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

In the Matter of the Second Amended Petition to Revoke Probation Against: Ronald Michael Schilling, M.D. Physician's and Surgeon's Certificate No. G 60661 Respondent.	Case No. 800-2020-071133

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 August 15, 2022.

IT IS SO ORDERED July 15, 2022.

MEDICAL BOARD OF CALIFORNIA

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

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

In the Matter of the Second Amended Petition to Revoke Probation Against:

RONALD MICHAEL SCHILLING, M.D.

Physician's and Surgeon's Certificate No. G 60661,

Respondent.

Agency Case No. 800-2020-071133

OAH No. 2021020231.1

PROPOSED DECISION ON REMAND

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, initially heard this matter by videoconference on June 23, 2021. Peggie Bradford Tarwater, Deputy Attorney General, appeared on behalf of petitioner William Prasifka, Executive Officer of the Medical Board of California (Board). Lindsay Johnson, Esq., appeared on behalf of respondent Ronald Michael Schilling, M.D., who was present during the hearing.

On July 23, 2021, the ALJ issued a proposed decision. The Board considered the proposed decision, and on October 4, 2021, remanded the matter to the ALJ for the taking of additional evidence on the following issues:

A. Whether Respondent's engaging in sexual intercourse and other intimate physical acts with K.K. resulted in Respondent testing positive to Fentanyl, including how such transfer occurred with respect to Respondent, the likelihood of such environmental exposure to Respondent from living with his girlfriend, the length of environmental exposure necessary for a positive test, and whether such exposure could result in the quantities of Fentanyl and Fentanyl metabolites found in Respondent's samples.

B. The facts and circumstances surrounding Respondent's May 2, 2021 urine and May 24, 2021 hair samples testing positive for Fentanyl and Fentanyl metabolites.

C. Whether Respondent has established his affirmative defense of environmental exposure by a preponderance of the evidence.

D. The facts and circumstances surrounding each of Respondent's missed check-ins for biological fluid tests on February 22, 2020; March 16, 2020; March 17, 2020; October 25, 2020; November 30, 2020; December 25, 2020; and January 10, 2021.

E. Any other evidence that would assist the Panel in assessing Respondent's sobriety and compliance with the terms of his probation

The remanded matter came on regularly for hearing by videoconference on April 26, 2022. ALJ Cindy F. Forman presided over the remand hearing. Peggie Bradford Tarwater, Deputy Attorney General, appeared and represented petitioner. Lindsay Johnson, Esq., appeared and represented respondent, who was present during the hearing.

The parties presented testimony and documentary evidence. The record was then closed and the matter was submitted for decision at the end of the hearing.

SUMMARY

Petitioner alleges respondent violated the conditions of his probation by failing to abstain from the use of controlled substances, missing several daily check-ins for biological testing, and failing to comply with all laws and rules regarding his medical practice. Respondent denied using controlled substances but admitted to the missed check-ins. Petitioner established by a preponderance of the evidence respondent violated the conditions of his probation. Respondent's explanations for his positive tests for fentanyl were not credible considering the scientific evidence presented at the remand hearing. Based on respondent's inability to comply with the terms of his probation, respondent has not demonstrated a capacity to practice medicine safely. It is there appropriate to revoke his probation and revoke his license for the protection of the public.

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FACTUAL FINDINGS

Jurisdiction and Procedural History

1. The Board issued Physician's and Surgeon's Certificate Number G 60661 (license) to respondent on July 13, 1987. The license was in effect at all times relevant to the charges brought in this proceeding. The license is scheduled to expire on August 31, 2022.

2. On April 18, 2018, the Board issued a decision in a disciplinary action titled *In the Matter of Accusation against Ronald Michael Shilling, M.D.,* case number 800-2015-018087, effective May 18, 2018, adopting a Stipulated Settlement and Disciplinary Order, dated January 24, 2018 (2018 Probation Order). The 2018 Probation Order found respondent was subject to discipline based on his violation of Business and Professions Code (Code) sections 2239 (self-use of controlled substances), 2236 (conviction of a substantially related crime), 2238 (violation of laws regulating drugs), and 2234 (general unprofessional conduct) in connection with his criminal conviction for driving under the influence of drugs. Under the terms of the 2018 Probation Order, the Board revoked respondent's certificate, immediately stayed the revocation, and then placed respondent's license on probation for six years with terms and conditions intended to monitor his use of controlled substances.

3. On August 20, 2020, petitioner issued a Cease Practice Order against respondent's license after respondent tested positive for fentanyl metabolites on August 11, 2020. Fentanyl, an opiate, is a Schedule II substance that has been described as 50 to 100 times more potent than morphine. (*People v. Tseng* (2018) 30 Cal.App.5th 117, 126; *Lemke v. Sutter Roseville Medical Center* (2017) 8 Cal.App.5th 1292, 1295.) The Cease Practice Order prohibited respondent from engaging in the

practice of medicine until a final decision has been issued on an accusation or a petition to revoke probation filed in the matter.

4. On December 28, 2020, petitioner, in his official capacity, filed an Accusation and Petition to Revoke Probation (Accusation) in this matter based on respondent's August 11, 2020 positive drug test for fentanyl. Respondent timely filed a Notice of Defense.

5. On June 10, 2021, petitioner, in his official capacity, filed the First Amended Petition to Revoke Probation (First Amended Petition), adding allegations relating to a second positive drug test and respondent's failure to make daily contact with the drug laboratory to arrange biological drug testing. At the June 23, 2021 hearing on this matter, petitioner amended the First Amended Petition by interlineation to add an allegation relating to a positive hair sample test. On April 15, 2022, petitioner, in his official capacity, filed the Second Amended Petition to Revoke Probation (Second Amended Petition), incorporating the allegation regarding the positive hair sample test and adding allegations regarding respondent's failure to contact the laboratory testing facility two additional times. The Second Amended Petition is the operative pleading in this matter.

Factual Background

6. Respondent is 70 years old. He is board-certified in physical medicine and rehabilitation. He obtained his medical license from New Jersey in 1980 and his New York license in 1981 or 1982. His New Jersey license was never disciplined; it eventually expired because respondent did not pay the required dues. Respondent's New York license was revoked because of the discipline instituted by the Board.

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7. Respondent has worked in California since his licensure in 1987. His medical practice focuses primarily on worker's compensation and the evaluation of disabilities due to injuries. He does not take patient calls and is not on staff at any hospital. Respondent has never been sued for malpractice. He was named in one patient complaint to the Board regarding a billing matter but the matter was dismissed.

8. The 2018 Probation Order stems from respondent's guilty plea on October 19, 2015, to driving under the influence of drugs (DUI) in violation of Vehicle Code section 23152, subdivision (e), a misdemeanor, and his later criminal conviction. The pertinent facts of respondent's criminal conviction are alleged in the Accusation giving rise to the 2018 Probation Order; respondent admitted the truth of those factual allegations as part of that Order. Those facts are that on November 8, 2014, at approximately 7 a.m., respondent fell asleep while driving his car and hit a telephone pole. Respondent showed signs of intoxication and admitted to having taken oxycontin, cocaine, and Valium before driving. Blood tests taken after respondent's arrest yielded positive results for Ativan and Ambien; a bag containing cocaine was found in respondent's car. Respondent admitted to the police he had purchased the cocaine for his then wife. The court placed respondent on summary probation for three years and ordered him to pay a fine, attend a three-month first offender program, and perform 40 hours of community service.

Acknowledgment of Probation Conditions

9. On April 20, 2018, the Board's biological fluid analyst assigned to respondent explained the requirements of biological fluid testing under the 2018 Probation Order. The analyst also informed respondent of his obligations to enroll with FirstSource Solutions (FirstSource), the Board's approved laboratory testing service,

and to then check in daily with FirstSource to find out if he was selected for random testing on that day. On May 22, 2018, respondent wrote to the Board and outlined his understanding of the conditions of his 2018 Probation Order and his compliance with those conditions as of that date. In the letter, respondent indicated his sobriety date is November 10, 2014, he has registered with FirstSource, he is undergoing psychological therapy, and has begun participating in a weekly support group. Respondent also notes his goal and intention are to "remain in firm compliance with the Board during this probationary period." (Ex. 6, p. 031.)

10. On May 23, 2018, respondent acknowledged he had received a copy of the 2018 Probation Order and the Board's inspector had explained to him all the terms and conditions of his probation.

Compliance with Probation Conditions

11. The Second Amended Petition alleges respondent failed to comply with three conditions of the 2018 Probation Order: Condition 1, requiring the complete abstention from the personal possession or use of controlled substances without a prescription; Condition 7, requiring respondent to log in daily with FirstSource for random biological testing to determine whether he is using controlled substances; and Condition 13, requiring respondent to comply with the laws and regulations governing medical practice.

Condition 1

12. Probation Condition 1 states as follows:

> Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the

California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.

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

13. Respondent tested positive for fentanyl three times. On August 11, 2020, and May 2, 2021, respondent was randomly selected to provide a urine sample. Both times, respondent's urine was found to contain fentanyl and fentanyl metabolites. On May 24, 2021, respondent was asked to provide a hair sample as part of his biological testing. That hair sample tested positive for a fentanyl metabolite in an amount just below the cutoff. (Ex. 14.) On the dates respondent's urine and hair tested positive for fentanyl, respondent did not have a prescription for fentanyl.

RESPONDENT'S RESPONSE

14. Respondent does not dispute the veracity of the positive fentanyl tests. Respondent, however, adamantly denies he ever used fentanyl without a prescription. He maintains he has been sober and free of illicit substances since November 8, 2014, his sobriety date.

15. Respondent testified that after first learning of his August 11, 2020 positive test, he believed the test was mistaken. To test the accuracy of FirstSource's testing, respondent began to submit urine and hair samples to an independent drug laboratory, Phamatech Laboratories (Phamatech), to confirm FirstSource's results. Phamatech's records indicate respondent submitted hair or urine samples to Phamatech on August 18 (hair and urine), September 23, September 26, October 3, 5, 22, 27, 31, November 7, 12, 25, and December 30, 2020, as well as on January 6, 13, 29, February 3, 9, 23, and March 3, 2021. (Ex. G.) Each of these samples tested negative for fentanyl. Phamatech's records, admitted as administrative hearsay, are not accorded meaningful evidentiary weight as they are not certified and do not establish the chain of custody. It is also uncertain whether respondent was observed when he submitted the collected samples. (See Gov. Code, § 11513, subd. (d).) Additionally, although the Phamatech results arguably support respondent's claim of abstinence for those test dates, they do not show the FirstSource August 11, 2020 positive test result was erroneous.

16. Respondent testified he had no interest in using fentanyl. He explained cocaine had been his drug of choice in the past because it was a stimulant. He did not like fentanyl or other painkillers because they were depressants, and he had no wish to slow himself down.

17. Respondent testified he had many surgeries in which he was prescribed opioids but had never abused them. Respondent disclosed each of his prescriptions for controlled substances to his probation monitor. He testified after his last surgical procedure in 2019, he had sworn off using any opioids, including those that had been prescribed, because of their potential to cause long-term organ damage.

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18. Respondent contends the August 2020 and May 2021 positive test results stem from sexual contact with his then girlfriend, K.K. (her initials used for confidentiality purposes), who unbeknownst to him was using fentanyl intermittently during their relationship. Respondent met K.K. in a recovery group meeting in April 2019, and they began a romantic relationship six months to a year later. Respondent repeatedly asserted he was unaware K.K. had abused fentanyl before their relationship, and he testified he made clear to K.K. he would not tolerate abuse of controlled substances during their relationship. According to respondent, he confronted K.K. after his positive fentanyl test in August 2020, but she denied using fentanyl. After his second positive test in May 2021, respondent confronted K.K. again about her use of fentanyl. At that time, K.K. admitted she had been intermittently using fentanyl without respondent's knowledge since the beginning of August 2020. After K.K.'s admission, respondent immediately ended their relationship. Respondent testified he had never felt any physical effects that would alert him to any fentanyl exposure during his sexual relations with K.K.

K.K. TESTIMONY

19. Respondent's explanation was partially corroborated by testimony from K.K. K.K. testified at the remand hearing in response to petitioner's subpoena; her counsel was present at the hearing. K.K. had submitted a declaration at the original hearing; she was unavailable to testify at the original hearing because she was scheduled to serve a nine-month jail sentence on the hearing date. The jail sentence stemmed from K.K.'s criminal convictions for misdemeanor grand theft and misdemeanor receipt of stolen property and for her criminal conviction in a companion case. (Ex. 30, p. A1744.) K.K. testified the latter criminal conviction was for a

DUI based on her driving with fentanyl and alcohol in her system, her fourth DUI conviction. No court records were offered into evidence regarding this conviction.

20. K.K. confirmed she first met respondent at a recovery group meeting in April 2019, and they began a relationship six months to a year later. K.K. testified she shared her alcohol abuse and her abuse of controlled substances at the recovery group meetings, but she did not reveal her use of fentanyl. Thus, according to K.K., respondent was unaware of her earlier fentanyl use.

21. K.K. moved in with respondent after her surgery in early August 2020. K.K. testified she was aware of respondent's probation condition that he could not use controlled substances and respondent told her she could not use controlled substances during their relationship. However, although she abstained from addictive substances at the outset of their relationship, K.K. began using fentanyl without respondent's knowledge in August 2020. K.K. testified she snorted three lines of fentanyl on the night of respondent's birthday party, August 10, 2020, outside of respondent's home unbeknownst to respondent. She and respondent engaged in kissing, oral sex, and vaginal intercourse between one and one and a half hours later. The sex lasted approximately an hour, and they then fell asleep.

22. K.K. testified respondent confronted her after he received notice of the August 11, 2020 positive test and she then stopped seeing respondent romantically and moved out of his home. K.K. further testified she was not intimate with respondent again until May 1, 2021. Approximately an hour before having sexual relations with respondent on that date, she also used fentanyl, both by snorting it and placing it in her mouth. She testified she and respondent engaged in oral sex, vaginal intercourse, and kissing for about an hour after she ingested the fentanyl. According to K.K., respondent was unaware she had used fentanyl at the time.

23. On May 9, 2021, after receiving his second positive test result, respondent confronted K.K again. At that time, K.K. acknowledged to respondent she had relapsed and was using fentanyl. It was unclear from the record if K.K.'s May 9 confession to using fentanyl was the first time she told respondent of her fentanyl use. Her declaration states that it was her first time (Ex. C, p. B24); her testimony at hearing was unclear and intimated she had confessed her use of fentanyl before she moved out of respondent's house in August 2020.

24. K.K. testified she has never seen respondent ingest or otherwise use fentanyl. According to K.K., respondent never purchased fentanyl for his or her use. K.K. further testified she never observed respondent impaired by drugs or alcohol.

EXPERT TESTIMONY

James L. Ferguson

25. After each of respondent's positive tests for fentanyl, the Board's biological fluids analyst sent the test results and respondent's explanation to James L. Ferguson, D.O, the Medical Director of Recovery Management Services at FirstSource for his review. Dr. Ferguson has been the Medical Director at FirstSource since March 2011. He also is a certified Medical Review Officer who has received special training to review laboratory results generated by an employer's drug testing program and explanations for those results. Dr. Ferguson has been involved in reviewing drug tests since September 1995. Based on his experience and training, Dr. Ferguson is qualified to opine about the reliability of respondent's test results and the source of the presence of the fentanyl reflected in those results.

26. In addition to responding to the Board analyst's direct inquiries regarding respondent's positive urine and hair tests for fentanyl, Dr. Ferguson

submitted two declarations and testified at hearing. After reviewing the test results and respondent's explanation, Dr. Ferguson opined respondent ingested and metabolized fentanyl two times based on his August 11, 2020 and May 2, 2021 positive urine test results. Dr. Ferguson further opined it was unclear whether respondent's May 24, 2021 hair sample demonstrated a separate instance of fentanyl use or a confirmation of earlier use because hair samples can reflect fentanyl use up to 90 days before the sample is taken.

27. Dr. Ferguson testified he knew of no data showing fentanyl contamination through sexual intercourse. He acknowledged fentanyl could be absorbed by a mucous membrane. However, he testified any transfer of fentanyl residue between K.K. and respondent through kissing would have to happen rapidly. As K.K. and respondent did not start kissing and having sexual relations until at least one hour after K.K. snorted fentanyl or placed it in her mouth, Dr. Ferguson thought it unlikely respondent could have absorbed fentanyl in this manner.

Timur Shah Durrani, M.D.

28. Timur Shah Durrani, M.D., testified about the likelihood that respondent's positive test results for fentanyl were the result of sexual contact. Dr. Durrani is licensed to practice medicine in California and is board-certified in occupational medicine, medical toxicology, family medicine, and preventative medicine. He is a certified Medical Review Officer and has worked as a Medical Review Officer since 2004 for the Department of Defense. He currently serves as an associate clinical professor at University of California San Francisco and as the medical director at Lawrence Berkeley National Laboratory. Based on his training and experience, Dr. Durrani is qualified to test as an expert on the results of respondent's positive drug tests.

29. Dr. Durrani testified at the hearing and submitted a declaration reflecting his opinions (Exhibit 37). His opinions were based on his review of respondent's drug test results and K.K.'s declaration as well as his research in the National Library of Medicine and the PubMed database as to the transfer of fentanyl during sex. Dr. Durrani found no reports in the literature describing the transfer of fentanyl via sexual intercourse or close contact.

30. Because of the absence of literature on the transfer of fentanyl during sex, Dr. Durrani reviewed findings of the absorption of fentanyl through skin patches and tested respondent's theory of sexual exposure against those findings. According to Dr. Durrani's research, fentanyl can be absorbed through the skin or mucous membranes. Once it is absorbed, fentanyl is extensively eliminated by the liver. Only eight percent of fentanyl is excreted in urine. According to the research, it takes three to 13 hours for fentanyl to be absorbed via a patch by the skin in therapeutic amounts and 35 hours to reach peak concentration. Dr. Durrani therefore thought it unlikely respondent absorbed fentanyl powder through his skin as there was no evidence respondent was in prolonged contact with any fentanyl residue on K.K.'s nostril or face or in her mouth.

31. According to Dr. Durrani, respondent also was unlikely to have absorbed fentanyl through K.K.'s sweat or mucous membranes as the concentration in his urine was more than 1,000 times the amount of fentanyl he could have been exposed to through mucous excretions or sweat. Although Dr. Durrani acknowledged kissing might be considered different than sweat or mucous excretions, he explained respondent's positive tests showed respondent had metabolized the fentanyl. Dr. Durrani opined respondent therefore was likely to show symptoms of fentanyl use, which respondent claimed he did not experience from his sexual contact. Considering

the absence of any published reports of fentanyl transfer by contact of body fluid or sexual contact, the concentration of fentanyl found in respondent's urine, and the absence of any reported symptoms from the alleged fentanyl exposure via sex, it was Dr. Durrani's opinion, with reasonable medical probability, that fentanyl transfer via sexual contact did not result in respondent's positive urine results.

Stephen Sandor, M.D.

32. Respondent offered a report, titled an "Addiction Medicine/Psychiatric Evaluation" and dated May 14, 2021, by Stephen Sandor, M.D., a board-certified psychiatrist with a certification of added qualification in addiction psychiatry, to support his claim that he had not knowingly used fentanyl. Dr. Sandor is a former Chairman and Medical Director of the Chemical Dependence Center at Saint John's Hospital in Santa Monica and has been the consulting psychiatrist for various outpatient drug and alcohol treatment programs. Dr. Sandor did not testify at either the initial hearing or the remand hearing. Based on his education and training, Dr. Sandor is qualified as an expert to address respondent's addiction issues. However, Dr. Sandor is not a Medical Review Officer and does not have the same depth of experience as Dr. Ferguson or Dr. Durrani reviewing workplace drug testing. His opinions therefore as to the cause of respondent's positive drug tests are accorded less weight than those of Dr. Ferguson and Dr. Durrani.

33. Dr. Sandor did not challenge the accuracy of respondent's positive urine test results. Instead, he characterized them as "innocent positives" i.e., a "genuinely positive test in an individual who did not knowingly use the drug." (Ex. B, p. B15.) He opined it was possible respondent absorbed the fentanyl through his skin and mucous membranes after having contact with the residue of the drug around K.K.'s nostrils and hands. Dr. Sandor, however, did not cite any scientific support for his opinion. Instead,

he provided anecdotal evidence of a doctor who had absorbed cocaine from his patient's skin and clothing.

ANALYSIS

34. A preponderance of the evidence established respondent's positive urine tests for fentanyl were not the result of his sexual contact with K.K. Both Dr. Ferguson and Dr. Durrani persuasively explained why the sexual transfer of fentanyl was unlikely. Neither expert was able to locate any research or literature to support respondent's theory of fentanyl transfer. Dr. Sandor's report offered no scientifically supported evidence to support his assertion that respondent's test results were innocent positives.

35. K.K.'s testimony also cast doubt on the credibility of respondent's explanation of his positive results. K.K. contradicted respondent's claim that their relationship was continuous through May 2, 2021. According to K.K., she ended her relationship with respondent after the first positive urine test in August 2020 because she believed respondent's August 11, 2021 positive result was her fault, and she and respondent did not resume intimacy until May 2021. Regardless of what K.K. told respondent at that time, her moving out after the first positive test should have placed respondent on notice that something was amiss. Respondent, however, asserted his relationship with K.K. did not end until May 2021, and he had no indication K.K. might have relapsed until that time. K.K.'s assertion that she never disclosed her fentanyl use during the recovery meetings respondent attended before they became romantically involved also was questionable since she had no reason to hide such use at that time. The timing of K.K.'s and respondent's May 1, 2021 sexual encounter also seems self-serving and dubious considering respondent's selection for testing the very next day.

36. Respondent violated Condition 1 of the 2018 Probation Order by failing to abstain from the use of fentanyl, as reflected in his positive urine tests on August 11, 2020, and on May 2, 2021.

Condition 7

37. Probation Condition 7 states in pertinent part:

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

38. Respondent failed to check in with FirstSource during program hours as required on February 22, 2020, March 17, 2020, October 25, 2020, November 30, 2020, December 25, 2020, January 10, 2021, September 4, 2021, and March 26, 2022. Respondent was not selected to test on any of those dates. For each missed date, the

Board wrote to respondent informing him of his missed dates and that his continued failure to cooperate with the biological fluid testing requirement could constitute grounds to issue a citation and fine. (Ex. 16, p. A1193, A1194; Ex. 17; Ex. 33.)

39. On December 31, 2020, the Board issued Citation Order number 800-2020-073797 against respondent for his failure to check in with FirstSource on February 22, 2020, March 17, 2020, October 25, 2020, and November 30, 2020. (Ex. 19.) The Citation stated respondent's failure to check in with FirstSource violated Conditions 6, 9, and 18 of the 2018 Probation Order and ordered respondent to pay $350 in fines and maintain compliance with his probation conditions. Respondent was warned that failure to do so may result in the filing of formal disciplinary action to revoke his probation. Respondent did not contest the citation and paid the fine.

40. On September 28, 2021, the Board issued Citation Order number 800-2021-081864 against respondent for his failure to check in with FirstSource on January 6, 2021, January 10, 2021, March 17, 2021, and September 4, 2021. The Citation stated respondent's failure to check in with FirstSource violated Conditions 6, 9, and 18 of the 2018 Probation Order and ordered respondent to pay $700 in fines and maintain compliance with his probation conditions. Respondent was warned any future violation may result in the filing of formal disciplinary action to revoke his probation. Respondent did not contest the citation and paid the fine.

41. Respondent did not dispute his failure to check in with FirstSource. He did not explain the missed dates in 2020 except that he had undergone multiple surgeries in 2020 and may have missed the dates because of his recovery. Respondent acknowledged that until he received the December 2020 citation, he mistakenly believed 99 percent compliance with his call-in obligations was acceptable. At the first administrative hearing on this matter, respondent testified that after receiving the first

citation, he began to sleep with his phone, which has two alarms set to remind him to call in to FirstSource, so that he would no longer miss a check-in. When asked to explain the two missed call-ins that occurred after that first hearing, i.e., the call-ins for September 4, 2021, and March 26, 2022, respondent explained that on March 26, 2022, he had slept through the two phone alarms and did not remember to check in with FirstSource, and he had no recall of why he missed the September 4, 2021 date.

42. Respondent violated Condition 7 by failing to check in with FirstSource on February 22, 2020, March 17, 2020, October 25, 2020, November 30, 2020, December 25, 2020, January 10, 2021, September 4, 2021, and March 26, 2022.

Condition 13

43. Condition 13 of the 2018 Probation Order states:

> Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments and other orders.

44. Respondent failed to comply with Condition 1 of the 2018 Probation Order because his urine samples tested positive for fentanyl. Respondent's use of fentanyl, a controlled substance, without a prescription, is contrary to the Medical Practice Act. (Bus. & Prof. Code, §§ 2234, subd. (a); 2239, subd. (a).) Respondent thereby violated Condition 13 of the 2018 Probation Order.

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Respondent's Evidence

45. Respondent acknowledged he exhibited poor judgment in becoming romantically involved with an individual with substance abuse problems and apologized to the Board for his poor decisions. Respondent repeatedly noted during his testimony that he did not know K.K. as a drug abuser but only as a recovering alcoholic. Respondent also admitted his relationship with K.K. was not his first romantic relationship with an addict, and he indicated he was working with his therapist to make sure he did not repeat his prior mistakes.

46. Except for the violations described above, respondent has been compliant with the terms and conditions of the 2018 Probation Order. Since the Cease Practice Order, respondent has continued biological testing, psychological therapy, and participation in a weekly recovery group. Reports from respondent's treating psychologist and group monitor raise no concerns. Respondent also regularly reads three medical journals and is active in obtaining continuing education courses. (Ex. 31, p. A1806; Ex. H.) He continues to follow the 12-step program; he also meditates and assists others struggling with their addictions. Respondent has paid his probation monitoring costs, his citation fees, and his malpractice premiums.

47. Respondent maintained he has always been open and honest with the Board. He testified that when he first became licensed in California, he voluntarily participated in the Board's diversion program because he was concerned about his cocaine use. He also testified that he disclosed his criminal conviction to the Board.

48. Respondent considers himself a good doctor. He chose physical medicine and rehabilitation because he wants to be involved in the actual lifestyle of the patient. He would be willing to practice with any restriction if he could return to practice.

49. Respondent's probation has been extended because of his non-practice since the date of the Cease Practice Order and previous tolling for medical reasons. As of February 24, 2022, respondent's probation is expected to end on December 22, 2026.

50. Respondent submitted several letters in support of his continued licensure from fellow doctors, his practice monitor, chiropractors, and business associates. Each of the letter writers was aware of the Board's Cease Practice Order and respondent's addiction issues. All wrote of his excellent clinical skills and his dedication to his patients. None observed any conduct indicative of relapse or impairment, and each endorsed his return to the practice of medicine. (Ex. D.) However, the letters were all written in March 2021, before respondent's second positive fentanyl test in May 2021.

51. Khanh (Kathy) Nguyen testified on Respondent's behalf and submitted a letter in support of Respondent's return to medical practice. (Ex. E.) Ms. Nguyen worked as respondent's office manager for more than 15 years, and she would see respondent two to three times a week until the Cease Practice Order became effective. Ms. Nguyen described respondent as a great physician who is invaluable to his patients; he makes home visits when his patients are too injured to come to the office. She reported respondent's patients respect and appreciate him. She described respondent as "clear-headed and focused" whenever she saw him and that she would never believe respondent would knowingly violate his probation requirements.

52. Afsoun Naderi, D.C., also testified on respondent's behalf and submitted a letter in support of respondent's return to practice. (Ex. F.) Dr. Naderi has known respondent for over 20 years and has been the administrator for respondent's medical practice. She described respondent as a hard worker with admirable ethics. She noted

that she had lunch with respondent for his birthday on August 11, 2020, within hours of his sample and found him "clear-eyed, totally cognitive and aware." He showed no evidence of intoxication. She has known respondent to be completely sober for at least six years. According to Dr. Naderi, respondent takes his probation very seriously and would never jeopardize his career or the welfare of multiple families that depend on his office for their income.

53. Dr. Sandor's report was based on a 30-minute interview with respondent and the review of several documents, including respondent's positive urine tests, K.K.'s declaration, the nine letters of support for respondent from physicians and chiropractors, respondent's practice monitor, and office administrator. Dr. Sandor found no reason outside of the positive fentanyl tests to suspect respondent had relapsed. In his report, Dr. Sandor opined it was "highly unlikely that [respondent] could have garnered the support offered by his colleagues evidenced in their letters to the [Board] had he been using opioids. Their letters describe him as attentive and thoughtful in his medical practice and entirely reliable. Both characteristics are quite incompatible with an individual who has relapsed to drug addiction." (Ex. B, p. B16.) Dr. Sandor's mental status examination found no issues with respondent's mental health and his diagnostic impressions observed no evidence respondent was using illicit substances. However, Dr. Sandor was unaware of respondent's subsequent positive hair sample, and it was not clear whether that test would alter his opinion, given the statement in his report that a positive hair sample would result after "a serious episode" of drug use. (*Id.*, p. B17.)

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LEGAL CONCLUSIONS

Applicable Law

1. The main purpose of administrative disciplinary proceedings is to protect the public through the prevention of future harm and the improvement and rehabilitation of the licensee. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

2. In a petition to revoke probation, the petitioner has the burden of proving by a preponderance of the evidence that license discipline is appropriate. (*Sandarg v. Dental Board of California* (2010) 184 Cal.App.4th 1434.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

3. A doctor commits unprofessional conduct if he uses or prescribes for or administers to himself or herself, any controlled substance. (Bus. & Prof. Code, § 2239, subd. (a).) Unprofessional conduct is actionable by the Board. (Bus. & Prof. Code, § 2234.)

4. Condition 19 of the 2018 Probation Order provides that 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."

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Probation Violations

5. Petitioner proved by a preponderance of the evidence respondent used fentanyl without a prescription on two occasions. Cause therefore exists to revoke respondent's probation and impose the stayed revocation of respondent's license for failure to comply with Condition Number 1 of the 2018 Probation Order (Failure to Refrain from Using Controlled Substances) as set forth in Factual Findings 12 through 36.

6. Petitioner proved by a preponderance of the evidence that respondent failed to check in for biological testing eight times. Cause therefore exists to revoke respondent's probation and impose the stayed revocation of respondent's license for failure to comply with Condition 7 of the 2018 Probation Order (Failure to Submit to Biological Testing), as set forth in Factual Findings 37 through 42.

7. Petitioner proved by a preponderance of the evidence respondent violated California law and the rules governing medical practice by using fentanyl without a prescription. Cause therefore exists to revoke respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with Condition 13 of the 2018 Probation Order (Failure to Comply with Laws) as set forth in Factual Findings 12 through 36 and 43 through 44.

Disposition

8. As petitioner established that respondent violated the terms of his probation, the appropriate consequence remains to be determined. The Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th ed. 2016) (Guidelines) sets forth recommended discipline. According to the Guidelines, the recommended minimum discipline for probation violations is a 30-day suspension and

the maximum is revocation of probation. The Guidelines also state that "the maximum penalty should be given for repeated similar offenses or for probation violations revealing a cavalier or recalcitrant attitude." (Ex. 22, p. A1293.)

9. Although respondent has been compliant with many of the probation conditions imposed by the Board, respondent has demonstrated a cavalier attitude toward the most important probation conditions that ensure public safety. He has been unable to comply with his daily check-in orders despite a Cease Practice Order, two Petitions to Revoke Probation, and promises made in this proceeding. He also tested positive for fentanyl use after the Cease Practice Order was imposed and the Accusation was filed. Even if respondent's explanation of his positive fentanyl test results had any scientific basis, respondent showed poor judgment by continuing to engage in a romantic relationship with a known substance abuser and placing his license at risk.

10. The stay of respondent's license revocation was conditioned upon compliance with the terms of his probation. Respondent has not provided evidence of a sustained commitment to meeting those terms. The excuses and explanations respondent provided for failing to satisfy his probation terms are not compelling in light of the expert evidence. Respondent has failed to prove his positive tests were the result of environmental exposure or sexual contact. Considering his inability to comply with the daily call-in requirements, the Board cannot rely on respondent to comply with the terms that allow it to monitor his drug use. Repeated citations have not modified respondent's behavior. It therefore cannot be concluded that respondent is capable of practicing medicine safely at this time. An outright revocation of respondent's license is the only measure of discipline that will protect the public.

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ORDER

The Second Amended Petition to Revoke the Probation of respondent Ronald Michael Schilling, M.D., is granted, and the stay of the order of revocation of Physician's and Surgeon's Certificate No. G 60661 is hereby lifted. Physician's and Surgeon's Certificate No. G 60661 is revoked.

DATE: 05/25/2022

CINDY F. FORMAN
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

Decision and Order

Medical Board of California Case No. 800-2015-018087

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Attorneys for Complainant

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

In the Matter of the Second Amended Petition to Revoke Probation Against: **RONALD MICHAEL SCHILLING, M.D.** **17261 Chatham Lane** **Huntington Beach, CA 92649-6419** Physician's and Surgeon's Certificate No. G 60661, Respondent.	Case No. 800-2020-071133 OAH Case No.: 2021020231.1 **SECOND AMENDED PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

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

2. On July 13, 1987, the Board issued Physician's and Surgeon's Certificate Number G 60661 to Ronald Michael Schilling, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on August 31, 2022, unless renewed.

DISCIPLINARY HISTORY

3. In a disciplinary action titled *In the Matter of Accusation Against Ronald Michael Schilling, M.D.*, Case No. 800-2015-018087, the Board issued a Decision, effective May 18, 2018, revoking Respondent's Physician's and Surgeon's Certificate. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of six years with certain terms and conditions. A copy of the Decision is attached as Exhibit A.

JURISDICTION

4. This Second Amended Petition to Revoke Probation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2227 of the Code states:

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

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6. At all times after the effective date of Respondent's probation, Condition 7,[1] Biological Fluid Testing, stated:

> Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a Respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the Respondent.
>
> During the first year of probation, Respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five (5) years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.
>
> Prior to practicing medicine, Respondent shall contract with a laboratory or service, approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing and meets all of the following standards:
>
> (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
>
> (b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.
>
> (c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.
>
> (d) Its specimen collectors observe the collection of testing specimens.
>
> (e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.
>
> (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and

[1] On July 11, 2018, the Board issued an Order correcting a clerical error in the numbering of the probation conditions. Pursuant to the Order, the probation condition, "Clinical Diagnostic Evaluations and Reports," which was previously not numbered, was numbered as Condition 5 and all subsequent conditions were renumbered in sequential order. (See Exh. A.) Condition 7 was referenced as Condition 6 in the Decision prior to correction.

provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.

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

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

(i) It maintains testing sites located throughout California.

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

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

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

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

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

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

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

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

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

After the issuance of a cease-practice order, the Board shall determine whether

the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his or her treating physician(s), other health care provider, or group facilitator, as applicable.

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

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

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

7. At all times after the effective date of Respondent's probation, Condition 10, Violation of Probation Condition for Substance Abusing Licensees, stated:

Failure to fully comply with any term or condition of probation is a violation of probation.

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

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

(2) Increase the frequency of biological fluid testing.

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

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

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

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

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

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he or she has violated any term or condition 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.

8. At all times after the effective date of Respondent's probation, Condition 19, Violation of Probation Condition, stated:

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

CEASE PRACTICE ORDER

9. On August 20, 2020, the Board issued a Cease Practice Order. According to the Cease Practice Order, Respondent is prohibited from engaging in the practice of medicine and may not resume the practice of medicine until a final decision has been issued on an accusation and/or a petition to revoke probation. The Cease Practice Order is based on Respondent's failure to comply with conditions of probation requiring abstention from use of controlled substances and requiring biological fluid testing.

10. Respondent's probation is subject to revocation because he failed to comply with the terms and conditions of probation. The facts and circumstances regarding his violations are set forth below.

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FACTUAL ALLEGATIONS

11. In a letter from the Board, dated April 20, 2018, Respondent was advised of biological fluid testing requirements to which he was required to adhere. Respondent was notified of the following:

> You must check-in daily (via landline or internet) between the hours of 12:00 a.m. and 5:00 p.m. to determine if you are required to provide a sample that day. Should you check in via telephone, you must listen to the entire message before hanging up, otherwise your check in may be deemed as a missed check-in.
>
> You must provide a sample the same day you are selected. It is your responsibility to ensure you have adequate time to provide your sample before your collection site closes.
>
> All collections must be directly observed.
>
> Failure to cooperate with biological fluid testing is a violation of probation and non-compliance may lead to further disciplinary action taken against your license.
>
> . . . .
>
> Lastly, . . . Reporting of Prescribed Drugs and Medical Release forms are enclosed. As required by your Disciplinary Order, you are required to notify the Board of any lawfully prescribed medications. Please complete the reporting of Prescribed Drugs form and Medical Release(s) for each prescribing health care provider. Return these forms to me by May 18, 2018. . . .

12. Respondent sent a letter to the Board, dated May 22, 2018, indicating he had registered with FirstSource Solutions (FirstSource), a Board-approved biological laboratory testing service, and made arrangements necessary to begin meeting the biological fluid testing requirements.

13. On May 23, 2018, Respondent signed an Acknowledgment of Decision form, acknowledging that he received a copy of the Decision placing his certificate on probation and that he had received an explanation of the terms and conditions of probation and that his questions about the conditions of probation had been addressed.

14. On or about August 11, 2020, Respondent was randomly selected for biological fluid testing by FirstSource. An observed urine sample was collected from Respondent, and the sample was split. The sample was provided to Clinical Reference Laboratory for testing. The first half of the split sample tested positive for Fentanyl and Fentanyl metabolites. Fentanyl is a Schedule II controlled substance.

15. On or about August 21, 2020, the second half of the split sample of the specimen provided by Respondent was sent to Drug Scan Laboratory for confirmatory testing. On or about August 24, 2020, Drug Scan Laboratory confirmed the presence of Fentanyl and Fentanyl metabolites.

16. The presence of Fentanyl metabolites in Respondent's urine is consistent with ingestion.

17. On or about May 2, 2021, Respondent was randomly selected for biological fluid testing by FirstSource. An observed urine sample was collected from Respondent, and the sample was split. The sample was provided to Clinical Reference Laboratory for testing. The sample tested positive for Fentanyl and Fentanyl metabolites.

18. The presence of Fentanyl metabolites in Respondent's urine is consistent with ingestion.

19. On or about May 24, 2021, Respondent was randomly selected for biological fluid testing by FirstSource and underwent hair testing. Testing by United States Drug Testing Laboratory resulted in a confirmed positive result for fentanyl based on the hair sample collected from Respondent and the presence of norfentanyl just below cut-off levels.

20. The presence of Fentanyl metabolites in Respondent's urine is consistent with ingestion.

21. Respondent did not report to the Board that he had been prescribed Fentanyl. He did not have a prescription for Fentanyl.

22. Respondent failed to check in with FirstSource during program hours as required on each of the following dates:

a. February 22, 2020;

b. March 17, 2020;

c. October 25, 2020;

d. November 30, 2020;

e. December 25, 2020;

f. January 10, 2021;

g. September 4, 2021; and

h. March 26, 2022.

23. On December 31, 2020, Respondent was issued a citation for failure to check in with FirstSource during program hours on February 22, 2020; March 17, 2020; and November 30, 2020. On September 28, 2021, Respondent was issued a citation for failure to check in with FirstSource during program hours on September 4, 2021.

FIRST CAUSE TO REVOKE PROBATION

(Controlled Substances - Abstain from Use)

24. At all times after the effective date of Respondent's probation, Condition 1 stated:

> Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.
>
> Within 15 calendar days of receiving any lawfully prescribed medications, Respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

25. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 1. The facts and circumstances regarding this violation are as follows:

26. The allegations of paragraphs 11 through 21 are incorporated here as if fully set forth.

27. Respondent's August 11, 2020 test results demonstrating ingestion of Fentanyl, a prohibited substance, in the absence of a valid prescription properly reported to the Board is a violation of probation.

28. Respondent's May 2, 2021 test results demonstrating ingestion of Fentanyl, a prohibited substance, in the absence of a valid prescription properly reported to the Board is a violation of probation.

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29. Respondent's May 24, 2021, hair test result demonstrating ingestion of fentanyl, a prohibited substance, in the absence of a valid prescription properly reported to the Board is a violation of probation.[2]

SECOND CAUSE TO REVOKE PROBATION

(Biological Fluid Testing – Failure to Make Daily Contact)

30. At all times after the effective date of Respondent's probation, Condition 7 states, in pertinent part:

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

(Emphasis added.)

31. Respondent was advised that he must check in daily between the hours of 12:00 a.m. and 5:00 p.m. to determine whether he was required to provide a biological fluid sample that day. He was further advised that he must listen to the entire message before hanging up lest his check-in be deemed as a missed check-in.

32. The allegations set forth in paragraphs 11 through 13 and 22 through 23 are incorporated here as if fully set forth.

33. Respondent's failure to check in for biological testing during program hours on each of the following dates constitutes a separate violation of probation:

a. February 22, 2020;

b. March 17, 2020;

c. October 25, 2020;

d. November 30, 2020;

[2] The First Amended Petition to Revoke Probation was amended by interlineation to add the allegation contained in this paragraph (formerly paragraph 27a) at the June 23, 2021 hearing in Office of Administrative Hearings Case Number 2021020231.

e. December 25, 2020;

f. January 10, 2021;

g. September 4, 2021; and

h. March 26, 2022.[3]

THIRD CAUSE TO REVOKE PROBATION

(Obey all Laws)

34. At all times after the effective date of Respondent's probation, Condition 13 stated:

> Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

35. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 13. The facts and circumstances regarding this violation are as follows:

36. The allegations of paragraphs 11 through 33 are incorporated here as if fully set forth.

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[3] The Second Amended Accusation adds the allegations in paragraphs 22, subdivisions (g) and (h) and 33, subdivisions (g) and (h), for acts occurring after the June 23, 2021 hearing in Office of Administrative Hearings Case Number 2021020231 and after remand of the case for the taking of additional evidence.

PRAYER

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

1. Revoking the probation that was granted by the Medical Board of California in Case No. 800-2015-018087 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. G 60661 issued to Ronald Michael Schilling, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. G 60661, issued to Ronald Michael Schilling, M.D.;

3. Revoking, suspending or denying approval of Respondent's authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice nurses;

4. If placed on probation, ordering Respondent to pay the Board the costs of probation monitoring; and

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

DATED: APR 15 2022

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

LA2020602859

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

In the Matter of the Accusation Against:	)	
	)	
	)	
Ronald Michael Schilling, M.D.	)	Case No. 800-2015-018087
	)	
	)	
Physician's & Surgeon's Certificate No. G 60661	)	
	)	
	)	
Respondent.	)	

ORDER CORRECTING NUNC PRO TUNC
CLERICAL ERROR IN "NUMBERING OF THE PROBATION CONDITIONS"
PORTION OF DECISION

On its own motion, the Medical Board of California (hereafter "board") finds that there is a clerical error in the numbering of the probation conditions in the Decision in the above-entitled matter and that such clerical error should be corrected so that all of the probation conditions in the Order are numbered and the numbers are sequential.

IT IS HEREBY ORDERED that the probation conditions contained in the Decision in the above-entitled matter be and hereby are amended and corrected nunc pro tunc as of the date of entry of the decision to read as "Condition 5 – Clinical Diagnostic Evaluation and Reports." All subsequent probation conditions are renumbered in sequential order.

Dated: July 11, 2018

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

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

In the Matter of the Accusation Against:	)	
Ronald Michael Schilling, M.D.	)	Case No. 800-2015-018087
Physician's and Surgeon's Certificate No. G 60661	)	
Respondent	)	

DECISION

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

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

IT IS SO ORDERED: April 18, 2018.

MEDICAL BOARD OF CALIFORNIA

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

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Attorneys for Complainant

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

In the Matter of the Accusation Against: RONALD MICHAEL SCHILLING, M.D. 3432 Windspun Drive Huntington Beach, CA 92649 Physician's and Surgeon's Certificate No. G 60661 Respondent.	Case No. 800-2015-018087 OAH No. 2017080883 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Peggie Bradford Tarwater, Deputy Attorney General.

2. Respondent Ronald Michael Schilling, M.D. (Respondent) is represented in this proceeding by attorney Lindsay M. Johnson, whose address is as follows: 5000 Birch Street, Suite 7000, Newport Beach, CA 92660.

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3. On or about July 13, 1987, the Board issued Physician's and Surgeon's Certificate No. G 60661 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-018087, and will expire on August 31, 2018, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-018087 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 May 19, 2017. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-018087 is attached as Exhibit A and is 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. 800-2015-018087. Respondent has also carefully read, fully discussed with 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 admits the truth of each and every charge and allegation in Accusation No. 800-2015-018087.

//

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

CONTINGENCY

11. 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 Board 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.

12. 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.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 60661 issued to Respondent Ronald Michael Schilling, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for six (6) years on the following terms and conditions.

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

illness or condition.

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

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

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

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

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

4. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who

has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

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

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

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

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

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

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

The Board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on Respondent based on the recommendations made by the evaluator. Respondent shall not be returned to practice until he or

she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that he or she has not used, consumed, ingested, or administered to himself or herself a prohibited substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

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

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

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

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

6. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon request of the Board or its designee.

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

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

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

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

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

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

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

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

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

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

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

(i) It maintains testing sites located throughout California.

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

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

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

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

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

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

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

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

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

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

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

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

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

7. <u>SUBSTANCE ABUSE SUPPORT GROUP MEETINGS</u>. Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its

prior approval, the name of a substance abuse support group which he or she shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

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

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

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

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

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

Respondent shall pay all worksite monitoring costs.

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

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

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) Respondent's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance; (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by Respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior

approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

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

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

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

(2) Increase the frequency of biological fluid testing.

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

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

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

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

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

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he or she has violated any term or condition 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.

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

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

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

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

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

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

14. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

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

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

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

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

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

Periods of non-practice for a Respondent residing outside of California will relieve

Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

17. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

18. 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.

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

20. 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.

ACCEPTANCE

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

DATED: 01/24/18

RONALD MICHAEL SCHILLING, M.D.
Respondent

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

DATED: 1-24-18

LINDSAY M. JOHNSON
Attorney for Respondent

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ENDORSEMENT

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

Dated: 1/25/18

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

PEGGIE BRADFORD TARWATER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2015-018087

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 19 2017
BY [illegible] ANALYST

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

In the Matter of the Accusation Against:	Case No. 800-2015-018087
RONALD MICHAEL SCHILLING, M.D. 3432 Windspun Drive Huntington Beach, CA 92649 Physician's and Surgeon's Certificate No. G 60661, Respondent.	**ACCUSATION**

Complainant alleges:

PARTIES

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

2. On July 13, 1987, the Board issued Physician's and Surgeon's Certificate Number G 60661 to Ronald Michael Schilling, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2018, unless renewed.

JURISDICTION

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

laws. All statutory references are to the Business and Professions Code unless otherwise indicated.

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

5. Section 2234 of the Code, 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.

". . . .

"(f) Any action or conduct which would have warranted the denial of a certificate.

". . . ."

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.

". . . .

"(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 Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing 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."

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

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

9. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

10. Health and Safety Code section 11350, subdivision (a), provides:

"(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year . . . ."

11. Health and Safety Code section 11055, subdivision (b)(6), lists cocaine as a controlled substance for purposes of Health and Safety Code section 11350, subdivision (a).

12. Section 11170 of the Health and Safety Code states:

"No person shall prescribe, administer, or furnish a controlled substance for himself."

FACTUAL ALLEGATIONS

13. On November 8, 2014, at approximately 7:00 a.m., Huntington Beach Police Officers responded to a call of a traffic collision in the area of Saybrook Lane and Edinger Avenue, in the City of Huntington Beach. Witnesses had observed a driver, identified as Respondent, driving erratically in a 2011 blue Jaguar XJL. Respondent's vehicle collided with a light pole on Saybrook Lane just south of Edinger Avenue and came to rest on a sidewalk. The vehicle sustained major front end damage. After the collision, Respondent exited his vehicle and retrieved several medication bottles out of the center console of his vehicle.

14. Respondent exhibited signs of intoxication. He stated that he had taken Oxycontin, cocaine, and Valium prior to driving. Based upon Respondent's statements and poor performance on field sobriety tests, Respondent was arrested for driving while under the influence of drugs.

15. During a subsequent search of Respondent's person, a baggie containing a white powdery substance resembling cocaine was retrieved from Respondent's right front pocket. Respondent stated that he purchased the cocaine from "Dennis" in Newport Beach, and the cocaine was for his wife. Respondent knew the substance was cocaine because he previously

used "a lot" of cocaine. He tasted to "make sure" before giving it to his wife. Also recovered during the search of Respondent and his vehicle were medications, including narcotics, in unmarked containers.

16. Blood test results were positive for lorazepam (Ativan), a benzodiazepine used to treat anxiety, and zolpidem (Ambien), a sedative used for sleep.

17. On February 24, 2015, in Orange County Superior Court case number 15WM02005, entitled *People vs. Ronald Schilling*, Respondent was charged with three misdemeanor counts (violations of Health and Safety Code section 11350, subdivision (a), (possession of a controlled substance), Health and Safety Code section 11550, subdivision (a) (use and under the influence of a controlled substance), and Vehicle Code Section 23152, subdivision (e), (driving under the influence of drugs).

18. On or about October 19, 2015, Respondent pled guilty to driving under the influence of drugs, pursuant to Vehicle Code Section 23152, subdivision (e). The remaining charges were dismissed. Respondent was sentenced to three years of probation, with terms and conditions including completion of a three-month First Offender Alcohol Program and completion of 40 hours of community service.

FIRST CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol and Self Use of Controlled Substance)

19. Respondent is subject to disciplinary action under section 2239 of the Code, in that he used or administered to himself narcotic medications in such a manner as to be dangerous or injurious to himself, or to any other person or to the public. The circumstances are as follows:

20. The allegations in paragraphs 13 through 18 are incorporated herein as if fully set forth.

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SECOND CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crimes)

21. Respondent is subject to disciplinary action under section 2236 of the Code in that he was convicted of driving under the influence of drugs, pursuant to Vehicle Code section 23152, subdivision (e), an offense substantially related to the qualifications, functions, or duties of a physician. The circumstances are as follows:

22. The allegations in paragraphs 13 through 18 are incorporated herein as if fully set forth.

THIRD CAUSE FOR DISCIPLINE

(Violation of Laws Regulating Drugs)

23. Respondent is subject to disciplinary action under section 2238 in that he engaged in unprofessional conduct by possessing cocaine, in violation of Health and Safety Code, section 11350, subdivision (a). The circumstances are as follows:

24. The allegations in paragraphs 13 through 18 are incorporated herein as if fully set forth.

FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

25. Respondent is subject to disciplinary action under section 2234 of the Code, generally, in that he committed unprofessional conduct. The circumstances are as follows:

26. The allegations of the First, Second, and Third Causes for Discipline are incorporated herein by reference as if fully set forth.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 60661, issued to Respondent Ronald Michael Schilling, M.D.;

2. Revoking, suspending or denying approval of Respondent's authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice nurses;

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

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

DATED: May 19, 2017

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

Complainant

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