

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

**In the Matter of the Accusation
Against:**

Derek Yu Hsu, M.D.

**Physician's and Surgeon's
Certificate No. A 140476**

Case No.: 800-2019-060677

Respondent.

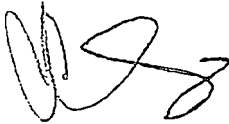
DECISION

The attached Stipulated Settlement 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 24, 2022.

IT IS SO ORDERED: February 22, 2022.

MEDICAL BOARD OF CALIFORNIA



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

1 ROB BONTA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 REBECCA L. SMITH
Deputy Attorney General
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7

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2019-060677

13 DEREK YU HSU, M.D.
630 Meyer Lane, Unit A
14 Redondo Beach, CA 90278-5262

OAH No. 2021050047

15 Physician's and Surgeon's Certificate
No. A 140476,

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16
17 Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
23 California (Board). He brought this action solely in his official capacity and is represented in this
24 matter by Rob Bonta, Attorney General of the State of California, by Rebecca L. Smith, Deputy
25 Attorney General.

26 2. Derek Yu Hsu, M.D. (Respondent) is represented in this proceeding by attorney
27 Kevin D. Cauley, whose address is: 624 South Grand Avenue, 22nd Floor, Los Angeles,
28 California 90017-3323.

3. On or about January 29, 2016, the Board issued Physician's and Surgeon's Certificate No. A 140476 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2019-060677, and will expire on July 31, 2023, unless renewed.

JURISDICTION

4. Accusation No. 800-2019-060677 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, 2021. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2019-060677 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2019-060677. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2019-060677, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent agrees that, at a hearing, Complainant could establish a prima facie case or factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2019-060677, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. A 140476 to disciplinary action.

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

13. Respondent agrees that 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.

14. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

15. 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.

16. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2019-060677 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

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

18. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice 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 140476 issued to Respondent Derek Yu Hsu, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for seven (7) years on the following terms and conditions:

1. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS: Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

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

1 Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and
2 independent evaluation. The clinical diagnostic evaluation report shall set forth, in the
3 evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a
4 threat to himself or others, and recommendations for substance abuse treatment, practice
5 restrictions, or other recommendations related to Respondent's rehabilitation and ability to
6 practice safely. If the evaluator determines during the evaluation process that Respondent is a
7 threat to himself or others, the evaluator shall notify the Board within twenty-four (24) hours of
8 such a determination.

9 In formulating his or her opinion as to whether Respondent is safe to return to either part-
10 time or full-time practice and what restrictions or recommendations should be imposed, including
11 participation in an inpatient or outpatient treatment program, the evaluator shall consider the
12 following factors: Respondent's license type; Respondent's history; Respondent's documented
13 length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use);
14 Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical
15 history and current medical condition; the nature, duration and severity of Respondent's
16 substance abuse problem or problems; and whether Respondent is a threat to himself or herself or
17 the public.

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

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

1 defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

2 A Clinical diagnostic evaluation conducted prior to the effective date of this Decision may
3 be accepted at the Board's discretion towards the fulfillment of this requirement. The cost of the
4 clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner,
5 the Board or its designee, shall be borne by the licensee.

6 Respondent shall not engage in the practice of medicine until notified by the Board or its
7 designee that he is fit to practice medicine safely. The period of time that Respondent is not
8 practicing medicine shall not be counted toward completion of the term of probation. Respondent
9 shall undergo biological fluid testing as required in this Decision at least two (2) times per week
10 while awaiting the notification from the Board if he or she is fit to practice medicine safely.

11 Respondent shall comply with all restrictions or conditions recommended by the examiner
12 conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified
13 by the Board or its designee.

14 2. CONTROLLED SUBSTANCES - TOTAL RESTRICTION. Respondent shall not
15 order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in
16 the California Uniform Controlled Substances Act.

17 Respondent shall not issue an oral or written recommendation or approval to a patient or a
18 patient's primary caregiver for the possession or cultivation of marijuana for the personal medical
19 purposes of the patient within the meaning of Health and Safety Code section 11362.5.

20 If Respondent forms the medical opinion, after an appropriate prior examination and a
21 medical indication, that a patient's medical condition may benefit from the use of marijuana,
22 Respondent shall so inform the patient and shall refer the patient to another physician who,
23 following an appropriate prior examination and a medical indication, may independently issue a
24 medically appropriate recommendation or approval for the possession or cultivation of marijuana
25 for the personal medical purposes of the patient within the meaning of Health and Safety Code
26 section 11362.5. In addition, Respondent shall inform the patient or the patient's primary
27 caregiver that Respondent is prohibited from issuing a recommendation or approval for the
28 possession or cultivation of marijuana for the personal medical purposes of the patient and that

1 the patient or the patient's primary caregiver may not rely on Respondent's statements to legally
2 possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall
3 fully document in the patient's chart that the patient or the patient's primary caregiver was so
4 informed. Nothing in this condition prohibits Respondent from providing the patient or the
5 patient's primary caregiver information about the possible medical benefits resulting from the use
6 of marijuana.

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

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

17 4. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the
18 use of products or beverages containing alcohol.

19 5. COMMUNITY SERVICE - FREE NONMEDICAL SERVICES. Within sixty (60)
20 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its
21 designee for prior approval a community service plan in which Respondent shall, within the first
22 two (2) years of probation, provide 40 hours of free nonmedical services to a community or non-
23 profit organization. If the term of probation is designated for two (2) years or less, the
24 community service hours must be completed not later than six (6) months prior to the completion
25 of probation.

26 Prior to engaging in any community service, Respondent shall provide a true copy of the
27 Decision(s) to the chief of staff, director, office manager, program manager, officer, or the chief
28 executive officer at every community or non-profit organization where Respondent provides

community service and shall submit proof of compliance to the Board or its designee within fifteen (15) calendar days. This condition shall also apply to any change(s) in community service.

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

6. EDUCATION COURSE. Within sixty (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 forty (40) hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for sixty-five (65) hours of CME of which forty (40) hours were in satisfaction of this condition.

7. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

1 this Decision.

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

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

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

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

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

25 9. MEDICAL EVALUATION AND TREATMENT. Within thirty (30) calendar days
26 of the effective date of this Decision, and on a periodic basis thereafter as may be required by the
27 Board or its designee, Respondent shall undergo a medical evaluation by a Board-appointed
28 physician who shall consider any information provided by the Board or designee and any other

1 information the evaluating physician deems relevant and shall furnish a medical report to the
2 Board or its designee. Respondent shall provide the evaluating physician with any information
3 and documentation that the evaluating physician may deem pertinent.

4 Following the evaluation, Respondent shall comply with all restrictions or conditions
5 recommended by the evaluating physician within fifteen (15) calendar days after being notified
6 by the Board or its designee. If Respondent is required by the Board or its designee to undergo
7 medical treatment, Respondent shall within thirty (30) calendar days of the requirement notice,
8 submit to the Board or its designee for prior approval the name and qualifications of a California
9 licensed treating physician of Respondent's choice. Upon approval of the treating physician,
10 Respondent shall within fifteen (15) calendar days undertake medical treatment and shall
11 continue such treatment until further notice from the Board or its designee.

12 The treating physician shall consider any information provided by the Board or its designee
13 or any other information the treating physician may deem pertinent prior to commencement of
14 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or
15 its designee indicating whether or not Respondent is capable of practicing medicine safely.
16 Respondent shall provide the Board or its designee with any and all medical records pertaining to
17 treatment that the Board or its designee deems necessary.

18 If, prior to the completion of probation, Respondent is found to be physically incapable of
19 resuming the practice of medicine without restrictions, the Board shall retain continuing
20 jurisdiction over Respondent's license and the period of probation shall be extended until the
21 Board determines that Respondent is physically capable of resuming the practice of medicine
22 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

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

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

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

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

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

23 12. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)
24 days of the effective date of this Decision, Respondent shall provide to the Board the names,
25 physical addresses, mailing addresses, and telephone numbers of any and all employers and
26 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's
27 worksite monitor, and Respondent's employers and supervisors to communicate regarding
28 Respondent's work status, performance, and monitoring.

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

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

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

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

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

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

28 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published

1 by the United States Department of Transportation without regard to the type of test
2 administered.

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

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

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

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

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

16 (i) It maintains testing sites located throughout California.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 15. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty
25 (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or
26 its designee for prior approval as a worksite monitor, the name and qualifications of one or more
27 licensed physician and surgeon, other licensed health care professional if no physician and
28 surgeon is available, or, as approved by the Board or its designee, a person in a position of

1 authority who is capable of monitoring Respondent at work.

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

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

12 Respondent shall pay all worksite monitoring costs.

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

17 The worksite monitor shall verbally report any suspected substance abuse to the Board and
18 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected
19 substance abuse does not occur during the Board's normal business hours, the verbal report shall
20 be made to the Board or its designee within one (1) hour of the next business day. A written
21 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
22 any other information deemed important by the worksite monitor shall be submitted to the Board
23 or its designee within forty-eight (48) hours of the occurrence.

24 The worksite monitor shall complete and submit a written report monthly or as directed by
25 the Board or its designee which shall include the following: (1) Respondent's name and
26 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)
27 the worksite monitor's license number, if applicable; (4) the location or location(s) of the
28 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the

1 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;
2 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can
3 lead to suspected substance abuse by Respondent. Respondent shall complete any required
4 consent forms and execute agreements with the approved worksite monitor and the Board, or its
5 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

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

15 16. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING
16 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of
17 probation.

18 A. If Respondent commits a major violation of probation as defined by section
19 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take
20 one or more of the following actions:

21 (1) Issue an immediate cease-practice order and order Respondent to undergo a clinical
22 diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of
23 Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice
24 order issued by the Board or its designee shall state that Respondent must test negative for at least
25 a month of continuous biological fluid testing before being allowed to resume practice. For
26 purposes of determining the length of time a Respondent must test negative while undergoing
27 continuous biological fluid testing following issuance of a cease-practice order, a month is
28 defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until

1 notified in writing by the Board or its designee that he may do so.

2 (2) Increase the frequency of biological fluid testing.

3 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or
4 other action as determined by the Board or its designee.

5 B. If Respondent commits a minor violation of probation as defined by section
6 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
7 one or more of the following actions:

8 (1) Issue a cease-practice order;

9 (2) Order practice limitations;

10 (3) Order or increase supervision of Respondent;

11 (4) Order increased documentation;

12 (5) Issue a citation and fine, or a warning letter;

13 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in
14 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
15 Regulations, at Respondent's expense;

16 (7) Take any other action as determined by the Board or its designee.

17 C. Nothing in this Decision shall be considered a limitation on the Board's authority
18 to revoke Respondent's probation if he has violated any term or condition of probation. If
19 Respondent violates probation in any respect, the Board, after giving Respondent notice and the
20 opportunity to be heard, may revoke probation and carry out the disciplinary order that was
21 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed
22 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
23 is final, and the period of probation shall be extended until the matter is final.

24 17. PATIENT DISCLOSURE. Before a patient's first visit following the effective date
25 of this order and while Respondent is on probation, Respondent must provide all patients, or
26 patient's guardian or health care surrogate, with a separate disclosure that includes Respondent's
27 probation status, the length of the probation, the probation end date, all practice restrictions
28 placed on Respondent by the board, the board's telephone number, and an explanation of how the

1 patient can find further information on Respondent's probation on Respondent's profile page on
2 the board's website. Respondent shall obtain from the patient, or the patient's guardian or health
3 care surrogate, a separate, signed copy of that disclosure. Respondent shall not be required to
4 provide a disclosure if any of the following applies: (1) The patient is unconscious or otherwise
5 unable to comprehend the disclosure and sign the copy of the disclosure and a guardian or health
6 care surrogate is unavailable to comprehend the disclosure and sign the copy; (2) The visit occurs
7 in an emergency room or an urgent care facility or the visit is unscheduled, including
8 consultations in inpatient facilities; (3) Respondent is not known to the patient until immediately
9 prior to the start of the visit; (4) Respondent does not have a direct treatment relationship with the
10 patient.

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

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

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

23 20. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
24 governing the practice of medicine in California and remain in full compliance with any court
25 ordered criminal probation, payments, and other orders.

26 21. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
27 under penalty of perjury on forms provided by the Board, stating whether there has been
28 compliance with all the conditions of probation.

1 Respondent shall submit quarterly declarations not later than ten (10) calendar days after
2 the end of the preceding quarter.

3 22. GENERAL PROBATION REQUIREMENTS.

4 Compliance with Probation Unit

5 Respondent shall comply with the Board's probation unit.

6 Address Changes

7 Respondent shall, at all times, keep the Board informed of Respondent's business and
8 residence addresses, email address (if available), and telephone number. Changes of such
9 addresses shall be immediately communicated in writing to the Board or its designee. Under no
10 circumstances shall a post office box serve as an address of record, except as allowed by Business
11 and Professions Code section 2021, subdivision (b).

12 Place of Practice

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

16 License Renewal

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

19 Travel or Residence Outside California

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

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

26 23. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
27 available in person upon request for interviews either at Respondent's place of business or at the
28 probation unit office, with or without prior notice throughout the term of probation.

1 24. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
2 its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting
3 more than 30 calendar days and within fifteen (15) calendar days of Respondent's return to
4 practice. Non-practice is defined as any period of time Respondent is not practicing medicine as
5 defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours in a
6 calendar month in direct patient care, clinical activity or teaching, or other activity as approved by
7 the Board. If Respondent resides in California and is considered to be in non-practice,
8 Respondent shall comply with all terms and conditions of probation. All time spent in an
9 intensive training program which has been approved by the Board or its designee shall not be
10 considered non-practice and does not relieve Respondent from complying with all the terms and
11 conditions of probation. Practicing medicine in another state of the United States or Federal
12 jurisdiction while on probation with the medical licensing authority of that state or jurisdiction
13 shall not be considered non-practice. A Board-ordered suspension of practice shall not be
14 considered as a period of non-practice.

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

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

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

23 Periods of non-practice for a Respondent residing outside of California will relieve
24 Respondent of the responsibility to comply with the probationary terms and conditions with the
25 exception of this condition and the following terms and conditions of probation: Obey All Laws;
26 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
27 Controlled Substances; and Biological Fluid Testing.

28 25. COMPLETION OF PROBATION. Respondent shall comply with all financial

obligations (e.g., restitution, probation costs) not later than one hundred twenty (120) calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

26. 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.

27. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within fifteen (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.

28. 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.

29. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in

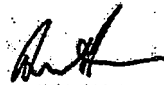
1 Accusation No. 800-2019-060677 shall be deemed to be true, correct, and admitted by
2 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
3 restrict license.

4 **ACCEPTANCE**

5 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
6 discussed it with my attorney, Kevin D. Cauley. I understand the stipulation and the effect it will
7 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
8 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
9 Decision and Order of the Medical Board of California.

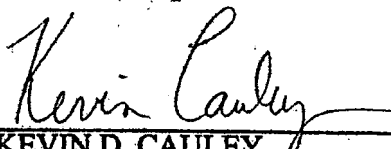
10
11 DATED:

11/8/21


DEREK YU HSU, M.D.
Respondent

13 I have read and fully discussed with Respondent Derek Yu Hsu, M.D. the terms and
14 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
15 I approve its form and content.

16 DATED: November 8, 2021


KEVIN D. CAULEY
Attorney for Respondent

18 **ENDORSEMENT**

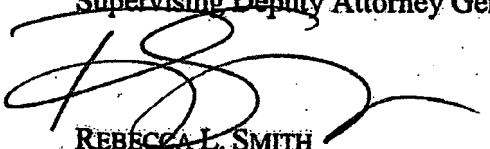
19 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
20 submitted for consideration by the Medical Board of California.

21
22 DATED:

11/8/2021

Respectfully submitted,

23 ROB BONTA
Attorney General of California
24 JUDITH T. ALVARADO
Supervising Deputy Attorney General


25 REBECCA L. SMITH
26 Deputy Attorney General
27 Attorneys for Complainant

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Exhibit A

Accusation No. 800-2019-060677

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 State Bar No. 155307
California Department of Justice
4 300 South Spring Street, Suite 1702
Los Angeles, California 90013
5 Telephone: (213) 269-6453
Facsimile: (916) 731-2117
6 *Attorneys for Complainant*

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 800-2019-060677

12 **Derek Yu Hsu, M.D.**
13 **1819 Kelton Avenue, PH 3**
14 **Los Angeles, CA 90025-6777**

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. A 140476,**

Respondent.

17
18 **PARTIES**

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

22 2. On or about January 29, 2016, the Medical Board issued Physician's and Surgeon's
23 Certificate Number A 140476 to Derek Yu Hsu, M.D. (Respondent). The Physician's and
24 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
25 herein and will expire on July 31, 2021, unless renewed.

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3. This Accusation is brought before the Board, under the authority of the following

All section references are to the Business and Professions Code (Code) unless otherwise

ated.

4. Section 2004 of the Code states:

(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

(i) Administering the board's continuing medical education program.

(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:

(2) Have his or her right to practice suspended for a period not to exceed one year 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.

REGULATORY PROVISIONS

6. Section 820 of the Code states:

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licensee's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licensee to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licensee and may be received as direct evidence in proceedings conducted pursuant to Section 822.

7. Section 824 of the Code states:

The licensing agency may proceed against a licensee under either Section 820, or 822, or under both sections.

8. Section 826 of the Code states:

The proceedings under Sections 821 and 822 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the licensing agency and the licensee shall have all the rights and powers granted therein.

FACTUAL ALLEGATIONS

9. Respondent was a resident in the UCLA Department of Anesthesiology and Perioperative Medicine, David Geffen School of Medicine at University of California, Los Angeles ("Residency Program"). On or about June 21, 2016, Respondent met with administrators from his Residency Program and admitted that he had been diverting narcotics for self-use, specifically the opiate narcotic, fentanyl.

10. Respondent entered treatment for substance use disorder. Respondent's Psychosocial Intake Evaluation indicates that he was abusing alcohol and drugs.

///

1 11. Respondent returned to work in the Residency Program on or about February 10,
2 2017.

3 12. As part of his re-entry to the Residency Program, Respondent signed a contract which
4 stated in pertinent part that he would be subject to immediate termination in the event of any
5 substance abuse relapse.

6 13. On or about September 23, 2019, approximately two weeks before he was scheduled
7 to graduate from his Residency Program, Respondent was found under the influence of propofol
8 and dexamethasone by the Residency Program Director and Dr. S. Respondent was immediately
9 terminated from the Residency Program. In his "Dismissal from Program" letter, the Residency
10 Program Director noted that Respondent was significantly impaired while on duty.

11 **CAUSE FOR DISCIPLINE**

12 **(Inability to Safely Practice Medicine)**

13 14. Respondent Derek Yu Hsu, M.D. is subject to disciplinary action pursuant to section
14 822 of the Code in that Respondent cannot safely practice medicine without practice restrictions.
15 The circumstances are as follows:

16 15. Complainant refers to and, by this reference, incorporates paragraphs 9 through 13,
17 above, as though set forth fully herein.

18 **PRAYER**

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

21 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 140476,
22 issued to Respondent;

23 2. Revoking, suspending or denying approval of Respondent's authority to supervise
24 physician assistants and advanced practice nurses;

25 3. Ordering Respondent, if placed on probation, to pay the Board the costs of probation
26 monitoring; and,

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

DATED: Jan. 26, 2021



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

LA2020601474