

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

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

**Oliver Ghitea, M.D.**

**Physician's and Surgeon's  
Certificate No. A 62680**

**Respondent.**

**Case No. 800-2021-076770**

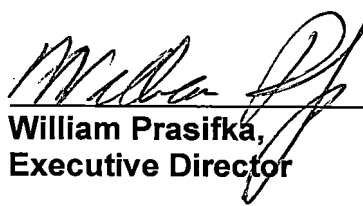
**DECISION**

**The attached Stipulated Surrender of License and 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 August 4, 2022.**

**IT IS SO ORDERED July 28, 2022.**

**MEDICAL BOARD OF CALIFORNIA**

  
\_\_\_\_\_  
**William Prasifka,  
Executive Director**

1 ROB BONTA  
Attorney General of California  
2 MARY CAIN-SIMON  
Supervising Deputy Attorney General  
3 CAROLYNE EVANS  
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*Attorneys for Complainant*  
7

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

11 In the Matter of the First Amended Accusation  
12 Against:

13 **OLIVER GHITEA, M.D.**  
14 **12615 SW 21st Ct.**  
**Lake Oswego, OR 97035-1118**

15 **Physician's and Surgeon's Certificate No.**  
16 **A 62680**

17 Respondent.

Case No. 800-2021-076770

OAH No. 2021080338

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

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

22 **PARTIES**

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

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1           2.     OLIVER GHITEA, M.D. (Respondent) is represented in this proceeding by attorney  
2 Michael F. Ball, whose address is: McCormick Barstow LLP, 7647 North Fresno Street, Fresno,  
3 CA 93720-8912.

4           3.     On June 13, 1997, the Board issued Physician's and Surgeon's Certificate No. A  
5 62680 to OLIVER GHITEA, M.D. The Physician's and Surgeon's Certificate was in full force  
6 and effect at all times relevant to the charges brought in First Amended Accusation No. 800-  
7 2021-076770 and will expire on March 31, 2023, unless renewed. Respondent is subject to an  
8 Order issued by the Office of Administrative Hearings on December 3, 2021 prohibiting him  
9 from practicing as a physician and surgeon in California until there is a final disposition of this  
10 matter.

#### 11   **JURISDICTION**

12           4.     First Amended Accusation No. 800-2021-076770 was filed before the Board on  
13 January 25, 2022, and is currently pending against Respondent. The First Amended Accusation  
14 and all other statutorily required documents were timely and properly served on Respondent.  
15 Respondent timely filed his Notice of Defense contesting the First Amended Accusation. A copy  
16 of First Amended Accusation No. 800-2021-076770 is attached as Exhibit A and incorporated by  
17 reference.

#### 18   **ADVISEMENT AND WAIVERS**

19           5.     Respondent has carefully read, fully discussed with counsel, and understands the  
20 charges and allegations in First Amended Accusation No. 800-2021-076770. Respondent also  
21 has carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
22 Surrender of License and Order.

23           6.     Respondent is fully aware of his legal rights in this matter, including the right to a  
24 hearing on the charges and allegations in the First Amended Accusation; the right to confront and  
25 cross-examine the witnesses against him; the right to present evidence and to testify on his own  
26 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the  
27 production of documents; the right to reconsideration and court review of an adverse decision;  
28

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

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

5 **CULPABILITY**

6 8. Respondent understands that the charges and allegations in First Amended  
7 Accusation No. 800-2021-076770, if proven at a hearing, constitute cause for imposing discipline  
8 upon his Physician's and Surgeon's Certificate.

9 9. For the purpose of resolving the First Amended Accusation without the expense and  
10 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could  
11 establish a factual basis for the charges in the First Amended Accusation and that those charges  
12 constitute cause for discipline. Respondent hereby gives up his right to contest that cause for  
13 discipline exists based on those charges.

14 10. Respondent understands that by signing this stipulation he enables the Board to issue  
15 an order accepting the surrender of his Physician's and Surgeon's Certificate without further  
16 process.

17 **CONTINGENCY**

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

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

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

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

9 **ORDER**

10 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 62680, issued  
11 to Respondent OLIVER GHITEA, M.D., is surrendered and accepted by the Board.

12 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the  
13 acceptance of the surrendered license by the Board shall constitute the imposition of discipline  
14 against Respondent. This stipulation constitutes a record of the discipline and shall become a part  
15 of Respondent's license history with the Board.

16 2. Respondent shall lose all rights and privileges as a physician and surgeon in  
17 California as of the effective date of the Board's Decision and Order.

18 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was  
19 issued, his wall certificate on or before the effective date of the Decision and Order.

20 4. If Respondent ever files an application for licensure or a petition for reinstatement in  
21 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must  
22 comply with all the laws, regulations and procedures for reinstatement of a revoked or  
23 surrendered license in effect at the time the petition is filed, and all of the charges and allegations  
24 contained in First Amended Accusation No. 800-2021-076770 shall be deemed to be true, correct  
25 and admitted by Respondent when the Board determines whether to grant or deny the petition.

26 5. Respondent shall pay the agency its costs of investigation and enforcement in the  
27 amount of \$4,388.75 (four thousand three hundred eighty-eight dollars and seventy-five cents)  
28 prior to issuance of a new or reinstated license.



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DATED: July 6, 2022

Respectfully submitted,  
  
ROB BONTA  
Attorney General of California  
MARY CAIN-SIMON  
Supervising Deputy Attorney General

*Carolyns Evans*  
CAROLYNE EVANS  
Deputy Attorney General  
*Attorneys for Complainant*

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43054475.docx

**Exhibit A**

**First Amended Accusation No. 800-2021-076770**



1 ROB BONTA  
Attorney General of California  
2 MARY CAIN-SIMON  
Supervising Deputy Attorney General  
3 CAROLYNE EVANS  
Deputy Attorney General  
4 State Bar No. 289206  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 510-3448  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*  
7

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

12 In the Matter of the First Amended Accusation  
Against:

Case No. 800-2021-076770

13 **OLIVER GHITEA, M.D.**  
14 **Oregon Anesthesiology Grp.**  
15 **707 SW Washington St., Ste. 700**  
**Portland, OR 97205**

**FIRST AMENDED ACCUSATION**

16 **Physician's and Surgeon's Certificate**  
17 **No. A 62680,**

18 Respondent.

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20  
21 **PARTIES**

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

25 2. On or about June 13, 1997, the Board issued Physician's and Surgeon's Certificate  
26 Number A 62680 to Oliver Ghitea, M.D. (Respondent). The Physician's and Surgeon's  
27 Certificate was in full force and effect at all times relevant to the charges brought herein and will  
28

1 expire on March 31, 2023, unless renewed. Respondent is subject to an Order issued by the  
2 Office of Administrative Hearings on December 3, 2021 prohibiting him from practicing as a  
3 physician and surgeon in California until there is a final disposition of this matter.

4 **JURISDICTION**

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

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

12 5. Section 2234 of the Code provides that the Board shall take action against any  
13 licensee who is charged with "unprofessional conduct," which includes but is not limited to,  
14 "[v]iolating . . . any provision of this chapter."

15 6. Section 2305 of the Code provides, in pertinent part, that the revocation, suspension,  
16 or other discipline, restriction, or limitation imposed by another state upon a license to practice  
17 medicine issued by that state, or the revocation, suspension, or restriction of the authority to  
18 practice medicine by any agency of the federal government, that would have been grounds for  
19 discipline in California, shall constitute grounds for disciplinary action for unprofessional  
20 conduct.

21 7. Section 141 of the Code provides:

22 (a) For any licensee holding a license issued by a board under the jurisdiction of the  
23 department, a disciplinary action taken by another state, by any agency of the federal government,  
24 or by another country for any act substantially related to the practice regulated by the California  
25 license, may be a ground for disciplinary action by the respective state licensing board. A  
26 certified copy of the record of the disciplinary action taken against the licensee by another state,  
27 an agency of the federal government, or another country shall be conclusive evidence of the  
28 events related therein.

1 (b) Nothing in this section shall preclude a board from applying a specific statutory  
2 provision in the licensing act administered by that board that provides for discipline based upon a  
3 disciplinary action taken against the licensee by another state, an agency of the federal  
4 government or another country.

5 **COST RECOVERY**

6 8. Effective January 1, 2022, Section 125.3 of the Code provides, in pertinent part, that  
7 the Board may request the administrative law judge to direct a licensee found to have committed  
8 a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
9 investigation and enforcement of the case, with failure of the licensee to comply subjecting the  
10 license to not being renewed or reinstated. If a case settles, recovery of investigation and  
11 enforcement costs may be included in a stipulated settlement.

12 **CAUSE FOR DISCIPLINE**

13 **(Discipline, Restriction, or Limitation Imposed by Another State)**

14 9. On March 18, 2021, the Oregon Medical Board issued an interim stipulated order  
15 (Oregon Order) Case No. MD21941, which restricts and/or disciplines Respondent's Oregon  
16 medical license. The Oregon Medical Board concluded that it was necessary that "licensee agree  
17 to cease the practice of medicine . . . pending the Board's investigation into his ability to safely  
18 and competently practice medicine." (Oregon Order attached as Exhibit A).

19 10. On December 21, 2021, the Oregon Medical Board filed a Complaint and Notice of  
20 proposed Disciplinary Action" (Oregon Complaint). The Complaint alleges that:

21 On March 11, 2021, Respondent was the attending anesthesiologist at a dental practice,  
22 providing sedation for a patient, who was undergoing a three-to-four-hour dental procedure. The  
23 Respondent was observed to be impaired by the end of the procedure and was offered a ride  
24 home. Respondent appeared drowsy and unsteady with slurred speech, poor motor skills when  
25 preparing medications, and difficulty completing medication records.

26 Respondent attributed his behavior to being overly tired and declined assistance in getting  
27 home. However, after leaving the dental clinic, Respondent was observed crossing multiple lanes  
28 of oncoming traffic and crashing his vehicle into a tree. Respondent was determined to be

1 impaired in the field sobriety test, and a needle was found in Respondent's shirt pocket.

2 Respondent was arrested for Driving Under the Influence of Intoxicants (drugs).

3 As a result of Respondent's arrest, a urine drug screen was performed the afternoon of  
4 March 11, 2021, which was positive for norfentanyl (a fentanyl metabolite), midazolam (Versed),  
5 and alpha-hydroxmidazolam, a metabolite, and diphenhydramine (Benadryl).

6 Respondent claimed that he had solicited and ingested pills he believed to be oxycodone he  
7 had obtained from an unnamed acquaintance. Respondent stated that he consumed the pills for  
8 treatment for flu-like symptoms several days leading up to March 11, 2021. Respondent was not  
9 prescribed these pills or any other opioid medications and described himself as "opioid naïve."  
10 Respondent reportedly destroyed the remaining pills after learning that his toxicology screening  
11 was positive for fentanyl.

12 The Oregon Complaint Toxicology testing of Respondent's hair performed on or around  
13 March 29, 2021 was positive for fentanyl at a level suggesting chronic use or a use exceeding  
14 Respondent's reported three to five opioid pills three weeks prior. The time course of the  
15 deterioration of Respondent's mental acuity and behavior is inconsistent with having consumed any  
16 fentanyl and/or midazolam remotely, i.e., more than 12 hours prior to driving under the influence  
17 of intoxicants, but rather is consistent with consumption (in any form) at a time proximally  
18 associated with the delivery of health care. (Oregon Complaint attached as Exhibit B).

19 11. Respondent's foregoing conduct and the actions of the Oregon Medical Board, as set  
20 forth in paragraphs 9 and 10, above, and Exhibit A and Exhibit B constitute cause for discipline,  
21 pursuant to section 2234 and/or section 2305 and/or 141 of the Code.

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**PRAAYER**

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 62680, issued to Respondent Oliver Ghitea, M.D.;
2. Revoking, suspending or denying approval of Respondent Oliver Ghitea, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Respondent Oliver Ghitea, M.D. to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: JAN 25 2022

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

# EXHIBIT A



# Oregon

Kate Brown, Governor

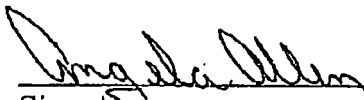
Medical Board  
1500 SW 1<sup>st</sup> Avenue, Suite 620  
Portland, OR 97201-5847  
(971) 673-2700  
FAX (971) 673-2670  
[www.oregon.gov/omb](http://www.oregon.gov/omb)

## Certification of True Copy

I certify that the enclosed documents are true and correct copies of the originals on file with the Oregon Medical Board.

RE: Oliver Ghitea, MD21941

License verification & Order included:  
Interim Stipulated Order Active 03/18/2021

  
\_\_\_\_\_  
Signature

April 13, 2021  
Date

Angela Allen  
Accounts Receivable



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BEFORE THE  
OREGON MEDICAL BOARD  
STATE OF OREGON

In the Matter of )  
OLIVER GHITEA, MD )  
LICENSE NO. MD21941 ) INTERIM STIPULATED ORDER  
1. )

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain healthcare providers, including physicians, in the State of Oregon. Oliver Ghitea, MD (Licensee) is a licensed physician in the State of Oregon.

2.

The Board received credible information regarding Licensee that resulted in the Board initiating an investigation. The results of the Board's investigation to date have raised concerns to the extent that the Board believes it necessary that Licensee agree to cease the practice of medicine until the investigation is completed.

3.

In order to address the concerns of the Board, Licensee and the Board agree to enter into this Interim Stipulated Order, which is not an admission of any wrongdoing on the part of the Licensee, and provides that Licensee shall comply with the following conditions effective the date this Order is signed by Licensee:

3.1 Licensee voluntarily withdraws from the practice of medicine and his license is placed in Inactive status pending the completion of the Board's investigation into his ability to safely and competently practice medicine.

3.2 Licensee understands that violating any term of this Order will be grounds for disciplinary action under ORS 677.190(17).

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4.

At the conclusion of the Board's investigation, Licensee's status will be reviewed in an expeditious manner. Following that review, if the Board determines that Licensee shall not be permitted to return to the practice of medicine, Licensee may request a hearing to contest that decision.

5.

This Order is issued by the Board pursuant to ORS 677.265(1) and (2) for the purpose of protecting the public, and making a complete investigation in order to fully inform itself with respect to the performance or conduct of the Licensee and Licensee's ability to safely and competently practice medicine. Pursuant to ORS 677.425, Board investigative materials are confidential and shall not be subject to public disclosure. However, as a stipulation this Order is a public document and is reportable to the National Practitioner Data Bank and the Federation of State Medical Boards.

6.

This Order becomes effective the date it is signed by the Licensee.

IT IS SO STIPULATED THIS 19<sup>th</sup> day of March, 2021.



OLIVER GHITEA, MD

IT IS SO ORDERED THIS 18<sup>th</sup> day of March, 2021.

State of Oregon  
OREGON MEDICAL BOARD



NICOLE KRISHNASWAMI, JD  
EXECUTIVE DIRECTOR

# EXHIBIT B

BEFORE THE  
OREGON MEDICAL BOARD  
STATE OF OREGON

In the Matter of )  
OLIVER GHITEA, MD ) COMPLAINT AND NOTICE OF  
LICENSE NO. MD21941 ) PROPOSED DISCIPLINARY ACTION

1.  
2.

Parties

The Oregon Medical Board (Board) is the state agency responsible for licensing,  
regulating and disciplining certain health care providers, including physicians, in the State of  
Oregon. Oliver Ghitea, MD (Licensee) is a physician licensed in the State of Oregon.

2.

Proposed Sanctions

Based on the facts and violations below, the Board proposes to take disciplinary action  
against Licensee pursuant to ORS 677.205(2), including the revocation of license; a \$10,000  
civil penalty per violation; and assessment of costs of any contested case hearing on the matter  
not to exceed \$40,000. The Board proposes to take this disciplinary action for violations of the  
Medical Practice Act, to wit: ORS 677.190(1)(a) unprofessional or dishonorable conduct, as  
defined in ORS 677.188(4)(a) any conduct or practice contrary to recognized standards of ethics  
of the medical profession, or any conduct or practice which does or might constitute a danger to  
the health or safety of a patient, or any conduct, practice, or condition which does or might  
adversely affect a physician’s ability to safely and skillfully practice medicine; ORS 677.190(7)  
impairment as defined in ORS 676.303(1)(b) and OAR 847-010-0073(3)(c)(A); and ORS  
677.190(13) gross negligence in the practice of medicine.

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3.

### Jurisdiction

3.1 Under ORS chapter 677, the Board has the duty to protect the public and the authority to exercise general supervision over the practice of medicine.

3.2 At all relevant times, Licensee was licensed to practice medicine in the State of Oregon, board certified by the American Board of Anesthesiology, and practicing in Portland, Oregon.

3.3 As a Licensee of the Oregon Medical Board, Licensee is subject to the laws, rules, and standards established by the Oregon Medical Board, including but not limited to Oregon Revised Statutes chapters 676 and 677 and Oregon Administrative Rules chapter 847.

3.4 The current, recognized standards of ethics for the medical profession are found in the 2016 edition of the American Medical Association's Code of Ethics (AMA Code of Ethics).

4.

### Facts

4.1 On March 11, 2021, Licensee was the attending anesthesiologist at a Beaverton dental practice, providing sedation for Patient A who was undergoing a three- to four-hour dental procedure. Licensee was observed to be impaired by the end of the procedure and was offered a ride home. Specifically, Licensee appeared drowsy and unsteady with slurred speech, poor motor skills when preparing medications, and difficulty completing medication records. Providing sedation to a patient when exhibiting drowsiness, unsteadiness, slurred speech, poor motor skills when preparing medications, and difficulty completing medication records puts the patient at risk of harm.

4.2 Licensee attributed his behavior to being overly tired and declined assistance in getting home. However, after leaving the dental clinic, Licensee was observed crossing multiple lanes of oncoming traffic and crashing his vehicle into a tree in Beaverton, Oregon. Licensee

///

1 was determined to be impaired in the field sobriety test, and a needle was found in Licensee's  
2 shirt pocket. Licensee was arrested for Driving Under the Influence of Intoxicants (drugs).

3 4.3 As a result of Licensee's arrest, a urine drug screen was performed the afternoon  
4 of March 11, 2021, which was positive for norfentanyl (a fentanyl metabolite), midazolam  
5 (Versed), and alpha-hydroxymidazolam, a metabolite, and diphenhydramine (Benadryl).

6 4.4 On March 16, 2021, upon notification of the events of March 11, 2021, the Board  
7 opened an investigation. On March 18, 2021, Licensee entered into an Interim Stipulated Order  
8 in which he voluntarily agreed to withdraw from the practice of medicine and place his license in  
9 Inactive status pending the completion of the Board's investigation into his ability to safely and  
10 competently practice medicine.

11 4.5 On March 19, 2021, Licensee voluntarily surrendered his Drug Enforcement  
12 Administration license to prescribe controlled substances.

13 4.6 Throughout the investigation, Licensee stated that he had solicited and ingested  
14 pills he believed to be oxycodone he had obtained from an unnamed acquaintance. Licensee  
15 stated he consumed them for the treatment of flu-like symptoms several days leading up to  
16 March 11, 2021. Licensee was not prescribed these or any other opioid medications and  
17 described himself as "opioid naïve." Both Licensee and his acquaintance reportedly destroyed  
18 the remaining pills after learning that his toxicology screening was positive for fentanyl.

19 4.7 Toxicology testing of Licensee's hair performed on or around March 29, 2021,  
20 was positive for fentanyl at a level suggesting chronic use or use exceeding Licensee's reported  
21 three to five opioid pills three weeks prior.

22 4.8 The time course of the deterioration of Licensee's mental acuity and behavior is  
23 inconsistent with having consumed any fentanyl and/or midazolam remotely, i.e., more than 12  
24 hours prior to driving under the influence of intoxicants, but rather is consistent with  
25 consumption (in any form) at a time proximally associated with the delivery of health care.  
26 Sedating a patient while under the influence of intoxicants and displaying the impaired behaviors

27 ///

1 described in paragraph 4.1 are errors of such magnitude that a willful indifference to the  
2 consequences of that act may be inferred

3 4.9 The AMA Code of Ethics Opinion 9.3.1 states, in pertinent part, that physicians  
4 should:

5 *"(b) Take appropriate action when their health or wellness is compromised,  
6 including:*

7 *1. Engaging in honest assessment of their ability to continue practicing safely.*

8 *2. Taking measures to mitigate the problem.*

9 \* \* \*

10 *3. Seeking appropriate help as needed, including help in addressing substance abuse.*

11 *4. Physicians should not practice if their ability to do so safely is impaired by use of  
12 a controlled substance, alcohol, other chemical agent or a health condition."*

## 13 5.

### 14 **Applicable Law and Standards**

15 5.1 ORS 677.190(1)(a) authorizes the Board to discipline a licensee for  
16 unprofessional or dishonorable conduct, which is defined as "conduct unbecoming a person  
17 licensed to practice medicine \* \* \* or detrimental to the best interests of the public." Under ORS  
18 677.188(4)(a), unprofessional or dishonorable conduct includes:

19 5.1.1 "Any conduct or practice contrary to recognized standards of ethics of the  
20 medical profession."

21 5.1.2 "Any conduct or practice which does or might constitute a danger to the  
22 health or safety of a patient or the public."

23 5.1.3 "Any conduct, practice, or condition which does or might adversely affect  
24 a physician's ability safely and skillfully to practice medicine."

25 5.2 ORS 677.190(7) authorizes the Board to discipline a licensee for the reason of  
26 impairment as defined in ORS 676.303(1)(b).

27 5.2.1 Under ORS 676.303(1)(b), "impairment" means "an inability to practice  
with reasonable competence and safety due to the habitual or excessive use of drugs or  
alcohol, other chemical dependency or a mental health condition."

1 5.2.2 OAR 847-010-0073(3)(c)(A) further defines "impairment" as "the use of  
2 alcohol, drugs, prescribed medication, or other substances while on or off duty which  
3 causes impairment when on duty...."

4 5.3 ORS 677.190(13) authorizes the Board to discipline a licensee for gross  
5 negligence in the practice of medicine. Professional gross negligence in Oregon is an error "of  
6 such magnitude or recurrence" that a willful indifference to the consequences of the act may be  
7 inferred. *Hambleton v. Bd. of Engineering Examiners*, 40 Or App 9, 12, 594 P2d 416 (1979).

8 5.4 ORS 677.205(1)(a) and (b) and (2)(b) to (f) authorize the Board to take  
9 disciplinary action for each of the violations listed in the foregoing paragraphs. In issuing  
10 discipline, the Board may refuse to grant, place conditions on, suspend, revoke, or limit a license  
11 to practice, order probation, and issue other such disciplinary action as the Board in its discretion  
12 finds proper, including assessment of the costs of the disciplinary proceedings as a civil penalty  
13 or assessment of a civil penalty not to exceed \$10,000 per violation, or both.

14 6.

15 **Violations – Impairment**

16 6.1 As demonstrated by drowsiness, unsteadiness, slurred speech, poor motor skills,  
17 and decreased ability to complete documentation while providing anesthesia care for Patient A  
18 on March 11, 2021, Licensee was unable to practice medicine with reasonable competence and  
19 safety. Because Licensee was unable to practice medicine with reasonable competence and  
20 safety due to the habitual or excessive use of substances on or off duty, as confirmed by  
21 toxicology testing on March 11, 2021, and March 29, 2021, Licensee was impaired as defined in  
22 ORS 676.303(1)(b) and OAR 847-010-0073(3)(c)(A). Impairment is grounds for discipline  
23 under ORS 677.190(7).

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7.

**Violations – Unprofessional or Dishonorable Conduct**

Medical Ethics

7.1 By providing patient care while impaired, Licensee violated AMA Code of Ethics Opinion 9.3.1, thereby committing unprofessional or dishonorable conduct as defined in ORS 677.188(4)(a), which is grounds for discipline under ORS 677.190(1)(a),

Danger to Health and Safety

7.2 By providing anesthesia care (conscious sedation) that put Patient A at risk of harm, Licensee engaged in conduct or a practice that might constitute a danger to the health or safety of a patient, thereby committing unprofessional conduct as defined in ORS 677.188(4)(a), which is grounds for discipline under ORS 677.190(1)(a).

Ability to Safely and Skillfully Practice Medicine

7.3 Because impairment renders a physician unable to practice medicine with reasonable competence and safety, Licensee's impairment adversely affected Licensee's ability to safely and skillfully practice medicine. By practicing medicine as in impaired physician, Licensee thereby committed unprofessional conduct as defined in ORS 677.188(4)(a), which is grounds for discipline under ORS 677.190(1)(a).

8.

**Violations – Gross Negligence**

Because providing anesthesia (conscious sedation) to Patient A while Licensee was under the influence of intoxicants and impaired is an error of such magnitude that a willful indifference to the consequences of Licensee's conduct may be inferred, Licensee committed gross negligence in the practice of medicine, which is grounds for discipline under ORS 677.109(13).

9.

Committing dishonorable or unprofessional conduct, gross negligence in the practice of medicine, and practicing medicine while impaired, all as described above, are grounds for license discipline up to and including revocation, civil penalties up to \$10,000 per violation, and the



1 costs of the proceeding under ORS 677.205(1) and (2). Pursuant to OAR 137-003-0505(1)(i),  
2 the Board may impose the maximum penalties against Licensee without amending its notice, up  
3 to and including revocation of license, a \$10,000 civil penalty per violation, and the costs of the  
4 proceeding.

5 10.

6 Licensee is entitled to a hearing as provided by the Administrative Procedures Act (ORS  
7 chapter 183), Oregon Revised Statutes. Licensee may be represented by counsel at the hearing.  
8 If Licensee desires a hearing, the Board must receive Licensee's written request for hearing  
9 within twenty-one (21) days of the mailing of this Notice to Licensee. Upon receipt of a request  
10 for a hearing, the Board will notify Licensee of the time and place of the hearing.

11 11.

12 If Licensee requests a hearing, Licensee will be given information on the procedures,  
13 right of representation, and other rights of parties relating to the conduct of the hearing as  
14 required under ORS 183.413(2) before commencement of the hearing.

15 12.

16 In the event of a hearing, the Board proposes to assess against Licensee the Board's costs  
17 of this disciplinary process and action, including but not limited to all legal costs from the  
18 Oregon Department of Justice, all hearing costs from the Office of Administrative Hearings, all  
19 costs associated with any expert or witness, all costs related to security and transcriptionist  
20 services for the hearing and administrative costs specific to this proceeding in an amount not to  
21 exceed \$40,000, pursuant to ORS 677.205(2)(f).

22 13.

23 **NOTICE TO ACTIVE DUTY SERVICEMEMBERS:** Active duty Servicemembers  
24 have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For  
25 more information contact the Oregon State Bar at 800-452-8260, the Oregon Military  
26 Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office

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1 through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-  
2 free telephone number.

3 14.

4 Failure by Licensee to timely request a hearing, failure to appear at any hearing  
5 scheduled by the Board, withdrawal of the request for hearing, or failure to appear at any hearing  
6 scheduled by the Board on time will constitute waiver of the right to a contested case hearing.


7 Waiver of the right to a contested case hearing may result in a default order by the Board,  
8 including the potential revocation of Licensee's medical license and assessment of such penalty  
9 and costs as the Board deems appropriate under ORS 677.205. If the Board issues a final order  
10 by default, the Board designates the discoverable material which comprises the file, including all  
11 submissions by Licensee, as the record for the purpose of proving a prima facie case.

12 15.

13 Licensee may appeal any final order issued in this case by filing a petition for review  
14 with the Oregon Court of Appeals within 60 days after it is served upon Licensee. See ORS  
15 183.480 et seq.

16 Dated this 21 day of December, 2021.

17  
18 OREGON MEDICAL BOARD  
19 State of Oregon

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21 \_\_\_\_\_  
22 NICOLE KRISHNASWAMI, JD  
23 Executive Director  
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