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

In the Matter of the Accusation Against:	)	
Andranik Madikians, M.D.	)	**Case No. 800-2015-019406**
Physician's and Surgeon's Certificate No. A 56383	)	
Respondent	)	

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 February 13, 2020.

IT IS SO ORDERED January 14, 2020.

MEDICAL BOARD OF CALIFORNIA

By: _____
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:

ANDRANIK MADIKIANS, M.D., Respondent

Agency Case No. 800-2015-019406

OAH No. 2019051190

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on November 7, 2019, in Los Angeles, California.

Tan N. Tran, Deputy Attorney General, appeared and represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

Scott J. Harris, Attorney at Law, appeared and represented respondent Andranik Madikians, M.D., who was present throughout the hearing.

The parties submitted the matter for decision at the conclusion of the hearing.

FACTUAL FINDINGS

Jurisdiction and License History

1. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense.

2. On October 23, 1996, the Board issued Physician's and Surgeon's Certificate Number A 56383 to respondent. Respondent's certificate is valid and is scheduled to expire on February 29, 2020. Respondent has no history of license discipline by the Board.

Respondent's Background

3. Respondent attended medical school at Instituto Tecnologico de Santo Domingo in the Dominican Republic, earning a Doctor of Medicine degree in 1988. In 1992, respondent completed his residency in pediatrics at the Bronx Lebanon Hospital Center in Bronx, New York.

4. In 1999, respondent moved to California and began a fellowship at the University of California, Los Angeles (UCLA) School of Medicine. After moving up the ranks as a professor and pediatric intensivist, respondent was appointed Chief Medical Officer at UCLA Mattel Children's Hospital, and currently serves as Interim Medical Director of the Pediatric Intensive Care Unit and the Pediatric Critical Care Transport.

5. Respondent is board-certified in pediatrics and pediatric critical care, and he is a fellow of the American College of Chest Physicians. Respondent is currently licensed by the State of New York with no evidence of license discipline.

Respondent's Use of Alcohol

6. Respondent credibly testified that he drank moderately before 2015, but not on a daily or weekly basis; that he would never drink while he was on service, which was scheduled 32 weeks out of the year; and that he abstained from drinking alcohol during the week after service.

7. On June 30, 2016, respondent entered a plea of nolo contendere and was convicted of driving with a blood alcohol content of 0.08 percent or more in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. (*People v. Madikians* (Super. Ct. Los Angeles County, 2016, No. 6ES01066).) The court suspended the imposition of sentence and placed respondent on probation for three years. Terms of probation included orders to pay fines and restitution totaling $2,047, to enroll in and complete a first-offender alcohol counseling program, to complete the Victim Impact Program of Mothers Against Drunk Driving, not to drive with any measurable amount of alcohol in his blood, and to obey the law.

8. The conviction arose from an incident on December 12, 2015. At the end of the day, respondent was driving home when his wife called to propose eating at a restaurant. Respondent went to the Vintage Café and a drink at the bar alone while waiting for his wife. His wife then called and told respondent that she would have dinner with her cousin instead of coming to the restaurant. Respondent remained at the restaurant and ordered French fries and a second round of double scotch. An acquaintance arrived at the restaurant and joined respondent at the bar. Respondent ordered a third double scotch while talking with the acquaintance.

9. At approximately 8:46 p.m. on the same night, a police officer responded to a radio call of a vehicle seen swerving in and out of lanes and colliding with the

center median. The officer conducted a traffic stop after observing respondent's vehicle crossing through the intersection. Respondent identified himself to the officer as the driver and followed the officer's direction to step out of the vehicle. Upon doing so, respondent began walking towards the curb and fell to the ground after losing his balance. He admitted to the officer that "he had been drinking way too much." (Exhibit 4.)

10. After observing objective symptoms of intoxication, the officer attempted to conduct field sobriety testing of respondent. However, respondent failed to cooperate and became argumentative. He was taken to a local police station and furnished a blood sample for testing, which showed a blood-alcohol content of 0.21 percent.

Evidence of Rehabilitation and Mitigation

11. Respondent complied with the terms and conditions of criminal probation. On December 20, 2017, the court set aside the conviction and dismissed the criminal complaint against respondent pursuant to Penal Code section 1203.4.

12. At the hearing, respondent expressed remorse, embarrassment, and shame for his misconduct. Respondent testified that he learned from the incident that alcohol can destroy an abuser's life and cause him or her to lose everything. He testified that he has never craved alcohol, and that he has curtailed his social consumption of alcohol, having most recently consumed a half-glass of wine at a wedding reception six weeks before the hearing.

13. Respondent sought an addiction medicine evaluation from Richard S. Sandor, M.D. For the past 37 years, Dr. Sandor has been in private practice as a specialist in psychiatry and addiction medicine. His educational history includes a

Bachelor of Arts degree in Biology from Yale University in 1968 and a Doctor of Medicine degree from the University of Southern California School of Medicine in 1972. Since 1985, Dr. Sandor has been certified as a Diplomate by the American Board of Psychiatry and Neurology. He has served as an expert witness in civil malpractice matters and disciplinary proceedings for the Board of Registered Nursing.

14. On February 8, 2019, Dr. Sandor interviewed respondent for approximately 60 minutes, and reviewed court records, the police report, and letters from colleagues. Dr. Sandor prepared a written evaluation to address whether respondent has an alcohol use disorder[1] and poses a risk to the public. In Dr. Sandor's opinion, respondent does not have an alcohol use disorder or pose a risk to the public, but "he exercised exceedingly poor judgement with respect to drinking and driving on one occasion." (Ex. A, p. 0020.)

15. Dr. Sandor based his opinion on the American Psychiatric Association's most recently published *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), which defines alcohol use disorder as "a problematic pattern of substance use which results in clinically significant impairment and distress." (Ex. A, pp. 0020-0021.) The DSM-5 lists 11 criteria, two or more of which must be present within a 12-month period to support a diagnosis of alcohol use disorder. Dr. Sandor concludes that respondent's single arrest for driving under the influence of alcohol met none of the criteria. Dr. Sandor observed none of the following objective signs of the disorder: craving alcohol; spending time obtaining alcohol or recovering from its use; failing to fulfill major role obligations of work; giving up or curtailing social, occupational, or

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[1] "Alcohol use disorder" is the formal diagnosis of the condition commonly known as alcoholism.

recreational activities because of alcohol use; and continued alcohol use despite knowledge that it will exacerbate ongoing psychological or physical problems. Respondent's denial of these symptoms was not contradicted by independent collateral sources of information. Dr. Sandor placed considerable weight on the written reports of respondent's professional activities and accomplishments which "portray a man of high professional accomplishment with an excellent history of having contributed to the field through his clinical work, research, writing and teaching." (Ex. A, p. 0020.)

16. In his written evaluation, Dr. Sandor concluded that respondent poses no risk to the public based on the following analysis:

> The vast majority of adults in the United States drink alcohol. Some proportion of these people will meet the criteria for substance use disorder, but most are casual, social drinkers. A further portion of those who drink may even develop one or even two problems as a result of their alcohol use. If these problems do not appear to be progressing – for example, manifesting within a 12 month period – and do not occur in increasing frequency or severity, then there are no grounds for diagnosing that person an alcoholic. When continued drinking results in the accumulation of more and more problems, it does suggest the existence of a substance use disorder. The chief characteristic of alcoholism as it develops is that the individual becomes unreliable. As more and more time, more and more energy and resources are taken up into the

> addiction, less and less is available for work, family, recreation, and other social activities. Among physicians who become alcoholics, we characteristically see individuals fail to keep or cancel appointments at the last minute (and often produce excuses which become less and less credible over time), appear at offices or clinics at unscheduled hours, fail to keep adequate medical records, make rounds at hospitals at unusual hours, and so on. As the disorder progresses, colleagues and ancillary staff begin to complain of the doctor's unreliability, and there may even be instances of complaints that the doctor has alcohol on his or her breath. We see none of these patterns in [respondent's] history. In fact, his colleagues' letters describing [respondent's] behavior and professional work show absolutely nothing like what we expect to see in the development of an alcohol use disorder.

(Ex. A, p. 0021.)

17. Dr. Juan Alejos testified about respondent's character. He has known respondent for 20 years and works with him at UCLA on a daily basis. Dr. Alejos is aware of the allegations against respondent and the record of his criminal conviction. His knowledge of the incident does not change his opinion of respondent's role at UCLA. Dr. Alejos has socialized with respondent during which time he observed respondent have "one drink at dinner," but Dr. Alejos has never observed respondent drink to excess or become belligerent.

18. Rick Harrison, M.D., testified about respondent's character. He has known respondent for 25 to 30 years and has worked "extremely closely" with him at UCLA for the past four to five years. Dr. Harrison is aware of the allegations against respondent and the record of his criminal conviction. Dr. Harrison testified that he was "surprised" to learn about the alcohol-related conviction because respondent "has always shown good judgment and this showed a lack of good judgment." Dr. Harrison testified that, in his personal opinion, the conviction is atypical and not indicative of respondent's general character. Dr. Harrison has socialized with respondent during which time he observed respondent have "one or two drinks," that he noticed "nothing out of the ordinary," and that respondent's judgment "has always been very good."

19. Swati Patel, M.D., testified about respondent's character. She has known respondent for 21 years and currently works "very closely" with him at UCLA. Dr. Patel testified that respondent told her about his criminal conviction, that she was surprised to learn about the conviction, and that she felt the incident was "out of character because [respondent] is such a pillar in society." She has known others with substance abuse disorders and has taught anesthetists how to look for signs of abuse. Dr. Patel has never suspected respondent to be a substance abuser because he exhibited none of the signs of abuse in that he has always been very reliable as a colleague and responsive when paged.

20. Respondent offered 11 character reference letters, each of which supplemented and explained the direct testimony of those who testified about respondent's character.

21. Complainant's counsel presented printed content from websites and argued that respondent has a substance abuse disorder because he drank three double scotches despite health problems "caused or worsened by it." Respondent

admitted that he was treated for a heart attack and that he has high blood pressure and hyperlipidemia; however, no credible medical evidence was presented to show that consuming three double scotches would cause or worsen these conditions.

LEGAL CONCLUSIONS

Standard of Proof

1. The standard of proof in an administrative action seeking to suspend or revoke a physician's certificate is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. Clear and convincing evidence requires a finding of high probability or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

The Law Governing Discipline

3. A licensee who has been found guilty under the Medical Practice Act may: have his or her license revoked; have his or her right to practice suspended for a period not to exceed one year; be placed on probation and required to pay the cost of probation monitoring; be publicly reprimanded by the Board; or have any other action taken in relation to discipline as the Board or administrative law judge deems proper. (Bus. & Prof. Code, § 2227, subd. (a).)

4. The Board must take action against any licensee who is charged with unprofessional conduct. (Bus. & Prof. Code, § 2234.)

5. Unprofessional conduct includes conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575)

6. Unprofessional conduct includes the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon. (Bus. & Prof. Code, § 2236, subd. (a).)

7. California Code of Regulations, title 16, section 1360, provides, in part:

> 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.

8. Unprofessional conduct includes the use of alcoholic beverages to an extent, or in such a manner, as to be dangerous or injurious to the licensee, or to any other person or to the public. (Bus. & Prof. Code, § 2239, subd. (a).)

9. The Board is generally authorized to publicly reprove a certificate holder for any act that would constitute grounds to suspend or revoke a license or certificate. (Bus. & Prof. Code., § 495.)

First Cause for Discipline – Conviction of Crime

10. Respondent was convicted of driving with a blood-alcohol content of 0.08 percent or more, causing him to be so impaired that he drove his car dangerously and he lost his balance and fell during a traffic stop. This evidence exhibits to a substantial degree a present or potential unfitness to perform the functions of a physician and surgeon in a manner consistent with the public health, safety, or welfare. Accordingly, the crime is substantially related to the qualifications, functions, or duties of a physician and surgeon under California Code of Regulations, title 16, section 1360.

11. Cause exists to discipline respondent's certificate under Business and Professions Code sections 2227 and 2236 because he was convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon.

Second Cause for Discipline – Excessive Use of Alcohol

12. Respondent's blood alcohol content was almost three times the legal limit. His state of impairment was such that he could have caused substantial property damage, injury, or death by driving his car while intoxicated.

13. Cause exists to discipline respondent's certificate in that he violated Code sections 2227 and 2239, subdivision (a), because he drank alcohol to an extent, or in a manner, as to be dangerous or injurious to himself and the public.

Level of Discipline

14. In reaching a decision on the appropriate level of discipline, the Board must consider the *Manual of Model Disciplinary Orders and Disciplinary Guidelines*, 12th Edition, 2016. (Cal. Code Regs., tit. 16, § 1361, subd. (a).) For the conviction of a

misdemeanor crime, and the use of alcohol to the extent or in a manner dangerous to the physician or others, the guidelines recommend a maximum penalty of revocation and a minimum penalty of stayed revocation with five years of probation.

15. At the hearing, complainant sought the imposition of no less than the minimum recommended penalty. Specifically, the deputy attorney general argued that an appropriate level of discipline would be to revoke respondent's certificate, stay the revocation, and place respondent on probation for 35 months, subject to terms that would oversee and monitor respondent's use of alcohol, including random biological fluid testing. A single conviction for driving under the influence may support a disciplinary proceeding against a licensee. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195.) The purpose of license discipline includes not only the protection of the public, but also the prevention of future harm. To defer license discipline until the licensee establishes recidivism poses a risk of harm to the public in disregard of these purposes. The law recognizes that it is far more desirable to impose discipline before a licensee causes harm than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757; *In re Kelley* (1990) 52 Cal.3d 487.)

Mitigating Factors and Rehabilitation

16. Deviating from the guidelines is appropriate where the facts of the particular case warrant such a deviation, such as the presence of mitigating factors. (Cal. Code Regs., tit. 16, § 1361, subd. (a).)

17. Rehabilitation requires a consideration of those offenses from which one has allegedly been rehabilitated. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041.) Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve one who has achieved reformation and regeneration. (*Id.*, at

1058.) The absence of a prior disciplinary record is a mitigating factor. (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132, fn. 10.) Remorse and cooperation are mitigating factors. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) While a candid admission of misconduct and full acknowledgment of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step. A truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.)

18. Respondent provided significant evidence of mitigation and rehabilitation. The conviction was not only respondent's first and only criminal offense involving alcohol use, and also the only evidence of any excessive use of alcohol. Respondent fully cooperated with the terms and conditions of probation and the conviction was dismissed pursuant to Penal Code section 1203.4. Approximately four years have passed since respondent engaged in the misconduct that resulted in his conviction, during which time he took responsibility for his actions, sought evaluation and treatment, and established by competent medical evidence that he does not have an alcohol use disorder. Respondent has no prior disciplinary record in California or New York during 27 years of licensure. Respondent presented substantial and compelling evidence that his excessive drinking on December 12, 2015, was an isolated instance of poor judgment. His expression of remorse and humiliation credibly exhibit a change in attitude and a state of mind of reformation and regeneration.

19. Issuing a public reprimand is inconsistent with specific recommendations set forth in the Board's disciplinary guidelines. However, a public reprimand is the most reasonable sanction in light of respondent's history of responsible use of alcohol, the nature and extent of his misconduct giving rise to this disciplinary action, and the effective remedial steps he has taken to ensure similar events will not recur. A public

reprimand ensures that respondent's misconduct will be a matter of public record and it will serve as a continuing reminder to curtail his use and consumption of alcohol. Public protection does not require respondent be placed on probation or that any conditions be placed on the public reprimand.

20. The language of California Code of Regulations, title 16, sections 1361 and 1361.5 requires that, if a licensee is disciplined for unprofessional conduct involving the abuse of alcohol, "the licensee shall be presumed to be a substance-abusing licensee," and the "probationary terms and conditions [from the Uniform Standards for Substance-Abusing Licensees] shall be used without deviation in the case of a substance-abusing licensee." In this case, the presumption that respondent is a substance abusing licensee has been rebutted. Additionally, the language of the regulations apparently presumes that the discipline imposed on the licensee will be probation, rather than a public letter of reprimand. This language calls into question the effect of the regulations on statutory discretion afforded when imposing discipline.

21. Business and Professions Code section 2227 identifies probation and public reprimand as separate and distinct forms of license discipline. In this case, no probation is imposed, and there is no cited statute or case law which specifically requires the probationary terms in the Uniform Standards for Substance-Abusing Licensees to be imposed along with a public reprimand. If the probationary terms set forth in the Uniform Standards for Substance-Abusing Licensees must be imposed with any discipline, this would convert all discipline to probation, including instances where probation is not warranted. This would negate the discretion afforded in Business and Professions Code section 2227 and acknowledged in California Code of Regulations, title 16, section 1361, subdivision (a). Such an interpretation of the disciplinary statutes and regulations would unduly punish some licensees, and these

proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in disciplinary cases, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid.* See also, *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

22. Given the foregoing, California Code of Regulations, title 16, sections 1361 and 1361.5 do not mandate the imposition of the probationary terms and conditions from the Uniform Standards for Substance-Abusing Licensees when a public reprimand is issued, as in this case.

ORDER

Physician's and Surgeon's Certificate Number A 56383 issued to respondent Andranik Madikians, M.D., is hereby publicly reprimanded pursuant to Business and Professions Code section 2227, subdivision (a)(4).

DATE: December 4, 2019

DocuSigned by:
Matthew Goldsby
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MATTHEW GOLDSBY
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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO November 20, 2018
BY: ANALYST

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

In the Matter of the Accusation Against: ANDRANIK MADIKIANS, M.D. Mattel Children's Hospital at UCLA 10833 Le Conte Avenue Los Angeles, CA 90095-1752 Physician's and Surgeon's Certificate A 56383, Respondent.	Case No. 800-2015-019406 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about October 23, 1996, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number A 56383 to Andranik Madikians, M.D.

(Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 2020, unless renewed.

JURISDICTION

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

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

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

"(b) The administration and hearing of disciplinary actions.

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

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

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

"(f) Approving undergraduate and graduate medical education programs.

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

"(h) Issuing licenses and certificates under the board's jurisdiction.

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

5. 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.

6. Section 2234 of the Code, states:

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

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview scheduled by the mutual agreement of the certificate holder and the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

7. 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 [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality[1] of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

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

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

8. Section 802.1 of the Code states:

"(a) (1) A physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine shall report either of the following to the entity that issued his or her license:

"(A) The bringing of an indictment or information charging a felony

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[1] California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal. Bus. & Prof. Code, section 2000, et.seq.) means the "Medical Board of California," and references to the "Division of Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

against the licensee.

"(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

"(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or information or of the conviction.

"(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars ($5,000)."

9. Section 2239 of the Code states:

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

"(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Medical Board may order discipline of the licensee in accordance with Section 2227 or the Medical Board may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment."[2]

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[2] There is a nexus between a physician's use of alcoholic beverages and his or her fitness to practice medicine, established by the Legislature in Section 2239, in "all cases where a licensed physician used alcoholic beverages to the extent or in such a manner as to pose a danger to himself or others." (*Watson v. Superior Court* (*Medical Board*) (2009) 176 Cal.App.4th 1407, 1411.)

10. Section 490 of the Code states:

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

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

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

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

11. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the

qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

". . ."

12. 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."

FIRST CAUSE FOR DISCIPLINE

(Conviction of Crime)

13. Respondent is subject to disciplinary action under section 2236 of the Code, in that he was convicted of a crime substantially related to the qualifications, functions or duties of a physician. The circumstances are as follows:

14. On or about June 30, 2016, in the case entitled *People of the State of California v. Andranik Madikians*, Los Angeles County Superior Court Case No. 6ES01066, Respondent was convicted via a plea of *nolo contendere* to violating California Vehicle Code section 23152 (b) (Driving Under the Influence of Alcohol or Drugs (DUI)).

15. As a result of said plea, Respondent was sentenced to three (3) years Summary Probation with terms and conditions, and payment of fees/fines.

16. The circumstances leading to Respondent's June 30, 2016 conviction are as follows:

A. On December 12, 2015, an anonymous caller advised dispatch of a driver who was seen swerving in and out of lanes and, at one point, was seen colliding with the center median. Police located the vehicle, conducted a traffic stop, and made contact with Respondent. Per the reporting officer, Respondent's speech was slurred, and there was a strong odor of alcohol emitting from Respondent's breath/person. Respondent exhibited signs of intoxication, and indicated that he had been drinking at a bar, and did not know what city he was in.

B. Respondent refused to provide a breath sample and refused to follow the officer's directions. Respondent was not able to complete Field Sobriety Tests (FSTs), and stated that he would not conduct any tests without his attorney. Respondent was argumentative and repeatedly yelled that he had been drinking and wanted a ride home. Respondent was subsequently arrested and later consented to a blood test, which showed a sample of blood alcohol concentration of 0.21% in Respondent's system.

SECOND CAUSE FOR DISCIPLINE

(Use of Alcoholic Beverages in a Dangerous Manner)

17. By reason of the facts and opinions set forth in the First Cause for Discipline above, Respondent is subject to disciplinary action under Section 2239 of the Code in that Respondent used alcoholic beverages to the extent, or in such a manner, as to be dangerous and injurious to himself or to any other person or to the public.

18. Respondent's acts and/or omissions as set forth in the First Cause for Discipline above, whether proven individually, jointly, or in any combination thereof, constitutes the use of alcoholic beverages to the extent, or in such a manner, as to be dangerous and injurious to himself, or to any other person or to the public, pursuant to Section 2239 of the Code.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

19. By reason of the facts and opinions set forth in the First Cause for Discipline above, Respondent is subject to disciplinary action under Section 2234, subdivision (a) of the Code in that Respondent has been convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon, and Respondent has used alcoholic beverages to

the extent, or in such a manner, as to be dangerous and injurious to himself, or to any other person or to the public.

20. Respondent's acts and/or omissions as set forth in and opinions set forth in the First Cause for Discipline above, whether proven individually, jointly, or in any combination thereof, constitutes the conviction of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon, and the use of alcoholic beverages to the extent, or in such a manner, as to be dangerous and injurious to himself, or to any other person or to the public, pursuant to Section 2234, subdivision (a) of the Code.

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 and Surgeon's Certificate Number A56383, issued to Andranik Madikians, M.D.

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

3. If placed on probation, ordering him to pay the Medical Board of California the costs of probation monitoring;

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

DATED: November 20, 2018

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

Complainant

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