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

In the Matter of the Second Amended Accusation Against: **Amir Friedman, M.D.** **Physician's and Surgeon's Certificate No. A 64093** **Respondent.**	**Case No. 800-2018-046381**

DECISION

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

This Decision shall become effective at 5:00 p.m. on May 6, 2022.

IT IS SO ORDERED April 6, 2022.

MEDICAL BOARD OF CALIFORNIA

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

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

In the Matter of the Second Amended Accusation Against:

Amir Friedman, M.D., Respondent

Physician's and Surgeon's Certificate No. A 64093

Agency Case No. 800-2018-046381

OAH No. 2021070153

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on January 27, 2022, by video and telephone conference.

Latrice R. Hemphill, Deputy Attorney General, represented William Prasifka (Complainant). Respondent Amir Friedman, M.D., appeared and represented himself.

During the hearing, Complainant moved to amend the then-pending First Amended Accusation, so that he could plead and pray for an award of costs pursuant to Business and Professions Code section 125.3. The motion was granted, but rather than interlineate new material, Complainant filed and served a Second Amended

Accusation on February 2, 2022. That pleading will be marked and received as exhibit 12, for jurisdictional purposes.

During the hearing, Respondent requested that his exhibit E be sealed by a protective order. There was no objection. The ALJ deems it prudent to also seal exhibit D, which, while not admitted contains sensitive personal information. A separate protective order will issue as to those documents.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on January 27, 2022.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant is the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs. He brought this action in his official capacity.

2. Respondent holds Physician's and Surgeon's Certificate A 64093 (Certificate) which was first issued to him on December 12, 1997. According to the certificate of licensure received as exhibit 2, which was made in April 2021, Respondent's Certificate was to expire in July 2021. However, Respondent's Certificate was renewed through July 2022. It was in effect at the times relevant to the allegations made by Complainant.

3. On January 25, 2022, the ALJ granted Complainant's Petition for an Interim Order of Suspension, pending the hearing in this matter.

4. After Complainant caused the original Accusation to be filed and served on Respondent, Respondent timely filed a Notice of Defense. Complainant filed the First Amended Accusation (FAA) in September 2021, and as noted above, the Second Amended Accusation (SAA) on February 2, 2022. Respondent is deemed, by operation of law, to have controverted the allegations of the FAA and SAA. (Gov. Code, § 11507.)

5. All jurisdictional requirements have been met.

Respondent's Criminal Conviction

6. On October 15, 2021, Respondent was convicted of a felony crime in the United States District Court, Central District of California. At that time, in the case *United States of America v. Amir Friedman*, the court adjudged Respondent guilty of one count of violating title 18, United States Code, section 371, conspiracy. The conviction was based on Respondent's earlier guilty plea, through a plea agreement.

7. The court sentenced Respondent to serve 14 months in federal prison, and upon release from prison he shall be placed on supervised release for two years, on terms and conditions. One of those conditions is that Respondent may not engage in employment that requires a license from any governmental agency unless the federal probation officer gives written approval. Another term and condition is that Respondent obtain mental health treatment. The court ordered Respondent to surrender to the Bureau of Prisons on or before noon on April 18, 2022.

8. The facts of the crime are that Respondent conspired with others, agreeing to take kickbacks and bribes from a pharmacy and a marketer in exchange for providing prescriptions to that pharmacy for compounded drugs and over-the-counter drugs. The conspiracy led to a financial gain of $788,140 for Respondent.

9. Respondent's conviction is for a crime that is substantially related to the duties, qualifications, and functions of a physician and surgeon.

Respondent's Improper Prescriptions of Controlled Substances

10. During 2020, Respondent prescribed himself a number of drugs, some of those drugs being controlled substances. He also prescribed drugs for his wife. The controlled substances included Testosterone Cypionate and Modafinil. During the Board's investigation, Respondent admitted he had been self-prescribing Viagra, Topamax, and testosterone. He admitted that he gave his wife the Topamax he had prescribed for himself. Pharmacy records established that Respondent had prescribed Modafinal for himself and given it to his wife. He wrote such prescriptions on more than one occasion.

11. Michael H. Verdolin, M.D., a board-certified anesthesiologist, provided a written report to the Board, which was received in evidence, and he testified during the hearing. It is his opinion that Respondent's self-prescription of drugs such as Amlodipine or Lisinopril, which are not controlled substances, was not a departure from the standard of care, though it is better practice to obtain the prescriptions from a fellow physician. However, Dr. Verdolin did find that testosterone cypionate is a controlled substance, as is Modafinal, and Dr. Verdolin opined that Respondent's self-prescription of those controlled substances was an extreme departure from the standard of care. In part, Dr. Verdolin relied on Health and Safety Code section 11170 which states that no one may prescribe, administer, or furnish a controlled substance for themselves. He also relied on medical ethics strictures that discourage physicians from treating themselves or their immediate families. Dr. Verdolin did not find any medical basis for providing controlled substances to either Respondent or to Respondent's wife. Furthermore, Dr. Verdolin testified that testosterone cypionate is

contraindicated for a patient with hypertension, a condition for which Respondent takes the Lisinopril and Amlodipine referenced above.

Respondent's Evidence

12. Respondent took responsibility for his criminal acts, and for prescribing the controlled substances. He asked that the Board look to the totality of the circumstances when considering the imposition of discipline against Respondent's Certificate.

13. Respondent practices pain medicine and anesthesia. He has never been the subject of Board discipline, there have not been prior complaints to the Board, nor has he been sued in any malpractice actions.

14. Respondent graduated from Texas A&M University in 1987, with high honors. He was a member of the Corps of Cadets at Texas A&M, the university's military training program, but he did not pursue a career in the military. (Respondent's character witness and classmate Tom Elkins explained that graduates from the Corps of Cadets may join the military as regular officers, on the same footing as graduates of West Point, Annapolis, or the Air Force Academy.) Respondent worked as an auditor for approximately two years, then entered medical school at the University of Texas. That was followed by a general surgery internship at the University of Southern California, and a residency in pain management and anesthesia at UCLA.

15. In 2000 Respondent began work at UCLA teaching anesthesia and pain management. He joined a practice at Cedars Sinai Medical Center in 2002, and then opened a private practice focused on pain management and workers' compensation cases. At one point Respondent had several locations where he practiced, and he

employed numerous persons. He was working six days per week, for up to 14 hours a day.

16. Respondent disclosed in this matter, and to the United States District Court, that he has had a history of personal loss and trauma. He and his parents emigrated to the United States from Israel when he was about five years old. His father was a physician. Five years later, Respondent's mother died; he discovered her body. His father had two marriages after his first wife passed away, and Respondent and his two brothers were not well cared for by his second stepmother. After Respondent graduated from college, one of his brothers committed suicide. His father took his own life in 2012.

17. Respondent married in 2007, and he and his wife have three children. Two of his children suffer from Autism Spectrum Disorder (ASD), and another suffers from anxiety and obsessive compulsive disorder. Respondent himself has been diagnosed with Asperger's Syndrome, placing him on the Autism spectrum.

18. Notwithstanding the challenges he has faced, Respondent practiced medicine without complaint from his patients. Indeed, one of his patients, identified with her initials here in the interest of privacy, testified on Respondent's behalf. L.S. had been Respondent's patient for many years, until he relocated to northern California. She described him as caring, putting in extra time during appointments to obtain all the clinical information he needed, and to counsel her. She was suffering from a rather painful back condition, but Respondent minimized the amounts of medications he was prescribing to her. He provided her a device that worked on her vagal nerves, giving her significant pain reduction. When she lost her job, Respondent treated her for free. She was shocked to hear of his crime and conviction but would continue treatment with him if she could.

19. Tom Elkins testified on Respondent's behalf. Elkins was a fellow cadet in Respondent's class at Texas A & M Universithy. He served as an officer in the Marine Corps for 20 years, and was deployed in Operation Desert Shield and Operation Desert Storm. He now is a human resources officer for USAA Insurance. He was shocked at Respondent's criminal act, believing it was completely out of character. Elkins, who has maintained regular contact with Respondent since their college days, recalled how Respondent tutored scores of fellow cadets so that they could pass chemistry. He believes his old friend to be a generous and compassionate person, despite his felonious misconduct.

20. Two other witnesses testified for Respondent. One was an attorney he works with, Linda Krolop-Silverstein, and the other was his father-in-law, Robert Wilson. Ms. Krolop-Silverstein practices intellectual property law and has worked with Respondent in his efforts to develop a medical device for managing pain. She believes him to be a good physician, conservative in his treatment of patients. She described him as a bit naïve in business matters.

21. Wilson has both a personal and professional relationship with Respondent. He was working with Respondent on the business issues that went along with Respondent's efforts to develop a pain management device, which got to the testing phase. Wilson recounted having overheard a conversation between Respondent and a patient where the latter stated that the device had allowed the patient to reduce pain medications by half. Wilson has consulted Respondent on his own medical issues and found Respondent's responses to be well suited to Wilson's needs.

22. Respondent's wife was going to testify but was in a rather emotional state. She asked that the ALJ read and consider the letter she wrote to Judge Walter,

who presided over Respondent's criminal case. The letter describes a man she knew for several years before their marriage, and he emerges as a kind, compassionate and competent physician. As Ms. Friedman is a registered nurse and nurse practitioner, her assessment of Respondent as a physician is given due weight. At bottom, Respondent's wife has been devastated by Respondent's conviction.

23. Respondent cooperated with federal authorities after his wrongdoing came to light, meeting with other potential wrongdoers at numerous times in an effort to help investigators develop cases against others. It is inferred that Judge Walter took that into account when he sentenced Respondent, along with other information provided by Respondent's attorneys in a sentencing memorandum they provided to the court ahead of the October 2021 sentencing hearing. That memorandum pointed out the problems faced by Respondent's wife and children, his personal issues, including alcohol use, and that he had been the victim of an embezzlement scheme, perpetrated by a billing service he employed, resulting in the loss of approximately one million dollars. According to the sentencing memorandum (exhibit A) the Probation Officer's report recommended a sentence of 30 months; as noted above, Judge Walter sentenced Respondent to just under half of that amount.

24. The sentencing memorandum submitted by Respondent's attorneys to the District Court, and Respondent's letter to the judge, both indicate that Respondent has had a life-long issue with alcohol, along with significant trauma from the emotional trauma flowing from the death of his mother, his brother, his father, and other issues. While it appears that Respondent was able to maintain a practice while burdened by trauma and alcohol use, such must be a concern going forward.

Costs

25. The Board has incurred costs of investigation and enforcement in the amount of $4,168.75, which is a reasonable amount.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter pursuant to Business and Professions Code sections 2004 and 2227 was established, based on Factual Findings 1 through 5. (Further statutory references shall be to the Business and Professions Code unless otherwise noted.)

2. The standard (as opposed to the burden) of proof in this proceeding is that of clear and convincing evidence, to a reasonable certainty. (*Eittinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853.) Complainant was therefore obligated to adduce evidence that was clear, explicit, and unequivocal—so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*In Re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

3. Cause was established to discipline Respondent's Certificate pursuant to sections 490 and 2236, subdivision (a), and California Code of Regulations, title 16 (CCR), section 1360, because of Respondent's conviction of a crime substantially related to the duties, qualifications, and functions of a physician and surgeon. This Conclusion is based on Factual Findings 6 through 9.

4. Respondent violated Health and Safety Code section 11170 by prescribing and administering controlled substances to himself, based on Factual

Findings 10 and 11. That conduct is unprofessional conduct under section 2239, subdivision (a). Respondents acts of prescribing controlled substances to himself also constituted gross negligence, based on Factual Finding 11. Cause was thereby established to discipline Respondent's Certificate pursuant to sections 2239, subdivision (a), and 2234, subdivision (b).

5. Because Respondent prescribed controlled substances to himself on more than one occasion, cause was established to discipline Respondent's Certificate for repeated negligent acts, pursuant to section 2234, subdivision (c). This Conclusion is based on Legal Conclusion 4 and its factual predicates.

6. Cause was established to discipline Respondent's Certificate pursuant to section 2234, subdivision (e), for committing dishonest or corrupt acts, which are substantially related to the duties, qualifications, and functions of a physician and surgeon. This Conclusion is based on Factual Findings 6 through 9.

7. Cause was established to discipline Respondent's Certificate pursuant to section 2234, for general unprofessional conduct, based on Factual Findings 6 through 11. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575 [unprofessional conduct violative of section 2234 need not be confined to the terms of that statute's subdivisions so long as the conduct breaches the rules or ethical codes of a profession].)

8. The Board is entitled to recover its costs of investigation and enforcement incurred since January 1, 2022, based on section 125.3, and based on Legal Conclusions 1, and 3 through 7. The reasonable amount of costs is $4,168.75, based on Factual Finding 25.

9. Plainly Respondent's financial circumstances must be strained given his suspension from practice, and imminent incarceration. While the amount of costs—just under $4,200—are reasonable on their face, Respondent will not be ordered to pay them at this time, because Respondent's Certificate is being revoked. In the event Respondent seeks and obtains reinstatement of his Certificate, he will be required to pay those costs, and the Board may promulgate a payment plan.

10. Grounds for discipline having been established, the issue becomes one of appropriate license discipline. The Board has developed disciplinary guidelines, entitled "Manual of Model Disciplinary Orders and Guidelines (2016)" (Disciplinary Guidelines) which are incorporated by reference into CCR section 1361, subdivision (a). The Disciplinary Guidelines provide guidance, at once general and specific, for what the disciplinary response should be for violations of the Medical Practice Act. The Discipline Guidelines provide that where an ALJ would depart from those Guidelines, for reasons such as mitigating circumstances, the age of the case or evidentiary problems, such issues should be identified.

11(A). In summary, the Disciplinary Guidelines usually recommend a maximum discipline, and a minimum level of discipline, though revocation is the only remedy for some violations, such as registering as a sex offender.

11(B). The Disciplinary Guidelines contain recommendations for the discipline to be imposed for violations of section 2236, subdivision (a) (conviction of a substantially related crime) and for violations of section 2234, subdivision (e), dishonest and corrupt acts, the most salient issues in this case. When the wrongdoing is directly related to patient care or billing, the minimum recommended discipline is revocation stayed, one year of suspension, and seven years' probation. The maximum is outright revocation of the Certificate.

12. The purpose of proceedings of this type is to protect the public, and not to punish an errant licensee. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.) While public protection is the highest priority of the Board and the ALJ (§ 2229, subd. (a)), the Board and the ALJ "shall, whenever possible, take action that is calculated to aid in the rehabilitation of the licensee, ..." (§ 2229, subd. (b).) However, that rehabilitative effort must not endanger the public. (*Id.*, at subd. (c).)

13. Notwithstanding the serious nature of Respondent's crime, he does not appear beyond redemption, in part because he has admitted his wrongdoing in the federal court and in this proceeding, and because his former patient's testimony painted him as a competent and compassionate physician. However, little time has passed since Respondent's conviction. And Respondent's admission of periods of excessive alcohol abuse are troubling, and largely unaddressed. In these circumstances, prudence dictates that Respondent's Certificate be revoked. He can choose to apply for reinstatement after he has served his prison term, and have an opportunity to address the demons lurking below the surface, which were exposed in his efforts to obtain leniency in the criminal proceeding and this matter.

ORDER

1. Physician's and Surgeon's Certificate Number A 64093. Issued to Respondent Amir Friedman, is hereby revoked.

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2. If Respondent seeks successfully seeks reinstatement of his Certificate, payment of costs in the amount of $4,168.75 shall be a condition of reinstatement of his Certificate. The Board may then, in its discretion, promulgate a payment plan.

DATE: 02/28/2022

Joseph Montoya

JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings

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

In the Matter of the Second Amended Accusation Against: **AMIR FRIEDMAN, M.D.** **6928 Pescado Circle** **Rancho Murieta, CA 95683** **Physician's and Surgeon's Certificate No. A 64093,** Respondent.	Case No. 800-2018-046381 OAH No. 2021070153 **SECOND AMENDED ACCUSATION**

PARTIES

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

2. On or about December 12, 1997, the Board issued Physician's and Surgeon's Certificate Number A 64093 to Amir Friedman, 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, 2023, unless renewed.

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JURISDICTION

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

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

STATUTORY PROVISIONS

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:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
>
> (b) Gross negligence.
>
> (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
>
> (1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
>
> (2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.
>
> (d) Incompetence.
>
> (e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.
>
> (f) Any action or conduct that would have warranted the denial of a certificate.
>
> (g) The failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

6. Section 2236 of the Code states:

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

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

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

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

7. Section 2239 of the Code states:

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

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

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8. Section 490 of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos* v. *Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

9. Section 493 of the Code states:

(a) Notwithstanding any other law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

(B) The number of years elapsed since the date of the offense.

(C) The nature and duties of the profession.

(2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.

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(c) As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

(d) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(e) This section shall become operative on July 1, 2020.

10. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself.

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1360, states:

For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.

COST RECOVERY

12. Section 125.3 of the Code states:[1]

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of

[1] Effective January 1, 2022, subdivision (k) of Section 125.3 (which exempted physicians and surgeons from the Board seeking recovery of the costs of investigation and prosecution), was repealed.

investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

FACTUAL ALLEGATIONS

13. In September 17, 2019, an information was filed in the United States District Court for the Central District of California, entitled *United States of America, Plaintiff, v. Amir Friedman, Defendant*, for Conspiracy [18 U.S.C. § 371: Conspiracy; 18 U.S.C. §§ 981 (a) (1) (A), 981 (a) (1) (C), 982 (a) (1), 982 (a) (7) and 28 U.S.C. § 2461 (c): Criminal Forfeiture].

14. Respondent was an anesthesiologist licensed in California. In or about August 2013 and continuing through May 2015, Respondent conspired with Pharmacy owner A, who owned and operated several compounding pharmacies, including New Age Pharmaceuticals, Inc.

("New Age"), located in Beverly Hills, California, and Marketer A through Marketing Entity A, to commit honest services mail and wire fraud and Travel Act violations.

15. New Age was reimbursed by health care benefit programs, such as those provided by the California Worker's Compensation System, for dispensing prescriptions and other pharmaceuticals, including "custom" over-the-counter drugs, such as Terocin, which was a pain relief product for minor aches and pains of muscles and joints.

16. Marketer A was a marketer based in California, who was paid commissions for facilitating the referral of prescriptions for compounded drugs and other pharmaceuticals, including Terocin.

17. Respondent wrote prescriptions for compounded[2] and over-the-counter drugs for patients. Respondent caused such prescriptions to be routed to New Age for dispensing, in exchange for kickback and bribe payments from Marketer A.

18. Respondent knowingly conspired to commit the following offenses against the United States:

A. mail fraud, including through the deprivation of honest services, in violation of 18 United States Code sections 1341 and 1346;

B. wire fraud, including through the deprivation of honest services, in violation of 18 United States Code sections 1343 and 1346; and

C. use of the mails and interstate facilities in aid of bribery, in violation of 18 United States Code section 1952 (a) (a) and (3).

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[2] In general, "compounding" was a practice in which a licensed pharmacist, a licensed physician, or, in the case of an outsourcing facility, a person under a supervision of a licensed pharmacist, combined, mixed, or altered ingredients of a drug or multiple drugs to create a drug tailored to the needs of an individual patient. Compounded drugs were prescribed by a physician when an FDA-approved drug did not meet the health needs of a particular patient. For example, if a patient were allergic to a specific ingredient in an FDA-approved medication, such as dye or a preservative, a compounded drug would be prepared excluding the substance that triggered the allergic reaction. The Food & Drug Administration did not verify the safety, potency, effectiveness, or manufacturing quality of compounded drugs; that is compounded drugs were not FDA-approved. The California State Board of Pharmacy regulated the practice of compounding in the State of California.

19. The manner and means of conspiracy were carried out, in substance, as follows:

A. Pharmacy Owner A would pay Marketer A kickbacks in exchange for arranging for, recommending, and causing the referral of, pre-formulated prescriptions for compounding drugs and other pharmaceuticals (collectively, "Kickback Tainted Prescriptions") to New Age.

B. Based on these payments, Marketer A would offer kickbacks and bribes to Respondent, who, in response to the promise of kickbacks and bribes, would refer and cause the referral of Kickback Tainted Prescriptions to New Age.

C. New Age would dispense compounded drugs and other pharmaceuticals authorized by the Kickback Tainted Prescriptions, send these items to patient beneficiaries through the mail, and submit the corresponding claims for reimbursement to the affected health care plans.

D. Based on these reimbursements, New Age would pay Marketer A, who, in turn, would write checks representing kickback and bribe payments to Respondent, who would continue to authorize Kickback Tainted Prescriptions.

20. Respondent's overt acts in furtherance of the conspiracy are as follows:

A. Overt Act No. 1: On or about August 7, 2013, Respondent caused Marketer A to issue check number 2032, drawn on Marketing Entity A's Bank of America account ending in 0636, in the amount of $22,000, to Respondent.

B. Overt Act No. 2: On or about March 27, 2015, Respondent caused Marketer A to issue check number 1110, drawn on the 0636 bank account, in the amount of $40,000, to Respondent.

C. Overt Act No. 3: On or about May 28, 2015, Respondent caused Marketer A to issue check number 1147, drawn on the 0637 bank account, in the amount of $32,600, to the Respondent.

21. In September 16, 2019, Respondent entered into Plea Agreement with the United States Attorney's Office for the Central District of California ("the USAO"). In the Plea Agreement, Respondent admitted as follows: That he is, in fact, guilty of the offense to which Respondent is agreeing to plead guilty.

22. Also in the Plea Agreement, Respondent agreed to the following:

A. At the earliest opportunity requested by the USAO and provided by the Court, appear and plead guilty to a single-count information, which charges Respondent with conspiracy to commit honest services mail and wire fraud and interstate travel in aid of bribery, in violation of 18 United States Code section 371.

B. Not contest facts agreed in the plea agreement.

C. Abide by all agreements regarding sentencing contained in the agreement.

D. Appear for all court appearances, surrender as ordered for service of sentence, obey all conditions of any bond, and obey any other ongoing court order in this matter.

E. Not commit any crime; however, offenses that would be excluded for sentencing purposes under United States Sentencing Guidelines.

F. Be truthful at all times with the United States Probation and Pretrial Services Office and the Court.

G. Pay the applicable special assessment at or before the time of sentencing unless defendant lacks the ability to pay and prior to sentencing submits a completed financial statement on a form to be provided by the USAO.

23. Respondent further agreed in the Plea Agreement to forfeit personally and on behalf of any Respondent Entity (defined as any entity in which Respondent has held an ownership interest; in which Respondent has served as an officer, director, manager, partner, trustee or other representative; or over which Respondent has had the ability, whether through position or formal or informal agreement, to exercise control), all right, title, and interest in and to any and all monies, properties, and or assets of any kind, derived from or acquired as a result of, or used to facilitate the commission of, or involved in the illegal activity to which defendant is pleading guilty (the "Forfeiture Assets").

24. Respondent is scheduled to be sentenced on October 15, 2021.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

25. By reason of the facts set forth in paragraphs 13 through 24 above, Respondent is subject to disciplinary action under section 2236, subdivision (a), and section 490 of the Code, as well as California Code of Regulations, title 16, section 1360, in that he has been convicted of offences which are substantially related to the qualifications, functions, or duties of a physician and surgeon.

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26. Respondent's acts and/or omissions as set forth in paragraphs 12 through 23, above are incorporated herein, whether proven individually, jointly, or in any combination thereof, constitute the conviction of crimes substantially related to the qualifications, function or duties of a physician and surgeon, pursuant to section 2236, subdivision (a), and section 490 of the Code, as well as California Code of Regulations, title 16, Section 1360.

SECOND CAUSE FOR DISCIPLINE

(Prescribing and/or Administering Controlled Substance/Gross Negligence and Repeated Negligent Acts)

27. Respondent Amir Friedman, M.D. is subject to disciplinary action under Code section 2239, subdivision (a), section 2234, subdivisions (b) and (c), and Health and Safety Code section 11170 in that he repeatedly prescribed himself controlled substances. The circumstances are as follows:

28. On or about May 6, 2020, while investigating a complaint against Respondent, a Board investigator received a patient history report from Encino Family Pharmacy. Seven original prescriptions were received from the pharmacy, which were written by Respondent.

29. Six of the prescriptions were for a Schedule III controlled substance, testosterone cypionate, and prescribed to Respondent. The seventh prescription was for a Schedule IV controlled substance, Modafinil, and was prescribed to Respondent's wife.

30. On or about September 24, 2020, Respondent was interviewed by the investigator. During the interview, Respondent admitted to prescribing himself Viagra, Topamax, and testosterone. Respondent also admitted that he gave his wife the Topamax he prescribed for himself, despite not having a doctor-patient relationship with his wife.

31. The American Medical Association's (AMA) *Code of Medical Ethics* sets forth the relevant standard of care and rules for the profession.

32. *Code of Medical Ethics*, section 8.19, states:

> Physicians generally should not treat themselves or members of their immediate families. Professional objectivity may be compromised when an immediate family member or the physician is the patient; the physician's personal feelings may unduly influence his or her professional judgment, thereby interfering with the care being delivered. Physicians may fail to probe sensitive areas when taking the medical

history or may fail to perform intimate parts of the physical examination. Similarly, patients may feel uncomfortable disclosing sensitive information or undergoing an intimate examination when the physician is an immediate family member. This discomfort is particularly the case when the patient is a minor child, and sensitive or intimate care should especially be avoided for such patients. When treating themselves or immediate family members, physicians may be inclined to treat problems that are beyond their expertise or training. If tensions develop in a physician's professional relationship with a family member, perhaps as a result of a negative medical outcome, such difficulties may be carried over into the family member's personal relationship with the physician. It would not always be inappropriate to undertake self-treatment or treatment of immediate family members. In emergency settings or isolated settings where there is no other qualified physician available, physicians should not hesitate to treat themselves or family members until another physician becomes available. In addition, while physicians should not serve as a primary or regular care provider for immediate family members, there are situations in which routine care is acceptable for short-term, minor problems. Except in emergencies, it is not appropriate for physicians to write prescriptions for controlled substances for themselves or immediate family members.

33. Respondent repeatedly prescribed himself a controlled substance without competent oversight. There are no medical records to support the prescriptions and no record of a decision-making process for the prescriptions.

34. Further, there is no record of a physician-patient relationship between Respondent and his wife. There is also no record that Respondent performed a good-faith examination on his wife.

35. Prescriptions must be written for legitimate medical purposes and there is no record that any of the prescriptions, written by Respondent, were written for legitimate medical purposes.

36. Respondent's repeated actions are negligent acts, which constitute a violation of Code section 2239, are an extreme departure from the standard of care, and a breach of the AMA's *Code of Medical Ethics*.

THIRD CAUSE FOR DISCIPLINE

(Commission of Dishonest or Corrupt Acts)

37. By reason of the facts set forth in paragraphs 13 through 36, above, Respondent is subject to disciplinary action under Code section 2234, subdivision (e), by having committed acts involving dishonesty or corruption, which are substantially related to the qualifications, functions, or duties of a physician and surgeon. By this reference, these allegations are incorporated herein, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

38. Respondent is subject to disciplinary action under Code section 2234 in that he engaged in unprofessional conduct. The circumstances are as follows:

39. The allegations in the First, Second, and Third Causes for Discipline, in paragraphs 25 through 37, above, are incorporated herein by reference as if fully set forth.

DISCIPLINARY CONSIDERATIONS

40. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about September 17, 2019, Respondent entered into a plea agreement in the criminal proceeding titled *United States of America, v. Amir Friedman,* Case Number 19CR00554-JFW, in the United States District Court for the Central District of California. Respondent entered a plea of guilty for conspiracy to commit honest services mail and wire fraud and interstate travel in aid of bribery, in violation of 18 United States Code section 371, and agreed to forfeit the amount of $788,140.00, which sum Respondent admitted he obtained, received, and possessed as a result of his violation of 18 United States Code section 371, as charged in the Information (Indictment).

41. To determine the degree of discipline, if any, to be imposed on Respondent Amir Friedman, M.D., Complainant alleges that on or about January 25, 2022, in a disciplinary action titled *In the Matter of the Interim Order of Suspension Against Amir Friedman, M.D.*, before the Medical Board of California, in Case Number 800-2018-046381, Respondent's license was suspended pending a hearing on this Second Amended Accusation. 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 64093, issued to Respondent Amir Friedman, M.D.;

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

3. Ordering Respondent Amir Friedman, M.D., to pay the Board the costs of the investigation and enforcement of this case and, if placed on probation, the costs of probation monitoring; and

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

DATED: FEB 01 2022

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

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