

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 EMILY L. BRINKMAN
Deputy Attorney General
4 State Bar No. 219400
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3374
6 Facsimile: (415) 703-5843
E-mail: Emily.Brinkman@doj.ca.gov
7 *Attorneys for Complainant*

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

12 Case No. 800-2019-054990

13 In the Matter of the Accusation Against:

14 **Richard Alan Heiner, M.D.**
18 White River Cir.
15 Salinas, CA 93906

16 **Physician's and Surgeon's Certificate**
No. C 51617,

17 Respondent.
18

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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

21 **PARTIES**

22 1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical
23 Board of California (Board). She brought this action solely in her official capacity and is
24 represented in this matter by Xavier Becerra, Attorney General of the State of California, by
25 Emily L. Brinkman, Deputy Attorney General.

26 2. Respondent Richard Alan Heiner, M.D. (Respondent) is represented in this
27 proceeding by attorney Shannon V. Baker, whose address is: Rothschild, Wishek & Sands, LLP,
28 765 University Ave., Sacramento, CA 95825.

3. On or about June 4, 2004, the Medical Board issued Physician's and Surgeon's Certificate Number C 51617 to Richard Alan Heiner, M.D. (Respondent). The Physician's and Surgeon's Certificate was suspended by the Interim Suspension Order issued on May 17, 2019 and will remain suspended pending a final decision and order by the Medical Board of California, but was in full force and effect at all times relevant to the charges brought herein and expired on October 31, 2019.

JURISDICTION

4. Accusation No. 800-2019-054990 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 August 13, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2019-054990 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2019-054990. 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.

///

///

1 **CULPABILITY**

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 800-2019-054990, if proven at a hearing, constitute cause for imposing discipline upon his
4 Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
8 those charges.

9 11. Respondent agrees that if he ever petitions for early termination or modification of
10 probation, or if the Board ever petitions for revocation of probation, all of the charges and
11 allegations contained in Accusation No. 800-2019-054990 shall be deemed true, correct and fully
12 admitted by Respondent for purposes of that proceeding or any other licensing proceeding
13 involving respondent in the State of California.

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

17 **CONTINGENCY**

18 13. This stipulation shall be subject to approval by the Medical Board of California.
19 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
20 Board of California may communicate directly with the Board regarding this stipulation and
21 settlement, without notice to or participation by Respondent or his counsel. By signing the
22 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
23 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
24 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
25 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
26 action between the parties, and the Board shall not be disqualified from further action by having
27 considered this matter.
28

14. 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.

15. 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 Number C 51617 issued to Respondent Richard Alan Heiner, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) 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. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that Respondent is mentally 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.

5. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this

1 Decision, Respondent shall submit to the Board or its designee for prior approval the name and
2 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who
3 has a doctoral degree in psychology and at least five years of postgraduate experience in the
4 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall
5 undergo and continue psychotherapy treatment, including any modifications to the frequency of
6 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

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

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

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

20 6. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the
21 effective date of this Decision, and on a periodic basis thereafter as may be required by the Board
22 or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician
23 who shall consider any information provided by the Board or designee and any other information
24 the evaluating physician deems relevant and shall furnish a medical report to the Board or its
25 designee. Respondent shall provide the evaluating physician with any information and
26 documentation that the evaluating physician may deem pertinent.

27 Following the evaluation, Respondent shall comply with all restrictions or conditions
28 recommended by the evaluating physician within 15 calendar days after being notified by the

1 Board or its designee. If Respondent is required by the Board or its designee to undergo medical
2 treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the
3 Board or its designee for prior approval the name and qualifications of a California licensed
4 treating physician of Respondent's choice. Upon approval of the treating physician, Respondent
5 shall within 15 calendar days undertake medical treatment and shall continue such treatment until
6 further notice from the Board or its designee.

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

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

18 Respondent shall not engage in the practice of medicine until notified in writing by the
19 Board or its designee of its determination that Respondent is medically fit to practice safely.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 The contract shall require that the laboratory directly notify the Board or its designee of
28 non-negative results within one (1) business day and negative test results within seven (7)

1 business days of the results becoming available. Respondent shall maintain this laboratory or
2 service contract during the period of probation.

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

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

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

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

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

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

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

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

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

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

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

25 The worksite monitor shall not have a current or former financial, personal, or familial
26 relationship with Respondent, or any other relationship that could reasonably be expected to
27 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its
28 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite

1 monitor, this requirement may be waived by the Board or its designee, however, under no
2 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

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

7 Respondent shall pay all worksite monitoring costs.

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

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

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

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

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

13 A. If Respondent commits a major violation of probation as defined by section
14 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take
15 one or more of the following actions:

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

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

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

28 B. If Respondent commits a minor violation of probation as defined by section

1 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
2 one or more of the following actions:

- 3 (1) Issue a cease-practice order;
- 4 (2) Order practice limitations;
- 5 (3) Order or increase supervision of Respondent;
- 6 (4) Order increased documentation;
- 7 (5) Issue a citation and fine, or a warning letter;
- 8 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in
9 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
10 Regulations, at Respondent's expense;
- 11 (7) Take any other action as determined by the Board or its designee.

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

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

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

1 13. PATIENT DISCLOSURE.

2 Before a patient's first visit following the effective date of this order and while the
3 respondent is on probation, the respondent must provide all patients, or patient's guardian or
4 health care surrogate, with a separate disclosure that includes the respondent's probation status,
5 the length of the probation, the probation end date, all practice restrictions placed on the
6 respondent by the board, the board's telephone number, and an explanation of how the patient can
7 find further information on the respondent's probation on the respondent's profile page on the
8 board's website. Respondent shall obtain from the patient, or the patient's guardian or health care
9 surrogate, a separate, signed copy of that disclosure. Respondent shall not be required to provide
10 a disclosure if any of the following applies: (1) The patient is unconscious or otherwise unable to
11 comprehend the disclosure and sign the copy of the disclosure and a guardian or health care
12 surrogate is unavailable to comprehend the disclosure and sign the copy; (2) The visit occurs in
13 an emergency room or an urgent care facility or the visit is unscheduled, including consultations
14 in inpatient facilities; (3) Respondent is not known to the patient until immediately prior to the
15 start of the visit; (4) Respondent does not have a direct treatment relationship with the patient.

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

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

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

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

27 17. GENERAL PROBATION REQUIREMENTS.

28 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.

18. 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.

19. 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

1 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
2 patient care, clinical activity or teaching, or other activity as approved by the Board. If
3 Respondent resides in California and is considered to be in non-practice, Respondent shall
4 comply with all terms and conditions of probation. All time spent in an intensive training
5 program which has been approved by the Board or its designee shall not be considered non-
6 practice and does not relieve Respondent from complying with all the terms and conditions of
7 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
8 on probation with the medical licensing authority of that state or jurisdiction shall not be
9 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
10 period of non-practice.

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

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

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

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

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

27 21. VIOLATION OF PROBATION. Failure to fully comply with any term or
28 condition of probation is a violation of probation. If Respondent violates probation in any

1 respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke
2 probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to
3 Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation,
4 the Board shall have continuing jurisdiction until the matter is final, and the period of probation
5 shall be extended until the matter is final.

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

16 23. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
17 with probation monitoring each and every year of probation, as designated by the Board, which
18 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
19 California and delivered to the Board or its designee no later than January 31 of each calendar
20 year.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

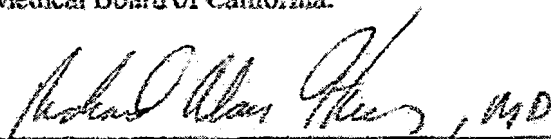
28 ///

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Shannon Baker. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate Number C 51617. 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:

1/23/2020



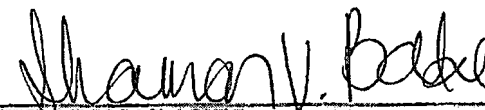
RICHARD ALAN HEINER, M.D.

Respondent

I have read and fully discussed with Respondent Richard Alan Heiner, 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:

1/23/20



SHANNON BAKER

Attorney for Respondent

ENDORSEMENT

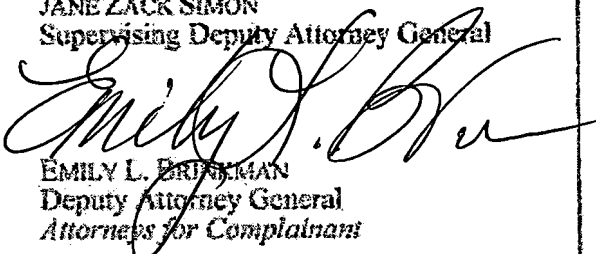
The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

DATED:

1/24/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General


EMILY L. BRISKMAN
Deputy Attorney General
Attorneys for Complainant

SF2019200960
14360233

1 XAVIER BECERRA
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

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 13 20 19
BY K. Wong ANALYST

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

12
13 In the Matter of the Accusation Against:

Case No. 800-2019-054990

14 **Richard Alan Heiner, M.D.**
15 **18 White River Cir.**
Salinas, CA 93906

ACCUSATION

16 **Physician's and Surgeon's Certificate**
17 **No. C 51617,**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about June 4, 2004, the Medical Board issued Physician's and Surgeon's
26 Certificate Number C 51617 to Richard Alan Heiner, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was suspended by the Interim Suspension Order issued on May 17, 2019
28 and will remain suspended pending a final decision and order by the Medical Board of California,

1 but was in full force and effect at all times relevant to the charges brought herein and will expire
2 on October 31, 2019, unless renewed.

3 **JURISDICTION**

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

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

10 5. Section 490 of the Code, states in part:

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

15 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
16 conviction following a plea of nolo contendere. An action that a board is permitted to take
17 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
18 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
19 made suspending the imposition of sentence, irrespective of a subsequent order under Section
20 1203.4 of the Penal Code.”

21 6. Section 2234 of the Code, states in part:

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

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

27 “(f) Any action or conduct that would have warranted the denial of a certificate.”

28 7. Section 2236 of the Code states:

1 “(a) The conviction of any offense substantially related to the qualifications, functions, or
2 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
3 chapter [chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive
4 evidence only of the fact that the conviction occurred . . .

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

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

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

18 **CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct and/or Criminal Conviction)**

20 9. Respondent Richard Alan Heiner, M.D. is subject to disciplinary action under section
21 2234 (unprofessional conduct), and/or section 2236 (criminal conviction), and/or California Code
22 of Regulations, title 16, section 1360 (criminal conviction), in that on or about May 16, 2019, in a
23 criminal proceeding entitled *The People of the State of California v. Richard Heiner*, in the
24 Monterey County Superior Court, Case Number 19CR003897, Respondent was convicted for
25 violating California Penal Code section 273.5(a). Penal Code Section 273.5(a) provides in
26 relevant part that: “Any person who willfully inflicts corporal injury resulting in a traumatic
27 condition upon a victim described in subdivision (b) [including a fiancé or fiancée] is guilty of a
28 felony . . .” Respondent was also convicted for violating California Penal Code section

1 12022.7(a), which involves inflicting "great bodily injury" under circumstances involving
2 domestic violence in the commission of a felony. The circumstances are as follows:

3 **April 13, 2019 Domestic Violence Event**

4 10. On or about April 13, 2019, at approximately 3:25 p.m., Respondent and his fiancé,
5 Victim A,¹ began arguing in Respondent's residence in Salinas, California. When Victim A
6 began to walk away from Respondent, Respondent threw two high heel shoes at Victim A.

7 11. When Victim A attempted to record Respondent with her cellphone, Respondent took
8 Victim A's cellular phone out of her hand, and smashed it on a coffee table, which caused the
9 phone screen to break.

10 12. Victim A picked up her cellular phone and began to walk upstairs when Respondent
11 began attacking her. Respondent threw Victim A on the stairs and mounted her. Respondent
12 began to slap her with an open hand and punch her face and head with his fists. Respondent then
13 threw an alcoholic beverage on Victim A's person, grabbed her hair, and slammed her head
14 against the stairs.

15 13. Fearing for her life, Victim A attempted to escape the house. As Victim A opened the
16 front door, Respondent used his body to slam the door on Victim A, pinning her left leg between
17 the door and the doorframe. Respondent then pulled Victim A back into his residence.
18 Respondent dragged Victim A back to the staircase where he beat her face by striking her with
19 both of his fists.

20 14. Victim A stood on her feet, ran to the upstairs master bedroom, and locked the door
21 behind her. As Victim A knelt down next to the bed, Respondent unlocked the door with a utility
22 kitchen knife. With the kitchen knife in hand, Respondent approached Victim A and knelt down
23 next to her. Victim A begged Respondent to not use the knife on her, and eventually was able to
24 remove the knife from Respondent's grasp, and throw the knife across the room.

25 15. Respondent began to attack Victim A again. Respondent threw Victim A down onto
26 the floor and ripped off her trench coat and began to punch her face and head. Respondent then
27

28 ¹ Names and initials will not be used in order to protect the victim's identity. Respondent
is aware of the victim's identity.

1 grabbed ankle weights, clasped them in his right hand, and with slashing motions from top right
2 to bottom left, and top left to bottom right, he struck Victim A in the face and head. Victim A
3 believed that she was going to die.

4 16. Respondent strangled Victim A by placing his forearm across her throat and then
5 transitioned to using his hand to clasp her throat. Victim A could not breathe and at one point lost
6 consciousness during the strangulation.

7 17. During the attack in the master bedroom, Respondent attempted to force a sexual
8 vibrator device into Victim A's vagina. Victim A prevented Respondent from placing the
9 vibrator in her vagina by turning and clenching her legs. Unable to force the vibrator into Victim
10 A's vagina, Respondent shoved the vibrator into Victim A's mouth.

11 18. Throughout the attack, Respondent threatened Victim A. Respondent's threats to the
12 victim included threats to kill her and to maim her, including but not limited to the following:
13 "You deserve to fucking die;" "Do you understand now? Fuck this shit;" Fuck you to hell;" "You
14 trying to steal from me;" "I'm going to cut your fingers off;" and "put a bullet in your head."

15 19. On or about April 13, 2019, at approximately 3:58 p.m., in Salinas, California,
16 officers with the Salinas Police Department were dispatched to Respondent's residence regarding
17 an ongoing assault. Upon arriving at Respondent's residence, the officers found Victim A nude,
18 with a bloody face, swollen shut eyes, swollen lips, swollen cheeks, and other visible injuries.
19 After one of the officers asked Victim A outside, Victim A appeared to faint and one of the
20 officers caught her and assisted her away from the residence. Police officers subsequently
21 arrested Respondent.

22 20. Victim A was brought to the Natividad Medical Center to treat her injuries from
23 Respondent's attack. Victim A was diagnosed with injuries to her left hand and to her head and
24 face, including a non-displaced acute nasal bone fracture, a large left periorbital hematoma, facial
25 edema/hematoma anteriorly, and laterally, resident periorbital hematoma. Victim A still had
26 visible signs of the injuries more than 24 hours after the attack, including severe redness of both
27 eyes, swelling and bruising of the head and neck, inability to fully open her mouth, and dried
28 blood inside her nostrils.

1 21. While conducting a search of Respondent's house, officers of the Salinas Police
2 Department recorded approximately 12 separate areas of bloodstains throughout the house.

3 22. On or about April 13, 2019, at or around 7:07 p.m., a Monterey County judge granted
4 an emergency protective order protecting Victim A from Respondent.

5 **Criminal Case Filing, Plea Agreement, and Sentencing**

6 23. On or about April 16, 2019, the Monterey County District Attorney's Office filed a
7 criminal complaint against Respondent in the Superior Court of California, Monterey County,
8 Salinas Division in the matter entitled: *The People of the State of California v. Richard Heiner*,
9 Case No. 19CR003897. The Respondent was charged with the following crimes:

- 10 a. Count 1: Felony, Willful Deliberate, Premeditated, Attempted Murder, Penal
11 Code sections 664/187(a);
12 b. Count 2: Felony, Assault with a Deadly Weapon, Penal Code 245(a)(1);
13 c. Count 3: Felony, Criminal Threats, Penal Code 422(a);
14 d. Count 4: Felony, Sexual Penetration by Foreign Object, Penal Code Section
15 289(a)(1)(A);
16 e. Count 5: Felony, Corporal Injury to Spouse/Cohabitant/Child's Parent, Penal
17 Code section 273.5(a).

18 24. On or about May 16, 2019, Respondent pled "guilty/no contest" to violating Penal
19 Code sections 273.5(a) and 12022.7(a).

20 25. On or about July 11, 2019, Respondent was sentenced by the Monterey Superior
21 Court to the following terms and conditions:

- 22 a. Four years of formal probation;
23 b. 365 days in County Jail, credited for time served of 90 days, plus good/work
24 time of 90 days, for a total of 180 days;
25 c. 40 hours community service;
26 d. Enroll in and complete a one-year domestic violence counseling program as
27 approved by the Probation Officer and attend one to two hour meetings each week;
28

- 1 e. Enroll in and complete any counseling or substance abuse program the
2 Probation Officer deems necessary;
- 3 f. Participate in any assessment with Behavioral Health to receive MediCal-
4 funded substance abuse treatment;
- 5 g. Do not possess, receive or transport any firearm, ammunition or any deadly
6 weapon. Immediately surrender any firearms or ammunition Respondent owns or
7 possesses to law enforcement;
- 8 h. Do not drink or possess any alcoholic beverage;
- 9 i. Do not annoy, molest attack, strike, threaten, harass, stalk, sexually assault,
10 batter, or disturb the peace of Victim A;
- 11 j. Accept a period of up to 10 days of flash incarceration by the Probation Officer
12 for any violation of probation;
- 13 k. Pay victim restitution to Victim A in an amount to be determined by the
14 Probation Officer;
- 15 l. Pay domestic violence fee amounting 500.00 dollars;
- 16 m. Pay 300.00 dollars to a woman's shelter;
- 17 n. Pay a restitution fine of 300.00 dollars for the State Restitution Fund;
- 18 o. Pay other various fees and fines.

19 26. Respondent is subject to disciplinary action under 2234, and/or 2236, and/or
20 California Code of Regulations, title 16, section 1360, in that Respondent was convicted of a
21 crime as alleged in paragraphs 9 through 25.

22 **PRAYER**

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

25 1. Revoking or suspending Physician's and Surgeon's Certificate Number C 51617,
26 issued to Respondent;

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

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

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

4
5 DATED: August 13, 2019



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