

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

Case No. 800-2015-017700

Respondent

IT IS SO ORDERED: April 16, 2020.

Ronald H Lewis, MD

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 KAROLYN M. WESTFALL
Deputy Attorney General
4 State Bar No. 234540
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9465
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **CESAR BENITEZ, M.D.**
14 **225 W MADISON AVE STE II**
EL CAJON CA 92020-3454

15 **Physician's and Surgeon's Certificate No.**
16 **A 107600**

17 Respondent.

Case No. 800-2015-017700

OAH No. 2019061104

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18
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. Lally¹ (Complainant) is the Interim Executive Director of the Medical
23 Board of California (Board). Kimberly Kirchmeyer, brought this action solely in her official
24 capacity as the then Executive Director of the Board. They have been represented in this matter
25 by Xavier Becerra, Attorney General of the State of California, by Karolyn M. Westfall, Deputy
26 Attorney General.

27
28 ¹ Kimberly Kirchmeyer became the Director of the Department of Consumer Affairs on October
28; 2019. On that date, Ms. Lally became the Interim Executive Director of the Medical Board.

2. Respondent Cesar Benitez, M.D. (Respondent) is represented in this proceeding by attorney Robert W. Frank, Esq., whose address is: Neil, Dymott, Frank, McFall & Trexler, McCabe & Hudson, APLC, 110 West A Street, Suite 1200, San Diego, CA 92101.

3. On or about May 6, 2009, the Board issued Physician's and Surgeon's Certificate No. A 107600 to Cesar Benitez, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-017700, and will expire on April 30, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-017700 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 July 9, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-017700 is attached hereto 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. 800-2015-017700. 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. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

///

CULPABILITY

9. Respondent admits that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. No. 800-2015-017700, and agrees that he has thereby subjected his Physician's and Surgeon's Certificate No. A 107600 to disciplinary action.

10. Respondent further agrees that if he ever petitions for modification or early termination of probation, or if an accusation and/or petition to revoke probation is filed against him before the Medical Board of California, all of the charges and allegations contained in Accusation No. 800-2015-017700 shall be deemed true, correct, and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California or elsewhere.

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

CONTINGENCY

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

13. 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.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 107600 issued to Respondent Cesar Benitez, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years from the effective date of the Decision and Order on the following terms and conditions:

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

If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide Respondent with a hearing within 30 days of the request, unless Respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, requests for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing

1 within 30 days of such a request, the notification of cease practice shall be dissolved.

2 2. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
3 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
4 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
5 follicle testing, or similar drug screening approved by the Board or its designee. Prior to
6 practicing medicine, Respondent shall contract with a laboratory or service approved in advance
7 by the Board or its designee that will conduct random, unannounced, observed, biological fluid
8 testing. The contract shall require results of the tests to be transmitted by the laboratory or
9 service directly to the Board or its designee within four hours of the results becoming available.
10 Respondent shall maintain this laboratory or service contract during the period of probation.

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

13 The Board may order Respondent undergo biological fluid testing on any day, at any time,
14 including weekends and holidays. Respondent shall be subject to up to 24 random tests per year.
15 Nothing precludes the Board from increasing the number of random tests if the Board finds that
16 Respondent has committed a violation of any of the biological fluid testing requirements.

17 If Respondent fails to cooperate in a random biological fluid testing program within the
18 specified time frame, Respondent shall receive a notification from the Board or its designee to
19 immediately cease the practice of medicine. Respondent shall not resume the practice of
20 medicine until the final decision on an accusation and/or a petition to revoke probation is
21 effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30
22 days of the notification to cease practice. If Respondent requests a hearing on the accusation
23 and/or petition to revoke probation, the Board shall provide the Respondent with a hearing within
24 30 days of the request, unless Respondent stipulates to a later hearing. If the case is heard by an
25 Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within
26 15 days of submission of the matter. Within 15 days of receipt by the Board of the
27 Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good
28 cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its

1 decision within 15 days of submission of the case, unless good cause can be shown for the delay.
2 Good cause includes, but is not limited to, non-adoption of the proposed decision, requests for
3 reconsideration, remands and other interlocutory orders issued by the Board. The cessation of
4 practice shall not apply to the reduction of the probationary time period.

5 If the Board does not file an accusation or petition to revoke probation within 15 days of
6 the issuance of the notification to cease practice or does not provide Respondent with a hearing
7 within 30 days of such a request, the notification of cease practice shall be dissolved.

8 3. EDUCATION COURSE. Within 60 calendar days of the effective date of this
9 Decision, Respondent shall submit to the Board or its designee for its prior approval educational
10 program(s) or course(s) which shall not be less than 8 hours in the area of anger management.
11 The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition
12 to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

28 ///

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.

5. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

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

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

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

6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief

1 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
2 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
3 calendar days.

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

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

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

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

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

16 10. GENERAL PROBATION REQUIREMENTS.

17 Compliance with Probation Unit

18 Respondent shall comply with the Board's probation unit.

19 Address Changes

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

25 Place of Practice

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

1 License Renewal

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

4 Travel or Residence Outside California

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

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

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

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

28 ///

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

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

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

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

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

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

24 15. LICENSE SURRENDER. Following the effective date of this Decision, if
25 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
26 the terms and conditions of probation, Respondent may request to surrender his or her license.
27 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
28 determining whether or not to grant the request, or to take any other action deemed appropriate

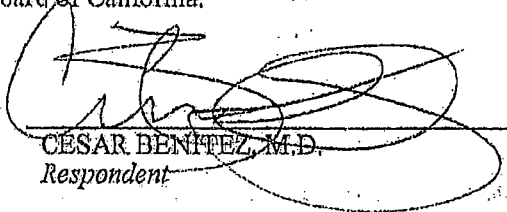
1 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
2 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
3 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
4 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
5 application shall be treated as a petition for reinstatement of a revoked certificate.

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

11 ACCEPTANCE

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

17
18 DATED: 03/03/2020

19 
CESAR BENITEZ, M.D.
Respondent

20
21 I have read and fully discussed with Respondent Cesar Benitez, M.D., the terms and
22 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
23 I approve its form and content.

24
25 DATED: 3-3-2020

26 
ROBERT FRANK, ESQ.
Attorney for Respondent

27
28 ///

ENDORSEMENT

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

DATED: 3/3/20

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

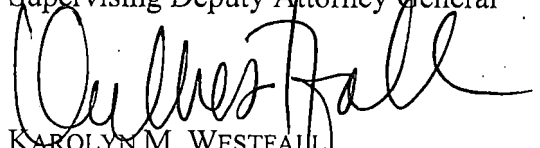

KAROLYN M. WESTFALL
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2015-017700

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
KAROLYN M. WESTFALL
Deputy Attorney General
State Bar No. 234540
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9465
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 800-2015-017700

CESAR BENITEZ, M.D.
225 W. Madison Ave., Ste. II
El Cajon, CA 92020-3454

ACCUSATION

Physician's and Surgeon's Certificate
No. A107600,

Respondent.

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 May 6, 2009, the Medical Board issued Physician's and Surgeon's Certificate No. A107600 to Cesar Benitez, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2021, 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 (Code) unless otherwise indicated.

4. Section 2227 of the Code states, in pertinent part:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“...”

5. Section 2234 of the Code, states, in pertinent part:

“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.

“...”

///

1 6. Unprofessional conduct under Business and Professions Code section 2234 is conduct
2 which breaches the rules or ethical code of the medical profession, or conduct which is
3 unbecoming a member in good standing of the medical profession, and which demonstrates an
4 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
5 575.)

6 7. Section 2236 of the Code states, in pertinent part:

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

11 “...

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

15 8. Section 2239 of the Code states, in pertinent part:

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

24 “...”

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

26 “For the purposes of denial, suspension or revocation of a license, certificate or
27 permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act
28 shall be considered to be substantially related to the qualifications, functions or duties of a

1 person holding a license, certificate or permit under the Medical Practice Act if to a
2 substantial degree it evidences present or potential unfitness of a person holding a license,
3 certificate or permit to perform the functions authorized by the license, certificate or permit
4 in a manner consistent with the public health, safety or welfare. Such crimes or acts shall
5 include but not be limited to the following: Violating or attempting to violate, directly or
6 indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision
7 of the Medical Practice Act.”

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Conviction of an Offense Substantially Related to the Qualifications,
10 Functions, or Duties of a Physician and Surgeon)**

11 10. Respondent has subjected his Physician's and Surgeon's Certificate No.
12 A107600 to disciplinary action under sections 2227 and 2234, as defined by section 2236, of the
13 Code, and California Code of Regulations, title 16, section 1360, in that he has been convicted of
14 an offense substantially related to the qualifications, functions, or duties of a physician and
15 surgeon, as more particularly alleged hereinafter:

16 11. On or about October 9, 2015,¹ Respondent was engaged to R.E., a woman whom
17 he had been in a dating relationship for approximately three (3) years, and who was
18 approximately eight (8) weeks pregnant with his child.

19 12. On or about October 9, 2015, Respondent and R.E. went to a friend's house where
20 Respondent consumed a large amount of hard alcohol. The couple returned to Respondent's
21 home late that evening and an argument ensued. During the argument, Respondent grabbed R.E.
22 by her wrist and throat, threw her onto the bed, strangled her neck for approximately ten (10)
23 seconds, pulled her hair, and pinned her to the ground. When R.E. was able to escape from
24 Respondent's grasp, she called the police. While on the phone with the police, Respondent

25 ///

26
27 ¹ Conduct occurring more than three years after the Board discovered the act or omission alleged
28 as the ground for disciplinary action is for informational purposes only and is not alleged as a basis for
disciplinary action. (Bus. & Prof. Code, § 2230.5.)

1 grabbed R.E. again and forced her to the ground. When R.E. attempted to call the police again,
2 Respondent hung up the phone and threw it across the room.

3 13. On or about October 10, 2015, at approximately 12:46 a.m., law enforcement
4 officers responded to R.E.'s call for help. Upon their arrival, they spoke with R.E. and observed
5 her to be upset and crying and noted redness to her throat. R.E. was transported to the hospital by
6 ambulance, and Respondent was placed under arrest for domestic violence.

7 14. On or about January 7, 2016, the San Diego City Attorney filed a criminal
8 complaint against Respondent in the matter of *The People of the State of California v. Cesar*
9 *Benitez*, San Diego County Superior Court Case No. M209988DV. Respondent was charged with
10 eight misdemeanors including: (1) Corporal injury to spouse and/or roommate, in violation of
11 Penal Code section 273.5(a); (2) Assault by means likely to produce great bodily injury, in
12 violation of Penal Code section 245(a)(4); (3) Battery of a current or former significant other, in
13 violation of Penal Code section 243(e)(1); (4) Battery of a current or former significant other, in
14 violation of Penal Code section 243(e)(1); (5) False imprisonment, in violation of Penal Code
15 section 236; (6) Battery of a current or former significant other, in violation of Penal Code section
16 243(e)(1); (7) Attempting to dissuade a witness from reporting a crime, in violation of Penal Code
17 section 136.1(b)(1); and (8) Damaging a wireless communication device to prevent assistance, in
18 violation of Penal Code section 591.5.

19 15. On or about June 6, 2016, Respondent was convicted upon his plea of guilty to
20 count 3, battery of a current or former significant other, in violation of Penal Code section
21 243(e)(1). Respondent was sentenced to three years of probation, ordered to attend 52 weeks of
22 individual counseling, pay standard fines, and a criminal protective order was ordered that
23 prohibited him from having any negative contact with R.E. during the pendency of probation.

24 16. On or about August 20, 2017, Respondent and R.E. went to a friend's barbeque
25 with their two children. During the barbeque, both R.E. and Respondent consumed a large
26 amount of alcohol. Shortly after the couple returned home that evening with their children, an
27 argument ensued. At some point, the argument became physical, and Respondent struck R.E. in
28 the face, causing her nose to bleed.

1 17. At approximately 7:15 p.m., law enforcement officers responded to the scene to
2 investigate a report of a woman yelling for help. Upon their arrival, they spoke with R.E. and
3 observed her to be upset and crying, and noted she had a bloody nose and bruising to her face.
4 R.E. was transported to the hospital by ambulance, and Respondent was placed under arrest for
5 domestic violence.

6 18. As a result of his arrest, on or about September 19, 2017, the San Diego City
7 Attorney filed an Order to Show Cause in San Diego County Superior Court Case No.
8 M209988DV. On that date, Respondent admitted his probation violation, and was ordered to
9 complete an outpatient alcohol rehabilitation program, abstain from alcohol for the pendency of
10 probation, and a full criminal protective order was ordered that prohibited Respondent from
11 having any contact with R.E. for ten (10) years.

12 19. On or about February 26, 2019, Respondent was interviewed by an investigator for
13 the Board. During that interview, Respondent admitted that both of his arrests were appropriate,
14 and based upon the outcomes of those experiences, he considers himself an alcoholic.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Use of Alcoholic Beverages to the Extent, or in Such a Manner, as to be Dangerous or**
17 **Injurious to Himself, Another Person, or the Public)**

18 20. Respondent has further subjected his Physician's and Surgeon's Certificate No.
19 A107600 to disciplinary action under sections 2227 and 2234, as defined by section 2239,
20 subdivision (a), of the Code, in that he has used alcoholic beverages to the extent, or in such a
21 manner, as to be dangerous or injurious to himself, another person, or the public, as more
22 particularly alleged in paragraphs 10 through 19, above, which are hereby incorporated by
23 reference and realleged as if fully set forth herein.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(General Unprofessional Conduct)**

26 21. Respondent has further subjected his Physician's and Surgeon's Certificate No.
27 A107600 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged
28 in conduct which breaches the rules or ethical code of the medical profession, or conduct which is

1 unbecoming to a member in good standing of the medical profession, and which demonstrates an
2 unfitness to practice medicine, as more particularly alleged in paragraphs 10 through 20, above,
3 which are hereby incorporated by reference and realleged as if fully set forth herein.

4 **PRAYER**

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

7 1. Revoking or suspending Physician's and Surgeon's Certificate No. A107600, issued
8 to Respondent, Cesar Benitez, M.D.;

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

11 3. Ordering Respondent, Cesar Benitez, M.D., if placed on probation, to pay the Board
12 the costs of probation monitoring; and

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

14
15 DATED: May 2, 2019


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

16
17
18
19
20 SD2019700770
21 13611257
22
23
24
25
26
27
28