th at p. 579.) Section 2228.1 is part of the Patients Right to Know Act of 2018 (Act), and requires medical doctors and osteopathic doctors, in specified circumstances, to provide notice to all patients prior to their appointment if the licensee is placed on probation pursuant to a probationary order effective on or after July 1, 2019. The law makes California the first state to require doctors to notify their patients if their license is placed on probation.

48. The genesis of section 2228.1 is Senate Bill 1448 authored by Senator Jerry Hill in 2018. The Act arose in the wake of the revelations of systemic sexual assault by USA Gymnastics team doctor, Larry Nassar. Three of Dr. Nassar's victims testified in support of the bill. The initial draft of SB 1448 required patient notification by all physicians placed on probation. (*Medical Board of California*, California Regulatory Law Reporter, Vol. 23, No. 2 (Spring 2018), p. 54.) However, after opposition, the language was amended to require disclosure by physicians on probation only if the discipline arose from one or more of the following circumstances: (1) any act of sexual abuse, misconduct, or relations with a patient or client; (2) drug or alcohol abuse directly resulting in patient harm or to the extent such use impairs the ability of the licensee to practice safely; (3) criminal conviction directly involving patient harm; and (4) inappropriate prescribing resulting in patient harm and a

probationary period of five years or more. At a committee hearing, Senator Hill explained this change as follows:

> We did narrow the bill considerably, narrowed it with the focus of patient harm. That really is the criterion that we're looking for and that really made the difference. I mean, when you look at a DUI, if a physician were to get a DUI, that is serious; that is reportable to the Medical Board. But, unless that DUI affected a patient it should not be part of the disclosure. And that's how we interpret it, and that's how we have focused it and funneled the approach to patient harm.[7]

49. Senator Hill's explanation of the law's intent is reflected in the use of the term "alcohol abuse" (section 2228.1), instead of "use of ... alcoholic beverages" (section 2239). The common meaning of "alcohol abuse" implies the practice or habit of drinking too much. (See https://www.oxfordlearnersdictionaries.com/us/definition/american_english/substance-abuse ["the practice or habit of ... drinking too much alcohol"]; https://www.medicinenet.com/alcohol_abuse/definition.htm ["use of alcoholic beverages to excess, either on individual occasions (binge drinking) or as a regular practice"]; https://www.medicalnewstoday.com/articles/alcohol-abuse [the continual

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[7] See Hearing before Assembly Business and Professions Committee, June 19, 2018 (statement of Senator Hill), at 2:04:00-2:04:45, https://www.assembly.ca.gov/media/assembly-business-professions-committee-20180619 (accessed November 1, 2021).

consumption of alcohol despite adverse consequences].) That the Legislature did not intend "alcohol abuse" to mean a single incident of alcohol misuse is supported by Senator Hill's statement that the statute would not apply to a physician with a single driving under the influence condition.

C. Reasonableness of the Construction

50. Finally, to evaluate the reasonableness of the construction, "reason, practicality, and common sense [must be applied] to the language at hand." (*Halbert's Lumber, supra*, 6 Cal.App.4th at p. 1239.) "[C]onsideration of the consequences that will flow from a particular interpretation must be considered. (*Dyna–Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.)

51. Complainant's interpretation of section 2228.1, that patient notification is a requirement for all physicians placed on probation for a violation of section 2239, is not reasonable. The Legislature could have said any physician placed on probation for violating section 2239 must provide patient notification under section 2228.1. They did not. Instead, the Legislature adopted the more specific language of "alcohol abuse" in section 2228.1, rather than "use of ... alcoholic beverages" (section 2239). Thus, for the patient notification requirement of section 2228.1, subdivision (a)(1)(B), to apply, complainant must first establish that respondent (1) engaged in alcohol abuse and (2) that said abuse either resulted in direct patient harm or impaired his ability to practice medicine safely. Complainant did not meet its burden, presenting only evidence of respondent's alcohol use on a single incident of September 27, 2018. Respondent's case is the exact scenario to which Senator Hill explained the statute was not intended to apply. Accordingly, in this case, the patient notification requirement of section 2228.1 is not required and therefore will not be imposed.

LEGAL CONCLUSIONS

1. The Medical Practices Act (§ 2000, et seq.) provides that "protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

2. Complainant has the burden of proving each of the grounds for discipline alleged in the Accusation, and must do so by clear and convincing evidence. (See, *Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) This is a heavy burden and requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt, and must be sufficiently strong that it commands the unhesitating assent of every reasonable mind. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84 [citations omitted].)

Applicable Law

3. The Board is authorized to discipline a license where the licensee has violated the Medical Practices Act. (§ 2227.) Said discipline may include revocation, suspension, placement on probation with terms and conditions the Board or an ALJ may deem proper, or issuance of a letter of reprimand. (*Ibid.*)

4. Pursuant to section 2234, "[t]he Board shall take action against any licensee who is charged with unprofessional conduct." Unprofessional conduct includes the conviction of any offense substantially related to the qualifications, functions, or duties of a physician. (§ 2236, subd. (a).) It also includes "... the use of alcoholic beverages to the extent, or in such a manner to be dangerous or injurious to

the licensee or another, or to the extent that such use impairs the ability of the licensee to practice medicine safely." (§ 2239, subd. (a).)

Causes for Discipline

5. As set forth in Factual Findings 2 through 6, and 36, respondent was convicted of violating Vehicle Code section 21252, subdivision (b) (driving a vehicle with a BAC greater than 0.08 percent.), an offense which is substantially related to the qualifications, functions and duties of a licensed physician. Therefore, cause exists to discipline his license pursuant to sections 2227 and 2236.

6. As set forth in the Factual Findings as a whole, and particularly Factual Findings 2 through 6, 36 and 38, respondent used alcohol in a manner dangerous or injurious to himself or others, or to such an extent his ability to practice medicine safely was impaired. Thus, cause exists to discipline his license pursuant to sections 2227 and 2239, subdivision (a).

Level of Discipline

7. As set forth in the Factual Findings as a whole, and particularly Factual Findings 38 through 55, revoking respondent's license, staying the revocation, and ordering him complete two years of probation, subject to the terms and conditions, as detailed in the Order below is appropriate and sufficient to ensure public safety.

ORDER

The Physician and Surgeon License No. G59697 issued to Antonio Kobayashi, M.D., is REVOKED. However, the revocation is STAYED and respondent is placed on probation for two years upon the following terms and conditions:

1. **Controlled Substances – Abstain from Use.** Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

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

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case,

unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

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

2. **Alcohol - Abstain From Use**. Respondent shall abstain completely from the use of products or beverages containing alcohol.

If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to,

nonadoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

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

3. **Biological Fluid Testing**. Respondent shall submit to biological fluid testing as required by his current PAG program, and submit, at respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Prior to practicing medicine, respondent shall contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

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

If respondent fails to cooperate in a random biological fluid testing program within the specified time frame, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until the final decision on an accusation and/or a

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

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

4. **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 two years of probation, provide 150 hours of free services (e.g., medical or nonmedical) to a community or non-profit organization. If the term of probation is designated for two years or less, the community service hours must be completed not later than six months prior to the completion of probation. 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.

5. **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 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 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.

6. **Notification.** Within seven 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.

7. **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.

8. **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.

9. **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 section 2021(b).

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

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

Travel or Residence Outside California. Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 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.

10. **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.

11. **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 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 Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

12. **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.

13. **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.

14. **License Surrender**. Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to

the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. **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 Board and delivered to the Board or its designee no later than January 31 of each calendar year.

DATE: November 24, 2021

TIFFANY L. KING
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the First Amended Accusation Against: **Antonio Kobayashi Coirin, M.D.** **1552 Coffee Rd., Ste. 200** **Modesto, CA 95355-3122** **Physician's and Surgeon's Certificate No. G 59697,** Respondent.	Case No. 800-2018-048670 **FIRST AMENDED ACCUSATION**

PARTIES

1. William Prasifka (Complainant) brings this First Amended 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 9, 1987, the Medical Board issued Physician's and Surgeon's Certificate Number G 59697 to Antonio Kobayashi Coirin, 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 April 30, 2022, unless renewed.

JURISDICTION

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

4. Section 2227 states:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.
>
> (b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

5. Section 2234, 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.
>
> . . . .

6. Section 2239 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.

7. Section 2236 of the Code states, in pertinent part:

(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.

. . .

(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.

REGULATORY PROVISIONS

8. 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.

FACTUAL ALLEGATIONS

9. On or about September 27, 2018, at approximately 11:55 p.m., a California Highway Patrol sergeant noticed Respondent's vehicle on a local highway, closing on a lead vehicle at a high rate of speed. The sergeant's radar registered Respondent's vehicle at approximately 77

miles per hour. He activated his emergency lights for a traffic stop. Respondent slowed down, stopping his vehicle on the paved shoulder.

10. The sergeant walked to the driver's side and spoke to Respondent through the open driver's side window. He immediately smelled the strong and distinct odor of an alcoholic beverage. He asked Respondent for his driver's license and identified Respondent as Antonio Kobayashi Coirin. Respondent stated that he was driving from Modesto to Los Banos. The sergeant asked Respondent if he had been drinking alcoholic beverages, and Respondent initially denied it, before admitting to drinking one Ketel and soda.

11. The sergeant asked Respondent to step out of his vehicle. The sergeant then smelled the strong and distinct odor of alcohol coming from Respondent's breath and his person. Respondent's eyes were red and watery and his speech was slow and slurred as he talked. Respondent agreed to participate in a number of field sobriety tests to determine if he was able to operate a motor vehicle safely.

12. Respondent performed the following field sobriety tests: nystagmus, Romberg, one-leg stand, hand pat, and finger count. During the nystagmus eye test, Respondent displayed lack of smooth pursuit based on his large, jerking movements. His eyes showed distinct and sustained nystagmus at maximum deviation and onset of nystagmus prior to 45 degrees. During the Romberg balance test, Respondent swayed from left to right and front to rear in a circular manner approximately half of an inch. During the one-leg stand test, Respondent started the test but then immediately put his foot down. He also stopped counting using the instructed thousands series and counted incorrectly the remainder of the test. He continued to put his foot down two more times before the sergeant stopped the test. During the hand pat test, Respondent failed to count as instructed and performed the test very deliberately. He increased his speed as he rolled and chopped with the blade portion of his left hand in the palm of his right hand. Respondent performed the finger count correctly as explained and demonstrated. Respondent provided a breath sample for the preliminary alcohol-screening test that indicated 0.137 percent and 0.135 percent blood alcohol levels.

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13. Due to Respondent's driving, objective signs of intoxication, and performance on the field sobriety tests, the sergeant formed the opinion that Respondent was driving under the influence of alcohol and any further driving by Respondent would be unsafe. The sergeant arrested Respondent and offered the option between a breath and blood test pursuant to implied consent. Respondent's breath results with the Evidential Portable Alcohol System (EPAS) showed Respondent's blood alcohol levels at 0.14 percent and 0.14 percent.

14. During his arrest, Respondent requested permission to answer a phone call he received from "Medical Exchange." Respondent explained to officers that the "Medical Exchange" was from his job as a surgeon and they were trying to reach him because he was the on-call surgeon. The sergeant allowed Respondent to answer the phone to ensure "Medical Exchange" would stop trying to call him and "call the next on-call surgeon."

15. On or about November 27, 2018, the Merced County District Attorney filed a criminal complaint charging Respondent with two misdemeanor violations of driving under the influence and driving with a blood alcohol over 0.08 percent. (Veh. Code, §§ 23152, subds. (a) & (b).)

16. On or about July 8, 2019, in a matter entitled "People of the State of California vs. Antonio Kobayashi Coirin," Merced County Superior Court case number 18CR-06902, Respondent pleaded no contest to driving with a blood alcohol greater than 0.08 percent (Veh. Code, § 23152, subd. (b)). In exchange for the plea, the district attorney's office dismissed the driving under the influence of alcohol allegation (Veh. Code, § 23152, subd. (a)). That same day, Respondent was sentenced to three years of "Conditional Revocable Release" probation, ending on July 7, 2022. Respondent was also ordered to: complete a three-month driving under the influence (DUI) program, abstain from the excessive use of intoxicating beverage, not drive with any measurable amount of alcohol in his blood, submit to chemical testing by any peace or probation officer, and pay various fines and fees for approximately $2,237.53.

17. On or about August 11, 2019, Respondent emailed the Board a Criminal Action Reporting Form disclosing his driving under the influence conviction.

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18. On or about September 27, 2020, Respondent participated in a voluntary interview with investigators from the Medical Board's Complaint Investigation Office. Respondent admitted to driving under the influence on September 27, 2018. Respondent explained that his ex-wife called him after dinner and they got into a contentious argument over the phone. He was very upset and began drinking, hoping that it would help him settle down. He could not fall asleep and thought that a drive would help him "cool off," and then he was arrested. Respondent acknowledged that he was working that day on a "group call." Respondent stated that the on-call "Medical Exchange" phone call was from Doctor's Hospital of Manteca emergency room regarding a patient. Respondent denied ever being under the influence of alcohol while at work and denied consuming alcohol prior to going to work.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

19. Respondent has subjected his Physician's and Surgeon's License No. G 59697 to disciplinary action under section 2227, as defined by sections 2234, subdivision (a), and 2236, in that he was convicted of an offense substantially related to the qualifications, functions or duties of a physician and surgeon, as more particularly alleged in paragraphs 9 through 18, which is hereby incorporated by reference and realleged as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Use of Alcohol Dangerous to Licensee or Others)

20. Respondent has subjected his Physician's and Surgeon's License No. G 59697 to disciplinary action under section 2227, as defined by sections 2234, subdivision (a), and 2239, in that he used 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, as more particularly alleged in paragraphs 9 through 18, which is 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 Number G 59697, issued to Respondent Antonio Kobayashi Coirin, M.D.;

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

3. Ordering Respondent Antonio Kobayashi Coirin, 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 06 2021

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

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