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

In the Matter of the First Amended Petition to Revoke Probation of: Rodney Sidransky, M.D. Physician's and Surgeon's Certificate No. A 78625 Respondent.	Case No. 800-2021-081738

DECISION

The attached Revised 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 March 11, 2022.

IT IS SO ORDERED February 9, 2022.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp MD

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 First Amended Petition to Revoke Probation of:

RODNEY SIDRANSKY, M.D. Respondent

Agency Case No. 800-2021-081738

OAH No. 2021110400

REVISED PROPOSED DECISION[1]

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter virtually via the Microsoft Teams application on December 16 and 17, 2021.

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[1] On January 18, 2022, the Office of Administrative Hearings received a request from the board for clerical/technical error corrections to be made pursuant to California Code of Regulations, title 1, section 1048 (Section 1048). Specifically, the board requested "petitioner" be changed to "respondent" in the title; that the order language (which was inadvertently omitted) be added; and that the decision be entitled "petition to revoke" rather than "first amended" petition to revoke. These requested changes are deemed appropriate under Section 1048, and the first two

Jason J. Ahn, Deputy Attorney General, represented complainant, William Prasifka, Executive Director, Medical Board of California (board), Department of Consumer Affairs, State of California.

Steven H. Zeigen, Rosenberg, Shpall & Zeigen, APLC, represented respondent, Rodney Sidranskey, M.D.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 17, 2021.

FACTUAL FINDINGS

Background

1. On April 10, 2002, the board issued physician's and surgeon's certificate number A 78625 to respondent. Respondent's license will expire on July 31, 2023, unless renewed.

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requested corrections were made in this revised proposed decision. During the hearing, and as explained in paragraph 10 of the original proposed decision (and this revised proposed decision), complainant amended the petition without objection and filed a first amended petition to revoke probation with OAH. The first amended petition to revoke probation was also entered into evidence as Exhibit 30. Thus, the last request for correction is denied. Other than the two noted technical changes, no other changes were made in this revised proposed decision.

THE 2016 DISCIPLINARY MATTER

2. On February 18, 2016, the board filed an accusation against respondent in Case No. 800-2015-011746. The accusation contained two causes for discipline. The first cause for discipline was for excessive use of alcohol or drugs. The accusation detailed respondent's extensive history of alcohol use, and admission to the emergency room following a fall, as well as treatment for alcohol dependency. Another hospital admission showed traces of various drugs in his system (benzodiazepine and TCH [marijuana][2]). Respondent's belongings were searched during one of the admissions and respondent was found to be in possession of multiple controlled substances (Xanax, Suboxone, klonopin, and oxycodone)[3]. The second cause for

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[2] Benzodiazepines are Schedule IV controlled substances pursuant to Health and Safety Code section 11057, subdivision (d), and dangerous drugs pursuant to Business and Professions Code section 4022. Respondent had a medical marijuana card for legal use of marijuana.

[3] Alprazolam (trade name Xanax) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d). Suboxone is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e). Clonazepam (trade name Klonopin) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d). Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b). All these substances are dangerous drugs pursuant to Business and Professions Code section 4022.

discipline was for prescribing Carisoprodol[4] to himself on two occasions. The accusation also contained an allegation that respondent suffered from a mental and/or physical illness and was not safe to practice pursuant to Business and Professions Code section 822.

3. On June 16, 2016, respondent entered into a stipulated settlement, wherein he admitted the truth of each and every allegation contained in the accusation.

4. By decision and order effective September 16, 2016 (2016 decision and order), the board revoked respondent's physician's and surgeon's certificate and immediately stayed the revocation for seven years subject to various terms and conditions.

THE 2018 DISCIPLINARY MATTER

5. On January 26, 2018, the board filed an accusation against respondent in Case No. 800-2017-038264, alleging four causes for discipline as follows: gross negligence; repeated acts of negligence; failure to maintain adequate records; and unprofessional conduct. The allegations involved respondent's care and treatment of one patient. As a disciplinary consideration, the accusation cited the fact that respondent was on probation as a result of the 2016 decision and order.

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[4] Carisoprodol (trade name Soma) is a Schedule IV controlled substance pursuant to the Federal Code of Regulations, Title 21, Section 812, and a dangerous drug pursuant to Business and Professions Code section 4022.

6. On August 3, 2018, respondent entered into a stipulated settlement with the board resolving the disciplinary matter, wherein respondent admitted that, if the matter were to proceed to hearing, the board could make a prima facie case against him and that his license was therefore subject to discipline.

7. By decision and order effective October 18, 2018 (2018 decision and order), the board revoked respondent's physician's and surgeon's certificate and immediately stayed the revocation for eight years subject to various terms and conditions. The 2018 decision and order also provided that, when effective, it would supersede the probation conditions and probationary term previously set in the 2016 decision and order. The 2018 decision and order contained the following probation 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 defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.
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> 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 until a final decision on an accusation and/or a petition to revoke probation. . . .

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 a final decision on an accusation and/or a petition to revoke probation . . . .

3. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon the request of the board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the board or its

> designee. Respondent shall make daily contact with the board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the board or its designee. The board may order the respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the respondent. . . .
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> [¶] . . . [¶]
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> 23. 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. . . .

8. On October 10, 2017, respondent signed a document entitled, "Acknowledgement of Decision," in which he agreed that he had received a copy of the 2018 decision and order and that a board representative had discussed all applicable probation conditions with him.

9. It is noted that conditions 1 and 2 contain additional language (not reproduced here) that require the board to file a petition to revoke probation and

request a hearing be set within certain time limits following the issuance of a cease practice order. The provisions further purport to limit the time an administrative law judge has to issue a proposed decision to 15 days. This was brought to the attention of OAH on January 4, 2021, when someone from the board called to find out why the decision had not yet been issued. However, neither an administrative law judge nor anyone from OAH was a party to 2018 stipulated settlement, which was an agreement solely between respondent and the board to resolve the 2018 disciplinary matter without a hearing. While the board is free to limit its own ability to do or not do certain things (by agreement with a respondent), an administrative law judge or OAH cannot be bound by the terms of a respondent's probationary condition. Such a term is void as a matter of law. Government Code section 11517, subdivision (c)(1), provides that a proposed decision shall be issued within 30 days of when a matter is submitted for decision, and that is what controls here.

The First Amended Petition to Revoke Probation

10. On October 19, 2021, complainant filed a petition to revoke probation. On December 17, 2021, following the second day of hearing, complainant filed a first amended petition to revoke probation, making minor changes. Respondent did not object to the first amended petition to revoke probation, as the added issues had already been addressed during the hearing. The first amended petition to revoke probation alleged three causes for discipline as follows:

- Failure to comply with biological fluid testing requirements by not calling in to see if he was selected to provide a biological fluid sample on May 22, 2020; October 31, 2020; January 3, 2021; February 13, 2021; April 22, 2021, August 13, 2021; and October 18, 2021 (violation of probation condition number 3)

- Failure to abstain from the use of alcohol on June 3, 2021, and June 19, 2021 (violation of probation condition number 2)

- Failure to abstain from the use of controlled substances on September 8, 2021, and September 10, 2021 (violation of probation condition number 1)

11. Respondent timely filed a notice of defense; this hearing followed.

Missed Check-Ins

12. The following factual findings were derived from documentary evidence; the testimony of Jennifer Saucedo, Assistant Governmental Program Analyst with the board; and the testimony of respondent.

13. The board contracts with FSSolutions (FSS) for licensees on probation to call in to see if they are required to submit a biological fluid sample. By the terms of respondent's probation conditions, he was required to make contact with FSS on a daily basis.

14. Respondent failed to contact FSS on to see if he was selected to provide a biological fluid sample on May 22, 2020; October 31, 2020; January 3, 2021; February 13, 2021; April 22, 2021, August 13, 2021; and October 18, 2021.

15. Ms. Saucedo sent multiple letters to respondent regarding missed check-ins, advising him that failure to call in to FSS constituted a probation violation.

16. Respondent's testimony regarding the missed check-ins is summarized as follows: He did not dispute that he failed to contact FSS on each of those dates. He did not provide the board with reasons for the missed check-ins because he was not asked by anyone at the board to provide one. He has four alarms on his phone to

remind him when he should call in. He has the FSS application downloaded on his iPad. He is not trying to deceive anyone. The reasons he did not call FSS on the specified dates are as follows:

- May 22, 2020: he missed work and slept all day. He felt like he had a "covid-like" sickness.
- October 31, 2020: he and his wife were on vacation, having just arrived at their destination after taking a late night flight. Due to jet lag and confusion he forgot to check-in.
- January 3, 2021: he and his wife were in the middle of closing on their first home together so he did not call in.
- February 13, 2021: he had just received his second covid-19 vaccine and had a "very strong reaction" so he slept the whole day.
- April 22, 2021: he missed work because he had blood emesis and was vomiting all day.
- August 13, 2021 – he did not recall the reason.
- October 18, 2021: he did not recall the reason.

17. Cause exists to revoke respondent's probation for the seven probation violations that occurred on May 22, 2020; October 31, 2020; January 3, 2021; February 13, 2021; April 22, 2021, August 13, 2021; and October 18, 2021. While it is understandable that, on occasion, someone may forget to call-in or become ill, there is no exception for illness and this was not simply a few times; it was seven times over

the course of a little more than a one-year period. None of respondent's excuses were grounds to excuse the failed check-ins.

Failure to Abstain from Alcohol and Controlled Substances

TESTS RELATING TO ALCOHOL

18. Phosphatidylethanol (PEth) is a metabolite of ethanol (alcohol) that forms in the red blood cells when alcohol is present. The cutoff for purposes of lab testing to show the presence of alcohol is 20 ng/mL.

19. On June 3, 2021, respondent provided a blood spot sample after being selected to do so, which was tested in accordance with his probation conditions. Respondent's result showed a PEth level of approximately 26 ng/mL. There was nothing unusual noted with the integrity of the sample with respect to the chain of custody.

20. On June 19, 2021 respondent provided a blood spot sample after being selected to do so, which was tested in accordance with his probation conditions. Respondent's result showed a PEth level of approximately 68 ng/mL. There was nothing unusual noted with the integrity of the sample with respect to the chain of custody.

21. Due to respondent's adamant denial that he consumed alcoholic beverages, respondent had his hair tested on August 2, 2021, almost two months after the original samples in June 2021. This test looks for the presence of a different metabolite of alcohol, ethyl glucuronide (EtG). Respondent's hair sample tested negative for that metabolite.

TESTS RELATING TO TRAMADOL

22. Tramadol hydrochloride (trade names Ultram, Ultracet) is an opioid analgesic, a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

23. On September 8, 2021, respondent provided a urine sample after being selected to do so. Respondent's sample showed the presence of 5,079 ng/mL of tramadol and 1,123 ng/mL (cutoff 100 ng/mL) of tramadol metabolite. There was nothing unusual noted with the integrity of the sample in the chain of custody. This sample was split and sent to an independent lab for reconfirmation. That split sample confirmed the presence of tramadol.

24. On September 10, 2021, respondent provided a urine sample after being selected to do so. Respondent's sample showed the presence of 5,221 ng/mL of tramadol and 1,173 ng/mL (cutoff 100 ng/mL) of tramadol metabolite. There was nothing unusual noted with the integrity of the sample in the chain of custody. This sample was split and sent to an independent lab for reconfirmation. That split sample confirmed the presence of tramadol.

25. On October 22, 2021, respondent had a hair test completed by United States Drug Testing Laboratories. Those lab results showed negative for tramadol.

26. On October 28, 2021, respondent had a fingernail test completed by United States Drug Testing Laboratories. Those lab results showed negative for tramadol.

CEASE PRACTICE ORDER

27. As a result of the June 2021 and September 2021 tests, the board issued a cease practice order to respondent on October 5, 2021, due to the violations of Condition Nos. 1 and 3 of respondent's probation inthe 2018 decision and order. According to respondent, he received and has remained in compliance with that order.

RESPONDENT'S TESTIMONY

28. The following is a summary of respondent's testimony and his curriculum vitae: respondent received his Bachelor of Science in Electrical Engineering in 1993, followed by his Doctor of Medicine in 2000. He completed residency programs in emergency medicine and psychiatry. Respondent currently works at Crownview Medical Group, where he has been since 2019. He provides psychiatric services to all ages. He specializes in treating individuals with Attention Deficit Hyperactivity Disorder, Addiction, Anxiety, Depression, Bipolar, Schizophrenia, traumatic brain injury, and Alzheimer's disease. From 2016 to 2019, respondent has worked in various medical settings, where he has provided addiction counseling and other medical and psychiatric services.

29. Respondent denied ever consuming an alcoholic beverage since his probation began in 2016, and maintained he has not taken tramadol in his entire life. Respondent was adamant that he has remained sober since 2016. He attends Alcoholics Anonymous on a daily basis and is a sponsor for eight people. He attends the Pacific Assistance Group meetings every Monday. He had joined Pacific Assistance Group right at the beginning of his first probation, in 2016. It is a group dedicated to medical professionals in recovery. He randomly tested over 42 times and never had a positive test. He took and passed the University of California, San Diego's Physician

Assessment and Clinical Education program (PACE) in 2019 and has implemented all of the PACE recommendations.

Respondent's sobriety is more important to him than his marriage and his career because both depend on his sobriety. Living a sober lifestyle is a fantastic way to live. Being a psychiatrist is an honor and it is all he knows how to do. He has taken many continuing education courses, and submitted proof of the same. He is the sole provider for his family and would like to keep practicing medicine.

Respondent's testimony was sincere, direct, and credible.

Expert Testimony

TESTIMONY OF JAMES FERGUSON, D.O.

30. James Ferguson received his Bachelor of Science degree in environmental health in 1977. He obtained his Doctor of Osteopathy degree in 1981. He is a distinguished fellow of the American Society of Addiction Medicine and a diplomate of the American Board of Addiction Medicine. Dr. Ferguson is on the editorial board of the Journal of Addiction Medicine and has held many positions over the years, including Chief Medical Review Officer, Senior Medical Review Officer, Urgent Care Physician, and a commissioned officer for the United States Public Health Service. Dr. Ferguson has also worked in private practice and has given many professional presentations as follows: Monitoring Program Procedures, Specimen Selection and Issues; Ethanol Biomarkers; Forensic Drug Testing: How it Benefits Monitoring Programs; Drug Testing Issues in Monitoring Programs; Urine Luck: Office-Based Drug Testing for Addiction Clinicians; Urine Dilution in Monitoring Programs; The Basics of Being an MRO; Validity Testing Issues in Workplace Drug Testing; and Alternative Matrices in Workplace Drug Testing. Dr. Ferguson is the Medical Director

for Recovery Management Services at FSS, which has a contract with the board for the testing of licensee biological fluid samples. He has held this position since 2011.

Dr. Ferguson testified at the hearing on behalf of complainant, and also provided a declaration. The following is a summary of both: Dr. Ferguson reviewed all the biological fluid samples and results discussed above. Dr. Ferguson also reviewed the chain of custody documents concerning the same. There was nothing unusual noted in the integrity of any of the samples provided.

When asked if the hair test respondent provided in August 2021 invalidated the previous two blood spot samples that were positive for PEth in June 2021, Dr. Ferguson said it did not. He was adamant that the only thing that can actually invalidate a positive test is when a split specimen in taken and that split sample is retested by a different laboratory, and the hair test did not meet this criteria. Further, the hair test looks for a different metabolite of alcohol, EtG, than the metabolite tested for in blood spot samples, which is PEth. Dr. Ferguson also pointed out that a hair sample is more sensitive of a test than a blood spot test because it is a "long period" specimen, and as such, it takes more ingestion of whatever is being tested for to induce a positive in a hair test. When looking at respondent's test results, he noted that whatever amount of alcohol respondent ingested in June 2021 was not enough to show up on the hair test, but the hair test did not invalidate the positive PEth results. Given that each type of biological test (hair, urine, blood) have different collection methods, different cutoff values, and different retention values, the results in one type of test do not invalidate results in another test.

Regarding the two tests in September that showed the presence of tramadol, again, Dr. Ferguson noted that the only thing that would invalidate these tests would be if a split sample were to be taken and retested at a different lab and showed

different results. That did not happen here. A split sample, in fact, was taken of both the September 8, 2021, and September 10, 2021, samples and sent to an independent lab. Both split sample tests confirmed the presence of tramadol and tramadol metabolite.

Dr. Ferguson said that the hair test respondent submitted to in October 2021 did not invalidate the September 2021 tests because, for the same reasons as previously discussed in connection with the June 2021 tests for alcohol, hair tests are different than urine tests and whatever amount of tramadol respondent ingested to cause the urine to be positive in September may not have been sufficient to show up in a hair test in October 2021.

Accordingly, Dr. Ferguson concluded that the June 2021 tests showed respondent consumed alcohol and the September 2021 tests showed respondent consumed tramadol.

TESTIMONY OF JOSEPH JONES PH.D.

31. Joseph Jones obtained a Bachelor of Science degree in chemistry in 1989, a master of science in chemistry in 1998, and a Ph.D in public health in 2017. Dr. Jones is a member of the American Chemical Society; American Association of Clinical Chemists; Research Society on Alcoholism; Midwest Association for Toxicology and Therapeutic Monitoring; Clinical Laboratory Management Association; American Public Health Association; Society of Hair Testing; Society of Forensic Toxicologists; The College on Problems of Drug Dependence; American Society of Addiction Medicine; Chicago Chromatography Discussion Group; and the Society of Peth Research. Dr. Jones has extensively published in 35 separate professional journals, the subjects of which include biological fluid testing, specifically, PEth, EtG, and hair testing. Dr. Jones

has also peer-reviewed the work of other professionals for publication in professional journals, which included subjects such as chemistry, mass spectrometry, toxicology, drug testing and analysis, alcoholism, and forensic chemistry.

Dr. Jones has held many positions over the years, including senior certifying lab official, data reviewer for a laboratory, supervisor for an occupational lab testing service, and certifying scientist. Dr. Jones is also on the national registry of certified chemists as a toxicological chemist and has testified as an expert in unemployment hearings, family court, civil court, criminal court, and at military courts-martial. Dr. Jones is currently the CEO for United States Drug Testing Laboratories.

Dr. Jones testified at the hearing on behalf of complainant, and also provided a declaration. The following is a summary of both: Dr. Jones reviewed all the biological fluid samples and results discussed above. Dr. Jones' testimony echoed much of what Dr. Ferguson stated. Dr. Jones noted that respondent's excuses as to why the two positive tests for alcohol may have occurred in June 2021 (that he used hand sanitizer and ate chicken madeira) were not plausible. First, he noted that when one cooks with alcohol, as is the case with chicken madeira, the alcohol boils out and there would not be enough to render a positive test. Regarding hand sanitizer, a subject he has actually written a paper about, there is simply not enough dermal transfer of ethanol to yield a positive PEth test.

Regarding the August 2021 hair test that showed negative for alcohol, Dr. Jones said that this test has no bearing on the June 2, 2021, and June 19, 2021 blood spot test results for many reasons. Thus, the result of the first sample has no bearing on the second sample. The collection of the hair it is different than collecting a blood spot sample. Substances also leach out of the hair differently than the blood because of personal hygiene. A person who is planning on providing a hair sample can accelerate

the rate at which the substance will leach from their hair (washing, cutting, et c.). There are also very different thresholds for positivity. The amount of drinking to generate a low level PEth can be due to much less drinking than that required to show up positive on a hair test. A hair test is not as sensitive. A PEth test is therefore very good at detecting relapse (from having a drink or two) whereas a hair test is more focused on someone who drinks much more.

Dr. Jones disagreed with respondent's expert, Amadeo J. Pesce Ph.D., DABCC. Specifically, Dr. Pesce pointed out that there was no evidence of alcohol use in subsequent hair or urine tests; while Dr. Jones said this was technically true, it does not discount the two positive June 2021 PEth tests. Further, he noted that Dr. Pesce cited his article, "Ethyl glucuronide in hair and fingernails as a long-term alcohol biomarker Addiction" 2014 Mar; 109(3): 425–431, which contained the statement "EtG in hair and fingernails as an objective long-term, up to 12 weeks, is a qualitative indicator of any alcohol use." Dr. Pesce used this article to support his conclusion that if the two June 2021 blood spot tests were positive for PEth, and EtG has a 12-week life, the hair test respondent took in August 2021 should have been positive. However, Dr. Jones said Dr. Pesce's interpretation of his study was taken out of context. Specifically, his study looked at college students who drank heavily on a daily basis – not someone who has an occasional drink. For that reason, Dr. Pesce's conclusion is "patently absurd."

Further, Dr. Jones takes issue with Dr. Pesce's attack on the reliability of blood spot tests. According to Dr. Jones, Dr. Pesce believes that certain hematocrit levels must be present to be a valid test, and the blood spot tests do not indicate what levels of hematocrit were present. Hematocrit is the ratio of the solids to liquids present in a blood sample. Dr. Pesce commented in his declaration that "to estimate plasma concentrations is highly dependent on hematocrit of the blood." Dr. Pesce cites an

article he authored regarding therapeutic drug monitoring (TDM). Dr. Jones noted that PEth does not reside in plasma; it resides in the phospholipid membranes of blood cells. For this reason, TDM interpretation is very different than PEth testing and interpretation. In other words, the only reason a person would need to know the hematocrit levels would be if you were doing TDM, for example, in a hospital setting - to see if a person is taking a medication as prescribed. When a PEth test is completed, it is not to test the level or amount of ethanol a person is consuming; it is merely to confirm the presence of the metabolite. All that matters is that it is more or less than the cutoff. Even if we knew the hematocrit level for the PEth tests, the effect of the hematocrit level has no bearing on the results. Thus, there does not need to be any adjustment or accounting for hematocrit levels. In Dr. Jones's view the June 2021 tests were valid.

Regarding the positive tests for tramadol in September 2021, the October 22, 2021, hair sample does not undermine the validity of the September 2021 tests. The proper way to invalidate a test is to split the sample and retest the same sample; not take a new sample and test it using a different type of test. Using a split sample to reconfirm a positive has been the standard in the scientific community for over 30 years. Each type of biological fluid test or hair test have different sensitivities, plus, we do not know what respondent did in between the time the two different tests were conducted (i.e. wash his hair or cut his hair). Also, it is important to note that the hair test is designed for a person who is abusing a substance and then going abstinent for a few days; it is not designed to detect the person (like the PEth test) that ingests a substance only occasionally.

Dr. Jones also does not believe the October 28, 2022, fingernail sample that tested negative for tramadol undermines the positive tramadol tests in September

2021. Again, like hair, fingernail tests have a longer detection threshold. The detection threshold for blood is 1 to 2 days; the detection threshold for urine is 2 to 3 days; the detection threshold for fingernails is 4 to 6 months. The longer the detection window, the more of a substance it takes to yield a positive result. This is because the fingernail test is looking for the substance abuser, not the occasional user.

Dr. Jones concluded respondent's September 2021 samples were consistent with respondent not being abstinent from alcohol during the two to four weeks prior to the tests and that the September 2021 positive tramadol tests, which were reconfirmed by splitting both samples and retesting them at an independent lab, are therefore, accurate.

TESTIMONY OF AMADEO PESCE, PH.D.

32. Amadeo Pesce received his Bachelor of Science degree in biology in 1960. He received his Ph.D in biochemistry in 1964. He has been a lab director in some form for over 50 years. He has been an assistant professor in experimental medicine, pathology, and laboratory medicine. He has been an adjunct assistant professor where he directed a research laboratory performing immunoassays for testing proteins and immunohistology. Dr. Pesce belongs to the American Chemical Society; American Association for Clinical Chemistry; Society of Experimental Biology and Medicine; National Academy of Clinical Biochemistry; Fellow, Association of Clinical Scientists; Association of Clinical Biochemists; Clinical Laboratory Management Association; and the San Diego Section AACC. He has received seven different awards in various areas such as biochemistry, toxicology, and clinical science. Dr. Pesce has served as a thesis advisor to seven students between 1971 and 1992. Dr. Pesce has 271 publications in peer reviewed journals, magazines, and online websites. He has also written 36 books and holds five patents pertinent to his work as a clinical chemist. Dr. Pesce is currently

the laboratory director at Birdrock Laboratory which, performs urine testing for pain management, addiction centers, and performs routine testing.

Dr. Pesce reviewed all relevant lab tests and documents pertinent to these proceedings. Dr. Pesce testified at the hearing and completed a declaration. The following is a summary of his testimony and declaration: Dr. Pesce believes that the amount of blood in a blood spot specimen can affect the validity of the blood spot test results. He said that the amount of hematocrit in the specimen matters and it concerns him that we do not know the amount of hematocrit in respondent's two June 2021 blood spot tests. Without knowing the actual amount of the blood spot specimen calls into question the accuracy of the result. He cited an article that he wrote, wherein he stated "The use of DNS assays to estimate plasma concentrations is highly dependent on the hematocrit of the blood . . . ." as support for his opinion.

Dr. Pesce also thinks that there is significance in the fact that the two June 2021 blood spot tests show such different results; the earlier test is barely above the cutoff and the later test is much higher. This, to him, suggests "significant alcohol usage" in that time frame. Dr. Pesce estimated it would have been at least four to six drinks per week. Thus, with that level of alcohol use, the hair test taken in August 2021 should have been positive for alcohol. In that respect, the negative hair test calls into question the prior positive blood spot tests.

Dr. Pesce also finds the two positive tramadol tests in September to be suspect because the results are so similar, in fact, almost identical (suggesting they may have been the same sample). Dr. Pesce also feels that the subsequent October 2022 hair test should have shown the presence of tramadol because of the high amount of tramadol detected in the September 2021 urine samples. Dr. Pesce felt the data is "conflicting" because other than the tests at issue, there are over 200 test results that

have all been negative for alcohol and tramadol. If respondent was using tramadol or consuming alcohol, he would expect to see it show up in more than just these tests.

Dr. Pesce concluded that the June and September 2021 tests are therefore "too unreliable to be deemed valid."

EVALUATION OF EXPERT TESTIMONY

33. A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1318-1319.) In resolving any conflict in the testimony of expert witnesses, the opinion of one expert must be weighed against that of another. In doing so, consideration should be given to the qualifications and believability of each witness, the reasons for each opinion, and the matter upon which it is based. California courts have repeatedly underscored that an expert's opinion is only as good as the facts and reason upon which that opinion is based. (*Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 924.)

34. Relying on certain portions of an expert's opinion is entirely appropriate. A trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal. 3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.* at pp. 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal. App. 2d 762, 767.) The fact finder may also reject the testimony of a

witness, even an expert, although it is not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal. 3d 875, 890.)

35. All three experts were exceptionally well-qualified to testify regarding the biological fluid testing and interpretation of results. All three experts were credible. However, the testimony of Dr. Ferguson and Dr. Jones is deemed more helpful in resolving the issue at hand: the reliability of the results for respondent's two June 2021 positive tests for alcohol and two September 2021 positive urine tests for Tramadol.

First, there were no noted issues regarding the integrity of any of the samples with respect to the chain of custody. Although Dr. Pesce called into question the reliability of the two tramadol tests from September 2021 because they were so similar (suggesting it might have been the same sample) there is no objective evidence to support this theory.

Second, Dr. Ferguson and Dr. Jones both agreed that the proper way to invalidate a test is to split the sample and retest that sample at an independent laboratory to see if the results are different. The splitting of the samples did not yield different results. The two September 2021 urine samples that tested positive for tramadol were split and reconfirmed.

Third, Dr. Ferguson and Dr. Jones persuasively explained that the detection periods and sensitivity of urine, blood, and hair tests are all different. The threshold cutoffs to detect the presence of a relevant substance is different. Thus, the fact that the hair test in August 2022 tested negative does not undermine the positive PEth results from June 2021, and the October 2021 hair test does not undermine the positive urine tests from September 2021 that showed the presence of tramadol, which were also reconfirmed. It was also persuasive that each biological medium is collected

differently, tested differently, and used to detect a specific kind of user. Specifically, the hair (and nail) tests are used to look for a chronic abuser; the urine and blood tests are used to seek out the occasional user; therefore it is not surprising that the tests that were performed subsequent to the two June 2021 positives and two September positives (and two reconfirmations) were negative; they have no bearing on the earlier tests.

Fourth, Dr. Pesce's testimony regarding the hematocrit levels in the blood, though relevant for purposes of TDM, does not appear to relevant in PEth testing, which is not seeking information about therapeutic drug levels; again, it is only looking for the bare presence of the metabolite.

Finally, it is not persuasive that Dr. Pesce feels the positive tests are not accurate because respondent tested over 200 times and every test was negative except the isolated few tests at issue here. Again, as Dr. Ferguson and Dr. Jones explained, the point of the PEth and urine tests, which are more sensitive than hair tests, are to seek out the occasional user, not the abuser.

Accordingly, the two June 2021 PEth tests (positive for alcohol) and two September urine tests (positive and reconfirmed for tramadol) are deemed valid and reliable.

Character Evidence

36. Duane Rogers, Psy.D., wrote a letter and testified at hearing. Both are summarized as follows: Dr. Rogers is a licensed marriage and family therapist (LMFT). He has been involved with the case management and professional monitoring of Department of Consumer Affairs licensees since 1982. He currently works as an Area Administrator and Case Manager, and the local health facilitator, for the Pacific

Assistance Group. Pacific Assistance Group is a statewide group of facilitators. Every county has two or three offices that operate independently. It is a group that works with those in the health care field who are in recovery, and one of the purposes of the group is to help individuals get their licenses reinstated. Respondent joined Pacific Assistance Group by self-referral in February 2016. When respondent first began the group, he was not yet on probation. When an individual joins the group, they have to sign a very strict contract that includes biological fluid testing. Respondent tested 14 to 16 times between March 2016 and September 2016, and always tested negative. In 2016, when respondent began his probation, the board took over all the testing. Respondent still attends the group every Monday evening. Respondent was devastated when all this happened because he was adamant that he is clean. Dr. Rogers believes respondent and has not observed or suspected any deviation from respondent's sobriety.

37. Swend Holland, M.D., wrote a letter and testified at hearing. Both are summarized as follows: Dr. Holland is respondent's practice monitor and has known respondent for five years. He sees respondent on a weekly basis and communicates with respondent almost every day. Respondent is very active in Alcoholics Anonymous the Big Book Awakening program. Dr. Holland has not observed anything in respondent's behavior or medical charting that would indicate he has had a relapse. Respondent helps many people in recovery and Dr. Holland is aware of the basis for the petition to revoke probation and believes respondent's long history of compliance with his probation should be considered.

38. Mark Meldon, D.O., wrote a letter on respondent's behalf, which is summarized as follows: Dr. Meldon first met respondent when respondent interviewed for an open psychiatrist position in November 2019 at Dr. Meldon's outpatient mental

healthcare practice, Crownview Medical Group. He hired respondent on the spot due to respondent's extensive knowledge of addiction medicine. Respondent shared his personal journey of addiction recovery with Dr. Meldon, and Dr. Meldon was able to see how important it was for respondent to help others in recovery. Dr. Meldon served as respondent's supervising physician while he worked at Crownview, and spent two to three days a week with respondent over a two-year period. Dr. Meldon felt respondent always gave sound medical advice and met Crownview's standards for good patient care. Dr. Meldon never observed any signs of relapse. Dr. Meldon "wholeheartedly" supports respondent and is confident that respondent has maintained his sobriety.

39. Jonathan Bear wrote a letter on respondent's behalf, which is summarized as follows: Mr. Bear has known respondent for one and a half years. He typically has daily contact with respondent at meetings during "Big Book" study. Respondent has helped Mr. Bear with his own sobriety and serves as a role model for him. He holds respondent in high regard, and characterizes him as a compassionate and responsible member of Alcoholics Anonymous. Mr. Bear has not noticed any changes in respondent's behavior that would suggest he is under the influence of any mind-altering substance. Respondent's sobriety is very important to respondent, and Mr. Bear does not believe respondent would go against anything that contravenes the "spirit and traditions" of Alcoholics Anonymous.

40. Kathy Dobbersteen, Ed.D, wrote a letter on respondent's behalf, which is summarized as follows: She has known respondent for over three years. A close friend recommended respondent to her so someone close to her could seek treatment for acute anxiety and depression. Dr. Dobbersteen feels respondent is a very caring individual and is always available if she has an urgent concern. Respondent is open about his life and cares deeply about his patients. Respondent is a leader in the

Alcoholics Anonymous community. He is passionate about his sobriety and helping others maintain their sobriety. Respondent always speaks about how grateful he is to have achieved his current life and would not do anything that would risk that accomplishment.

41. Anna Glynn wrote a letter on respondent's behalf, which is summarized as follows: Ms. Glynn has been respondent's patient for almost two years. He has been a positive influence in her life. Out of all the psychiatrists she has encountered, respondent is the best. He genuinely cares about her as a patient. She has changed her life as a result of respondent's guidance. Respondent introduced her to the Big Book Awakening Fellowship," in which he is an active member and advocate. Ms. Glynn described respondent as a legend in the Big Book program. Respondent has always been transparent about his life in recovery. He is humble, knowledgeable, and has integrity. Respondent "practices what he preaches" and she is proud to have him as a doctor.

42. Delia Lozoya wrote a letter on respondent's behalf, which is summarized as follows: Ms. Lozoya met respondent in February 2021 when she was looking for a psychiatrist to evaluate someone close to her. This individual had been struggling for two years with mental health issues and is very difficult to reach. Respondent maintained patients and was able to gain the trust of the individual who needed treatment, which led to that patient becoming stable over time.

43. Monti Ricasa has known respondent since 2016. Respondent has always been one of his sponsors in sobriety and has been a blessing. He has met respondent at his home for meetings and he has also picked her up and driven him to Alcoholic's Anonymous and Big Book Awakenings meetings. Respondent goes above and beyond for all of the individuals he sponsors. Respondent sends daily meditation and prayers

for them to start their day, and Mr. Ricasa does not know many people who have that level of concern or dedication to individuals they sponsor. Respondent even interprets the Big Book meetings into Spanish for those who do not speak English. "Words cannot explain" the type of humanity and concern for others that respondent exhibits.

44. Chris Rosas wrote a letter on respondent's behalf, as follows:

> I, Chris Rosas, have known [respondent] for the better part of five (5) years at which time he became my sponsor and I, his sponsee, for the treatment of alcoholism. Without him being a constant in this difficult part of my life's journey, I would not be be where I am today. His continued support has changed my life for the better and I wouldn't trade it for the world. In all the years that I've known him, I have never known [respondent] to ever be under the influence of alcohol. We communicate on a daily basis via text where he sends inspirational quotes and passages to continue his support in my recovery journey. [Respondent] is a kind and spiritual family man who is intelligent and devoted to all those that he's taken under his wing for support. I will be forever grateful to him for all that he has done and continues to do for me. . . .

45. Rosanne State, M.D., wrote a letter on respondent's behalf, as follows:

> I have known [respondent] for the past 18 months. I have seen and interacted with [respondent] on a weekly or biweekly basis since that time. [Respondent's] recovery

efforts are exemplary. He is a highly spiritual, honest, willing, and kind man, who I've been blessed to

know. Indeed, I look to him as a role model of recovery, who inspires me each time I interact with him. [Respondent] has generously made himself available to me when I need advice about recovery, and I often turn to him for his wise counsel. He is always patient, listens attentively, and shares his wisdom selflessly. [Respondent] truly impresses me as someone who recognizes that recovery is a gift and that he grows by sharing that gift with others. He is a man who lives to serve others.

[Respondent] and I are both participants in the Pacific Assistance Group (PAG), a program for healthcare professionals in recovery under the direction of Duane E. Rogers, Psy.D., MFT. At each meeting, we do a recovery reading and then share our experience, strength, and hope based on the themes of the reading. [Respondent] always shares both his scholarly knowledge about the AA twelve step program, and his rich, lived experience of recovery. I have learned so much from him; he has helped me immensely on my recovery journey. [Respondent] finds the time in a busy professional schedule to sponsor several men in AA; He facilitates multiple AA Step Studies, including a Big Book Awakenings Step study in Spanish. I am also aware that [respondent] is frequently called upon professionally to

> treat patients with drug and alcohol problems- a task he approaches with great enthusiasm and dedication. It is not surprising that these patients - who can be very challenging to work with- thrive under his care. I am honored to call [respondent] a colleague and a mentor. There is no question in my mind that [respondent's] exemplary recovery is absolutely genuine, and that [respondent] is and has been sober for many years. He truly embodies the program of AA in a spirit of unfailing gratitude, humility, and faith. He is a loving husband, father, and grandfather, who is devoted to his family. My own recovery has been so enriched by my interactions with [respondent], by witnessing his sobriety week after week for the past 18 months, and - beyond that- his remarkable recovery. Recovery is a spiritual path that [respondent] follows with sincere devotion and love; Sobriety is a prerequisite for recovery . I know [respondent] treasures recovery beyond measure, and would never compromise his sobriety. . . .

46. Tiffany Tucker wrote a letter on respondent's behalf, which is summarized as follows: She has known respondent for three years. He has provided excellent care for her and several other individuals she knows. She has full knowledge of why the hearing is occurring and supports respondent. She has never seen respondent appear to be under the influence of any substance and feels that the positive tests must be a mistake. Respondent operates from a position of integrity and is dedicated to his medical career. He has a busy work schedule and a large client base. Respondent is

also dedicated to a clean and drug-free lifestyle. He places a huge importance on his sobriety.

47. Tiffany Walker testified at the hearing and provided a letter on respondent's behalf. Both are summarized as follows: She met respondent an Alcoholics Anonymous. She has been respondent's sponsor for six years. She has seen respondent work the 12 steps. Respondent works with many groups and has also brought recovery to the Spanish-speaking community. Respondent has integrity and she trusts him at his word.

48. Christopher Wehrle wrote a letter on respondent's behalf, which is summarized as follows: he has known respondent for two years. Respondent has been his mentor, doctor, and friend. As a mentor, respondent has been pivotal in advising and inspiring him to re-enter a doctoral program so that he can teach at the graduate level. As a medical provider, respondent has assisted him with medication adjustment which, in turn, has helped him be a more productive father, partner, employee, and friend. As a friend, respondent has not only encouraged him to continue with the 12-step program, but has also introduced him to a new version of that program. Mr. Wehrle admires respondent for his commitment to sobriety and sponsorship of many people. Mr. Wehrle does not believe respondent has been drinking alcoholic beverages or using any mind-altering substances. Respondent has been a pillar in the community as long as he has known him.

49. Marissa Wilson wrote a letter on respondent's behalf, which is summarized as follows: She and someone close to her are bipolar. Both she and this individual have been working with respondent since December 2020. Respondent has worked wonders for both of them and provides both clinical and emotional support.

He has the unique ability to treat the patient as a whole and has made a positive impact on both their lives.

50. David Youtie wrote a letter on respondent's behalf, as follows: He was referred to respondent in July 2020. He not only views respondent as a competent medical professional but also as a friend and fellow recovering alcoholic. Respondent has helped Mr. Youtie explore the possibility of going back to school to become a substance abuse counselor. He and respondent are both regular attendees at AA and respondent is always honest and forthright in his pursuit of ongoing recovery. Respondent has been a "guiding light" and an inspiration to Mr. Youtie.

LEGAL CONCLUSIONS

1. The burden of proof for all of the allegations made in the petition to revoke probation rests upon the board and requires the board to prove the allegations by a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1442; Evid. Code, § 115; 500.)

2. Cause does not exist to conclude that respondent violated Condition Nos. 1 and 2 of the 2018 decision and order. This conclusion is reached based on respondent's credible testimony that he has been sober since 2016. His testimony is supported by numerous individuals who wrote letters on his behalf attesting that he is dedicated to his sobriety and has helped others maintain their sobriety. The record shows that respondent, from the morning when he sends affirmations to those he sponsors, to the evening, when he attends meetings to help others and to help himself maintain sobriety, is committed to living a clean and sober lifestyle. Indeed, as respondent stated, his sobriety is more important to him than his marriage and career

because both are dependent on him maintaining sobriety. Thus, the positive biological fluid tests in June and September 2021 are inconsistent with respondent's credible and powerful assertion that he is sober, and also inconsistent with the testimony and letters from the many individuals who not only attest to respondent's sober lifestyle, but also the level of dedication and professionalism he brings to his practice of psychiatry, and in the counseling of those who are experiencing their own recovery journey.

3. This finding is made notwithstanding the testimony of Dr. Jones and Dr. Ferguson regarding the trace amounts of alcohol and tramadol found in the test results. The evidence of record outside their expert testimony calls into question whether respondent actually did consume alcoholic beverages (on the two occasions in June 2021) or ingest tramadol (on the two occasions in September 2021). Every single test respondent has taken since he was placed on probation in 2016, save the four tests in June and September of 2021, have been negative. Although nothing unusual was found regarding the chain of custody regarding the taking and testing of any of the four samples that tested positive, the isolated nature of those positive tests in relation to the plethora of negative tests since 2016, the negative tests that occurred after the June and September 2021 tests, the credible testimony of respondent, and the strong character evidence supporting respondent's testimony regarding his commitment to sobriety, all suggest something had to be "off" in the testing of those four samples. In sum, while a preponderance of the evidence established that four tests were positive in June and September 2021, a preponderance of the evidence did not show respondent actually ingested alcohol or tramadol on those occasions, causing those positive results. Thus, a preponderance of the evidence did not establish a violation of Condition Nos. 1 or 2.

4. A preponderance of the evidence did, however, establish that respondent violated Condition No. 3. Respondent was placed on probation in 2016. He was placed on probation again in 2018, the conditions of which superseded the 2016 conditions. Between May 22, 2020 and October 18, 2021, respondent failed to call in to FSS to check if he was selected for biological fluid testing on seven separate occasions. Any one of these instances were grounds for revocation of his probation. Cause therefore exists to set aside the 2018 stay order and imposing the stayed discipline of revocation of respondent's certificate under Condition No. 23.

5. As with all matters seeking to discipline a professional license, or revoke probation, the paramount concern is always protection of the public. Nothing showed that, at any time, the public was at risk. Nobody suffered any harm as a result of respondent's failures to check-in with FSS. The individuals who attested to respondent's dedication to sobriety, and respondent's own testimony, have more than established that his sobriety is more important to him than anything else. Respondent's practice monitor and employer, Dr. Holland and Dr. Meldon, are in the best position to know if respondent poses any threat to the public. Yet, both wholeheartedly support respondent, and have observed no signs of relapse.

6. When the board places a licensee on probation, it is, in essence giving a respondent a second chance to show the board that the licensee is worthy, and safe, to practice. In the case of a respondent who has biological fluid testing conditions and call-in conditions, it is therefore crucial that the licensee follow the probationary conditions so that the board can fulfill its mandate to protect the public. On this record, it would be a great disservice to the public, given respondent's deep commitment to helping others in recovery and lack of evidence that he has failed to abstain from alcohol or controlled substances, to revoke his physician's and surgeon's

certificate. That said, respondent needs to answer for the year of missed check-ins, and also dedicate himself in the future to following his probation conditions with the same passion, commitment, and vigor he has shown to his patients and those he sponsors in recovery. Accordingly, the probation conditions set forth in the 2018 decision and order shall remain in effect, except that respondent's probation shall be extended for one year.

7. These conclusions are based on the Factual Findings and Legal Conclusions as a whole. Evidence and arguments presented by the parties, and not referenced in this decision, have been considered in reaching this decision. All arguments contrary to this decision have been considered and rejected.

ORDER

The first amended petition to revoke probation is denied. Respondent shall remain on probation under the same terms and conditions as indicated in the 2018 decision and order (Case No. 800-2017-038264), except that his probation shall be extended by one year.

DATE: January 19, 2022

Kimberly J. Belvedere

KIMBERLY J. BELVEDERE

Administrative Law Judge

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

In the Matter of the Petition to Revoke Probation Against: **RODNEY SIDRANSKY, M.D.** **10466 Lake Breeze Dr.** **Spring Valley, CA 91977-3471** **Physician's and Surgeon's Certificate No. A 78625** Respondent.	Case No. 800-2021-081738 PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

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

2. On or about April 10, 2002, the Board issued Physician's and Surgeon's Certificate No. A 78625 to RODNEY SIDRANSKY, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on July

31, 2023, unless renewed.

PRIOR DISCIPLINARY HISTORY

3. In a prior disciplinary action titled *In the Matter of the Accusation Against Rodney Sidransky, M.D.,* Case No. 800-2017-038264, the Board issued a Decision and Order, effective October 18, 2018, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of eight (8) years, subject to terms and conditions of the Order, including, but not limited to, biological fluid testing, abstaining from use of alcohol, and abstaining from controlled substances. A true and correct copy of that Decision and Order is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Petition to Revoke Probation is brought before the Board under the authority of the following laws, and under the Board's Decision and Order in Case No. 800-2017-038264. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

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

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

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6. At all times after the effective date of the Decision and Order in Case No. 800-2017-038264, Probation Condition No. 1 stated:

> Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.
>
> Within 15 calendar days of receiving any lawfully prescribed medications, Respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.
>
> If Respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 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. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.
>
> If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

7. At all times after the effective date of the Decision and Order in Case No. 800-2017-038264, Probation Condition No. 2 stated:

> 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 final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 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. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

8. At all times after the effective date of the Decision and Order in Case No. 800-2017-038264, Probation Condition No. 3 stated:

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

During the first year of probation, Respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five (5) years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

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

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

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

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

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

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

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

one (1) business day and will be notified of negative test results within seven (7) business days.

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

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

(i) It maintains testing sites located throughout California.

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

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

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

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

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

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

If a biological fluid test result indicates Respondent has used, consumed, ingested, or administered to himself or herself a prohibited substance, the Board shall order Respondent to cease practice and instruct Respondent to leave any place of work where Respondent is practicing medicine or providing medical services. The Board shall immediately notify all of Respondent's employers, supervisors and work monitors, if any, that Respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the

licensee, his or her treating physician(s), other health care provider, or group facilitator, as applicable.

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

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

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance Respondent's rehabilitation.

9. At all times after the effective date of the Decision and Order in Case No. 800-2017-034089, Probation Condition No. 23 stated:

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

FIRST CAUSE TO REVOKE PROBATION

(Failure to Comply with Biological Fluid Testing Requirements)

10. Respondent's probation is subject to revocation because he failed to comply with Probation Condition No. 3 referenced above. The facts and circumstances regarding this violation are as follows:

11. On or about October 2, 2018, Respondent was advised that he needed to enroll and participate in FirstSource Solutions (FSSolutions) for random biological fluid testing, and that he was required to check their system daily to determine if he was selected to provide a biological fluid sample.

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12. On or about October 10, 2018, Respondent acknowledged having received a copy of the Decision and Order in Case No. 800-2017-038264, and that he understood each condition of probation.

13. On or about May 22, 2020, Respondent failed to make his required daily contact with FSSolutions to determine if he was selected to provide a specimen for testing and analysis.

14. On or about May 26, 2020, Respondent was advised that his failure to make daily contact with FSSolutions on or about May 22, 2020, was considered a violation of probation, and that his continued failure to cooperate with the biological fluid testing requirement could constitute grounds to issue a citation and fine.

15. On or about October 31, 2020, Respondent failed to make his required daily contact with FSSolutions to determine if he was selected to provide a specimen for testing and analysis.

16. On or about November 13, 2020, Respondent was advised that his failure to make daily contact with FSSolutions on or about October 31, 2020, was considered a violation of probation, and that his continued failure to cooperate with the biological fluid testing requirement could constitute grounds to issue a citation and fine.

17. On or about January 3, 2021, Respondent failed to make his required daily contact with FSSolutions to determine if he was selected to provide a specimen for testing and analysis.

18. On or about February 13, 2021, Respondent failed to make his required daily contact with FSSolutions to determine if he was selected to provide a specimen for testing and analysis.

19. On or about April 22, 2021, Respondent failed to make his required daily contact with FSSolutions to determine if he was selected to provide a specimen for testing and analysis.

20. Respondent's probation is subject to revocation because he failed to make daily contact with FSSolutions to determine if he was selected to provide a specimen for testing and analysis on or about May 22, 2020, October 31, 2020, January 3, 2021, February 13, 2021, and April 22, 2021, as required under Probation Condition No. 3 of the Decision and Order in Case No. 800-2017-038264.

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SECOND CAUSE TO REVOKE PROBATION

(Failure to Abstain from Alcohol)

21. Respondent's probation is subject to revocation because he failed to comply with Probation Condition No. 2 referenced above. The facts and circumstances regarding this violation are as follows:

22. On or about June 3, 2021, Respondent provided a biological fluid sample at an approved testing site, which was analyzed and found to be positive for 26 ng/mL of phosphatidyl ethanol.

23. On or about June 19, 2021, Respondent provided a biological fluid sample at an approved testing site, which was analyzed and found to be positive for 68 ng/mL of phosphatidyl ethanol.

24. Respondent's probation is subject to revocation because he failed to abstain from alcohol on or about June 3, 2021 and June 19, 2021, as required under Probation Condition No. 2 of the Decision and Order in Case No. 800-2017-038264.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Abstain from Controlled Substance)

25. Respondent's probation is subject to revocation because he failed to comply with Probation Condition No. 1 referenced above. The facts and circumstances regarding this violation are as follows:

27. On or about September 8, 2021, Respondent provided a biological fluid sample at an approved testing site, which was analyzed and found to be positive for 5079 ng/mL of tramadol.[1]

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[1] Tramadol Hydrochloride (Ultram®, Ultracet®), an opioid analgesic, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used for the treatment of moderate to severe pain. The FDA-approved labeling under the Drug Abuse and Dependence section provides warns, among other things, that "[t]ramadol hydrochloride may induce psychic and physical dependence ... Dependence and abuse, including drug-seeking behavior and taking illicit actions to obtain the drug are not limited to those patients with prior history of opioid dependence. The risk in patients with substance abuse has been observed to be higher. Tramadol hydrochloride is associated with craving and tolerance development. Withdrawal symptoms may occur if tramadol hydrochloride is discontinued abruptly." According to the DEA, "[t]ramadol is most commonly abused by narcotic addicts, chronic pain patients, and health professionals."

28. On or about September 10, 2021, Respondent provided a biological fluid sample at an approved testing site, which was analyzed and found to be positive for 5221 ng/mL of tramadol.

29. Respondent's probation is subject to revocation because he failed to abstain from controlled substance on or about September 8, 2021 and September 10, 2021, as required under Probation Condition No. 1 of the Decision and Order in Case No. 800-2017-038264.

PRAYER

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

1. Revoking the probation that was granted by the Medical Board of California in Case No. 800-2017-038264 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. A 78625 issued to Respondent Rodney Sidransky, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. A 78625, issued to Respondent Rodney Sidransky, M.D.;

3. Revoking, suspending or denying approval of Respondent Rodney Sidransky, M.D.'s authority to supervise physician assistants and advanced practice nurses;

4. Ordering Respondent Rodney Sidransky, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: OCT 19 2021

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

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Exhibit A

Decision and Order

Medical Board of California Case No. 800-2017-038264

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

In the Matter of the Accusation Against:	)	
Rodney Sidransky, M.D.	)	Case No. 800-2017-038264
Physician's and Surgeon's Certificate No. A 78625	)	
Respondent	)	

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on October 18, 2018.

IT IS SO ORDERED: September 18, 2018.

MEDICAL BOARD OF CALIFORNIA

Kristina D. Lawson, J.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
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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: **RODNEY SIDRANSKY, M.D.** **3103 Sylvia Street** **Bonita, CA 91902-2143** **Physician's and Surgeon's Certificate No. A 78625** Respondent.	Case No. 800-2017-038264 OAH No. 2018020465 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Jason J. Ahn, Deputy Attorney General.

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

3. On or about April 10, 2002, the Board issued Physician's and Surgeon's Certificate No. A 78625 to Rodney Sidransky, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-038264, and will expire on July 31, 2019, unless renewed. On or about September 16, 2016, in a prior disciplinary action entitled *In the Matter of the Accusation Against Rodney Sidransky, M.D.* before the Medical Board of California, in Case Number 800-2015-011746, Respondent's license was revoked with the revocation stayed and his license was placed on seven (7) years probation with terms and conditions.

JURISDICTION

4. On or about January 26, 2018, Accusation No. 800-2017-038264 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 26, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-038264 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2017-038264. Respondent has also carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other

rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2017-038264 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 800-2017-038264 and Accusation No. 800-2015-011746 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving respondent in the State of California.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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ADDITIONAL PROVISIONS

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 78625 issued to Respondent Rodney Sidransky, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for eight (8) years on the following terms and conditions. Once adopted by the Board, the stipulated settlement contained in Accusation No. 800-2017-038264, will supersede the terms of probation in Decision and Order No. 800-2015-011746. All terms and conditions of probation in Decision and Order No. 800-2015-011746 have been incorporated into the stipulated settlement in Accusation No. 800-2017-038264. Upon the effective date of the Decision and Order in Accusation Case No. 800-2017-038264, September 16, 2018, and once the time to challenge the matter has run, the probationary terms contained in Decision and Order No. 800-2015-011746 will be superseded by the terms of probation in Decision and Order in Accusation No. 800-2017-038264.

1. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.

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

If Respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 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. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of 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 final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 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. A decision shall be received from the Administrative Law Judge or

the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

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

During the first year of probation, Respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five (5) years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

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

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

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

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

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

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

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

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

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

(i) It maintains testing sites located throughout California.

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

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

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

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

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

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

If a biological fluid test result indicates Respondent has used, consumed, ingested, or administered to himself or herself a prohibited substance, the Board shall order Respondent to cease practice and instruct Respondent to leave any place of work where Respondent is practicing medicine or providing medical services. The Board shall immediately notify all of Respondent's employers, supervisors and work monitors, if any, that Respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the Respondent, his treating physician(s), other health care provider, or group facilitator, as applicable.

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

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

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If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, Respondent has committed a major violation, as defined in Title 16, California Code of Regulations (CCR) section 1361.52(a), and the Board shall impose any or all of the consequences set forth in CCR section 1361.52(b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance Respondent's rehabilitation.

4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

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5. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license; has three (3) years of experience in providing evaluations of physicians and surgeons with substance abuse disorders; and is approved by the Board.

The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

The evaluator shall not have a current or former financial, personal, or business relationship with the Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the Respondent has a substance abuse problem; whether the Respondent is a threat to himself or others; and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the Respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that the Respondent is a threat to himself or others, the evaluator shall notify the Board within 24 hours of such a determination.

In formulating his or her opinion as to whether the Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors:

a. License type;

b. Respondent's history;

c. Documented length of sobriety/time that has elapsed since substance use;

d. Scope and pattern of substance abuse;

e. Treatment history;

f. Medical history;

g. Current medical condition;

h. Nature, duration, and severity of substance abuse problem; and

i. Whether the Respondent is a threat to himself or the public.

The cost of an evaluation shall be borne by the Respondent.

For all evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed 30 days from the date the evaluator was originally assigned the matter.

Whenever the Board orders the Respondent to undergo a clinical diagnostic evaluation, the Board shall order the Respondent to cease practice pending the results of the clinical diagnostic evaluation and review by the Board.

While awaiting the results of the clinical diagnostic evaluation, the Respondent shall undergo random biological fluid testing at least two (2) times per week.

The Board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether the Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on the Respondent based on the recommendations made by the evaluator. Respondent shall not be return to practice until he has at least 30 days of negative biological fluid tests or biological fluid tests indicating that Respondent has not used, consumed, ingested, or administered to himself a prohibited substance, as defined in section 1361.51(e).

Before determining whether to authorize the return to practice after the issuance of a cease-practice order or after the imposition of practice restrictions following a clinical diagnostic evaluation, the Board in conjunction with the evaluator shall ensure that the Respondent meets the following criteria:

(a) A demonstration of sustained compliance with his current treatment or recovery program, as applicable;

(b) A demonstration of the capability to practice medicine safely as evidenced by current worksite monitor reports, evaluations conducted by licensed health care practitioners, and any other information relating to the Respondent's substance abuse and recovery therefrom; and

(c) Negative biological fluid tests or biological fluid tests indicating that the Respondent has not used, consumed, ingested, or administered to himself a prohibited substance, as defined in

section 1361.51(e), for at least six (6) months; two (2) positive worksite monitor reports; and complete compliance with other terms and conditions of probation.

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

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

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

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

7. WORKSITE MONITOR. The Respondent shall, within 30 calendar days of the effective date of this Decision, submit to the Board or its designee for prior approval the name of a worksite monitor.

(A) The worksite monitor shall meet the following criteria to be approved by the Board:

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

2. The worksite monitor's scope of practice shall include the scope of practice of the Respondent being monitored, be another licensed health care professional if no monitor with like scope of practice is available, or, as approved by the Board, be a person in a position of authority who is capable of monitoring the Respondent at work.

3. If a licensed professional, the worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years.

4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the Respondent's disciplinary order and agrees to monitor the Respondent as set forth by the Board.

(B) The worksite monitor shall adhere to the following required methods of monitoring the Respondent:

1. Have face-to-face contact with the Respondent in the work environment on as frequent a basis as determined by the Board, but not less than once per week.

2. Interview other staff in the office regarding the Respondent's behavior, if requested by the Board.

3. Review the Respondent's work attendance.

(C) Reporting by the worksite monitor to the Board shall comply with the following:

1. The worksite monitor shall verbally report any suspected substance abuse to the Board and the Respondent's employer or supervisor as defined in subsection (c)(2) within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; the Respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board within 48 hours of the occurrence.

2. The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include the following:

a. The Respondent's name and license number;

b. The worksite monitor's name and signature;

c. The worksite monitor's license number, if applicable;

d. The worksite location(s);

e. The dates the Respondent had face-to-face contact with the monitor;

f. The names of worksite staff interviewed, if applicable;

g. An attendance report;

h. Any change in behavior and/or personal habits; and

i. Any indicators that can lead to suspected substance abuse.

(D) The Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor(s) and the Board authorizing the Board and worksite monitor to exchange information.

(E) If the monitor resigns or is no longer available, the Respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If the Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, the Respondent shall receive a

notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

(F) Worksite monitoring costs shall be borne by the Respondent.

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

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume practice until an appropriate practice setting is established.

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

9. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. The following provisions shall apply:

(A) When determining the frequency of group support meetings to be attended, the Board or the evaluator shall give consideration to the following:

1. The Respondent's history;

2. The documented length of sobriety/time that has elapsed since substance use;

3. The recommendation of the clinical evaluator;

4. The scope and pattern of use;

5. The Respondent's treatment history; and

6. The nature, duration, and severity of substance abuse.

(B) The facilitator of a group support meeting shall conform to the following requirements:

1. He or she shall have a minimum of three (3) years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations.

2. He or she shall not have a current or former financial, personal, or business relationship with the Respondent within the last five (5) years. The Respondent's previous participation in a group support meeting led by the same facilitator does not constitute a current or former financial, personal, or business relationship.

3. He or she shall provide to the Board a signed document showing the Respondent's name, the group name, the date and location of the meeting, the Respondent's attendance, and the Respondent's level of participation and progress.

4. He or she shall report the Respondent's unexcused absence to the Board within 24 hours.

(C) Any costs associated with attending and reporting on group support meetings shall be borne by the Respondent.

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

examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

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

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

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

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

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

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

13. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any

medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed.

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

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall

make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

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

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

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

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

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15. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

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

17. 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.

18. 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.

19. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business

and Professions Code section 2021(b).

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

20. 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.

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

probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

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

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

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

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; and Quarterly Declarations.

22. 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.

23. 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.

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24. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

25. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, David M. Balfour Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and fully agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 8/3/18

RODNEY SIDRANSKY, M.D.
Respondent

I have read and fully discussed with Respondent Rodney Sidransky, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 8/3/2018

DAVID M. BALFOUR ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: Respectfully submitted,

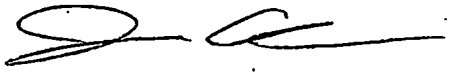
ENDORSEMENT

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

Dated: August 3, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General



JASON J. AHN
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2017-038264

XAVIER BECERRA
Attorney General of California
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Jan. 26 2018
BY Sara Pasion ANALYST

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

In the Matter of the Accusation Against: **Rodney Sidransky, M.D.** **3103 Sylvia Street** **Bonita, CA 91902-2143** **Physician's and Surgeon's Certificate No. A 78625,** Respondent.	Case No. 800-2017-038264 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about April 10, 2002, the Medical Board issued Physician's and Surgeon's Certificate Number A 78625 to Rodney Sidransky, 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 July 31, 2019, unless renewed.

JURISDICTION

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

4. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(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."

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5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"...

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"..."

6. Section 2266 of the Code states:

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

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

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent has subjected his Physician's and Surgeon's Certificate No. A78625 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient A[1], as more particularly alleged hereinafter:

9. On or about August 30, 2011, Respondent evaluated Patient A for a "renewal" of Patient A's medical marijuana recommendation card.[2] Respondent certified Patient A as being eligible for consumption of medical marijuana.

10. On or about June 9, 2012, Patient A returned to Respondent. Under the relevant medical record section titled "Subjective," it stated "R[ight] Knee effusion C.P. [chronic pain]." Under the section titled, "Objective [physical findings]," Respondent noted, "NL," meaning that everything was normal. There are no other medical records documenting results of Respondent's physical examination of Patient A. Respondent purportedly initiated opioid prescription to Patient A for Patient A's chronic right knee pain, a right knee effusion, and back pain, despite the fact that Respondent found Patient A's physical findings to be normal after a physical examination.

11. Respondent failed to obtain a detailed and/or meaningful pain history or orthopedic history. Respondent failed to obtain Patient A's past orthopedic records or review any CT or MRI imaging studies. Respondent failed to obtain informed consent for diazepam, zolpidem, and acetaminophen, before prescribing them. Respondent failed to formulate any individualized treatment plan for Patient A or any treatment plan at all. Respondent failed to document the rationale for initiating opioids for Patient A instead of trying non-opioids analgesic[3] and physical

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[1] References to "Patient A" are used to protect patient privacy.

[2] There are no medical records documenting Respondent's initial evaluation of Patient A, which support Respondent's conclusion that Patient A is eligible for consumption of medical marijuana.

[3] Analgesic is a drug used to diminish sensation to pain without loss of consciousness.

therapy.

12. During the period of on or about July 5, 2012, through January 5, 2013, Respondent prescribed controlled substances to Patient A. According to the Controlled Substances Utilization and Evaluation System (CURES) report over this period of time, Respondent prescribed to Patient A:

Filled	Drug Name	Quantity	Prescriber	Pharmacy
07-05-12	APAP/Hydrocodone[4] 325/10	90	Respondent	Arlington
07-16-12	APAP/Hydrocodone 325/10	90	Respondent	Acare
07-21-12	APAP/Hydrocodone 325/10	90	Respondent	RiteAid
08-02-12	APAP/Hydrocodone 325/10	90	Respondent	Costco
08-07-12	APAP/Hydrocodone 325/10	90	Respondent	Walgreens
08-11-12	APAP/Hydrocodone 325/10	90	Respondent	Acare
08-25-12	APAP/Hydrocodone 325/10	120	Respondent	RiteAid
08-30-12	APAP/Hydrocodone 325/10	120	Respondent	Arlington
09-02-12	APAP/Hydrocodone 325/10	120	Respondent	Walgreens
09-06-12	APAP/Hydrocodone 325/10	90	Respondent	Target

[4] APAP, also known as Acetaminophen, is a less potent pain reliever that increases the effects of hydrocodone. Hydrocodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(I), and a dangerous drug pursuant to Business and Professions Code section 4022. APAP Hydrocodone (Vicodin®, Lortab® and Norco®) is a hydrocodone combination of hydrocodone bitartrate and Acetaminophen which was formerly a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022. On August 22, 2014, the DEA published a final rule rescheduling hydrocodone combination products (HCP's) to schedule II of the Controlled Substances Act, which became effective October 6, 2014. Schedule II controlled substances are substances that have a currently accepted medical use in the United States, but also have a high potential for abuse, and the abuse of which may lead to severe psychological or physical dependence. When properly prescribed and indicated, HCP's are used for the treatment of moderate to severe pain. In addition to the potential for psychological and physical dependence there is also the risk of acute liver failure which has resulted in a black box warning being issued by the Federal Drug Administration (FDA). The FDA black box warning provides that "[a]cetaminophen has been associated with cases of acute liver failure, at times resulting in liver transplant and death. Most of the cases of liver injury are associated with use of the acetaminophen at doses that exceed 4000 milligrams per day, and often involve more than one acetaminophen containing product."

Filled	Drug Name	Quantity	Prescriber	Pharmacy
09-08-12	APAP/Hydrocodone 325/10	90	Respondent	Acare
09-13-12	APAP/Hydrocodone 325/10	120	Respondent	Kings
09-17-12	APAP/Hydrocodone 325/10	120	Respondent	CVS
09-21-12	APAP/Hydrocodone 325/10	120	Respondent	Walgreens
09-22-12	Diazepam[5] 5 mg	60	Respondent	CVS
09-23-12	APAP/Hydrocodone 325/10	120	Respondent	RiteAid
09-25-12	APAP/Hydrocodone 325/10	120	Respondent	RiteAid
10-04-12	APAP/Hydrocodone 325/10	120	Respondent	Arlington
10-04-12	Zolpidem[6] 10 mg	30	Respondent	Arlington
10-08-12	APAP/Hydrocodone 325/10	120	Respondent	Walgreens
10-10-12	Diazepam 5 mg	120	Respondent	CVS
10-15-12	APAP/Hydrocodone 325/10	120	Respondent	Costco
10-27-12	APAP/Hydrocodone 325/10	120	Respondent	Walgreens
12-18-12	APAP/Hydrocodone 325/10	90	Respondent	Walgreens
01-05-13	APAP/Hydrocodone 325/10	120	Respondent	Target

13. Respondent failed to monitor Patient A's use of opioids with urine drug testing or pill counts. Despite prescribing an average of 4.5 grams of acetaminophen per day to Patient A, thereby placing Patient A at risk for acetaminophen-induced hepatitis and liver failure, Respondent failed to monitor liver function tests. There is no documentation of any follow-up visits by Patient A or monitoring of the opioids Respondent prescribed to Patient A. There is no

[5] Diazepam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subsection (d)(9), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, Diazepam is generally used to treat anxiety disorders, alcohol withdrawal symptoms, or muscle spasms.

[6] Zolpidem is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subsection (d)(32), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, Zolpidem is generally used to treat insomnia.

documentation regarding Patient A's response to treatment, potential side-effects assessed, functional improvement, or renewal of prescriptions written. Respondent did not implement and/or did not document implementation of the "5-As" method for chronic pain management assessment, which includes: Analgesia; Activity; Adverse; Aberrance; and Affect.

14. Respondent did not conduct periodic reviews of Patient A's need for opioid. On one occasion during above prescribing period, Patient A went to Respondent's personal residence to pick up a prescription Respondent filled and Respondent was paid for this service.

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

(a) Respondent failed to obtain a detailed and/or meaningful pain history or orthopedic history;

(b) Respondent prescribed opioids to Patient A purportedly for Patient A's "chronic knee pain, a right knee effusion, and back pain," despite the fact that Respondent's own physical examination of Patient A showed that everything was normal;

(c) Respondent failed to obtain Patient A's past orthopedic records or review any CT or MRI imaging studies;

(d) Respondent failed to obtain informed consent for diazepam, zolpidem, and acetaminophen, before prescribing them;

(e) Respondent excessively prescribed APAP/Hydrocodone to Patient A;

(f) Respondent failed to formulate any individualized treatment plan for Patient A or any treatment plan at all;

(g) Respondent failed to document the rationale for initiating opioids for Patient A instead of trying non-opioids analgesic and physical therapy;

(h) Respondent failed to monitor Patient A's use of opioids with urine drug testing or pill counts;

(i) Despite prescribing an average of 4.5 grams of acetaminophen per day to Patient A, thereby placing Patient A at risk for acetaminophen-induced hepatitis and liver failure, Respondent failed to monitor liver function tests;

(j) Respondent failed to document any follow-up visits by Patient A or monitoring of the opioids Respondent prescribed to Patient A;

(k) Respondent failed to document Patient A's response to treatment, potential side-effects assessed; functional improvement, or renewal of prescriptions written;

(l) Respondent did not implement and/or did not document implementation of the "5-As" method for chronic pain management assessment, which includes: Analgesia; Activity; Adverse; Aberrance; and Affect; and

(m) Respondent did not conduct periodic reviews of Patient A's need for opioid.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

16. Respondent has further subjected his Physician's and Surgeon's Certificate No. A78625 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patient A, as more particularly alleged herein.

(a) Paragraphs 8 through 15, above, are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

17. Respondent has further subjected his Physician's and Surgeon's Certificate No. A78625 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that respondent failed to maintain adequate and accurate records regarding his care and treatment of Patient A, as more particularly alleged in paragraphs 8 through 15, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

18. Respondent has further subjected his Physician's and Surgeon's Certificate No. A78625 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 8 through 17, above, which are hereby incorporated by reference as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

19. To determine the degree of discipline, if any, to be imposed on Respondent Rodney Sidransky, M.D., Complainant alleges that on or about September 16, 2016, in a prior disciplinary action entitled In the Matter of the Accusation Against Rodney Sidransky, M.D. before the Medical Board of California, in Case Number 800-2015-011746, Respondent's license was revoked with revocation stayed for seven (7) years of probation for excessive use of alcohol or drugs and self-prescription of controlled substances. That decision is now final and is incorporated by reference 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 A 78625, issued to Rodney Sidransky, M.D.;

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

3. Ordering Rodney Sidransky, 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: January 26, 2018

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