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

In the Matter of the Accusation Against: **Digish Dinesh Shah, M.D.** **Physician's & Surgeon's Certificate No A 116712** **Respondent.**	**Case No. 800-2018-043056**

DECISION

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

This Decision shall become effective at 5:00 p.m. on JUN 17 2020

IT IS SO ORDERED MAY 18 2020

MEDICAL BOARD OF CALIFORNIA

Kristina Lawson

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

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
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State Bar No. 205340
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Attorneys for Complainant

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

In the Matter of the Accusation Against: DIGISH DINESH SHAH, M.D. 1250 16th Street, Suite A454 Santa Monica, California 90404 Physician's and Surgeon's Certificate No. A 116712, Respondent.	Case No. 800-2018-043056 OAH No. 2019090524 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Christine J. Lally ("Complainant") is the Interim Executive Director of the Medical Board of California ("Board"). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Claudia Ramirez, Deputy Attorney General.

2. Respondent Digish Dinesh Shah, M.D. ("Respondent") is represented in this proceeding by attorney Benjamin J. Fenton of the Fenton Law Group, LLP, 1990 South Bundy Drive, Suite 777, Los Angeles, California 90025.

3. On April 22, 2011, the Board issued Physician's and Surgeon's Certificate No. A116712 to Digish Dinesh Shah, M.D. ("Respondent"). That Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2018-043056, and will expire on February 28, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-043056 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 8, 2019. Respondent filed a timely Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2018-043056 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2018-043056. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2018-043056, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

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

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 imposition of discipline 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 that:

1. PUBLIC REPRIMAND. Physician's and Surgeon's Certificate No. A116712 issued to Respondent Digish Dinesh Shah, M.D. shall be and is hereby publicly reprimanded

pursuant to Business and Professions Code section 2227, subdivision (a)(4). This public reprimand, which is issued in connection with Respondent's conviction of driving under the influence of alcohol, as set forth in Accusation No. 800-2018-043056, is as follows:

"On April 1, 2018, you were involved in a minor traffic collision while driving under the influence of alcohol. Two breath tests showed that your blood alcohol concentration ("BAC") level was 0.206 percent and 0.220 percent. On June 7, 2018, you pled nolo contendere to and were convicted of violating Vehicle Code section 23152, subdivision (b), a misdemeanor, for driving under the influence of alcohol with a BAC of 0.08 percent or more. You have provided significant evidence of mitigation and rehabilitation."

IT IS FURTHER ORDERED THAT Respondent shall comply with the following:

2. 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.

3. VIOLATION OF THIS ORDER. Failure to comply with any of the terms of this Disciplinary Order constitutes unprofessional conduct in violation of Business and Professions Code section 2234. If Respondent violates this Disciplinary Order in any respect, the Board may file an Accusation and, after a hearing, discipline Respondent's license for unprofessional conduct.

ACCEPTANCE

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

DATED: 2/10/20

DIGISH DINESH SHAH, M.D.
Respondent

I have read and fully discussed with Respondent Digish Dinesh Shah, 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: 2/14/20

BENJAMIN J. FENTON, ESQ.
Attorney for Respondent

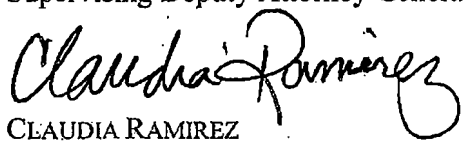
ENDORSEMENT

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

DATED: 2/18/20

Respectfully submitted,

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



CLAUDIA RAMIREZ
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2018-043056

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 8 20 19
BY [illegible] ANALYST

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

In the Matter of the Accusation Against: **DIGISH DINESH SHAH, M.D.** 1250 16th Street, Suite A454 Santa Monica, CA 90404 Physician's and Surgeon's Certificate No. A 116712, Respondent.	Case No. 800-2018-043056 **A C C U S A T I O N**

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 April 22, 2011, the Board issued Physician's and Surgeon's Certificate Number A 116712 to Digish Dinesh Shah, M.D. ("Respondent"). That Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 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 provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code states:

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

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

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

"(g) The practice of medicine from this state into another state or country without meeting

the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

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

6. Section 2236 of the Code states:

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

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

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

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

[1] "Unless otherwise expressly provided, the term 'board' as used in this chapter means the Medical Board of California. As used in this chapter or any other provision of law, 'Division of Medical Quality' and 'Division of Licensing' shall be deemed to refer to the board. (Bus. & Prof. Code, § 2002.)

shall be conclusive evidence of the fact that the conviction occurred."

7. Section 2239 of the Code states:

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

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

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Section 493 of the Code states:

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

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

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

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

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

11. Vehicle Code Section 23152, subdivisions (a) and (b), provide, in pertinent part:

"(a) It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle.

"(b) It is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

"For purposes of this article [Article 2, Offenses involving Alcohol and Drugs] and [Vehicle Code] [s]ection 34501.16, percent, by weight, of alcohol in a person's blood is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

"In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the

time of the performance of a chemical test within three hours after the driving."

FIRST CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

12. Respondent is subject to disciplinary action under Code section 2239 in that he was convicted of driving under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. Respondent also used alcoholic beverages to the extent and in such a manner as to be dangerous or injurious to himself, another person, or to the public. The circumstances are as follows:

13. On or about April 1, 2018, at approximately 1:11 a.m., Los Angeles Police Department Officers Miller and Lua received a radio call of a traffic collision at Wilshire and Gayley in West Los Angeles. Upon arrival, the Officers observed the aftermath of a minor traffic collision in which Respondent's vehicle was facing eastbound on Wilshire behind another vehicle belonging to a female driver.

14. The female driver informed the Officers that she was stopped at a red light when Respondent's vehicle collided with the rear of her car. She further stated that when she spoke to Respondent after the accident, she believed that his speech was slurred and incoherent. Believing Respondent was intoxicated, she called the police.

15. Officer Lua noticed Respondent showed objective symptoms of intoxication such as bloodshot watery eyes, unsteady gait, and an odor of an alcoholic beverage emitting from his breath. Respondent spontaneously stated he had been drinking alcohol. Officer Lua asked Respondent if he would submit to a series of field sobriety tests. Respondent agreed to perform the tests. Respondent was unable to complete the tests as explained and demonstrated.

16. Based upon Respondent's performance on the field sobriety tests and objective symptoms of intoxication exhibited by Respondent, Officer Lua formed the opinion that Respondent had been driving under the influence of alcohol and was unable to safely operate a motor vehicle. Respondent was arrested for driving under the influence of alcohol.

17. The female driver was transported to UCLA Westwood for treatment of back and neck pain.

18. Respondent took two breath tests. A breath sample was collected at 2:10 a.m. and registered a blood alcohol concentration ("BAC") level of 0.206 percent, more than twice the legal limit. The second sample was collected at 2:13 a.m. and registered a BAC of 0.220 percent.

19. On or about April 19, 2018, a Misdemeanor Complaint entitled *The People of the State of California v. Digish Dinesh Shah* was filed in the Superior Court for the County of Los Angeles bearing case number 8AR00741. Respondent was charged with one count of driving under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision (a), and one count of driving under the influence of alcohol when BAC was 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision (b).

20. On or about April 26, 2018, Respondent entered a plea of not guilty to both counts.

21. On or about June 7, 2018, the court dismissed Count One in the furtherance of justice pursuant to Penal Code section 1385. Respondent withdrew his plea of not guilty and pled nolo contendere with the approval of the court as to Count Two. The court found Respondent guilty and Respondent was duly convicted.

22. The court ordered that imposition of sentence be suspended. Respondent was placed on summary probation for thirty six months subject to the following terms and conditions: (1) Obey all laws and orders of the court; (2) Pay fines, fees, assessments, and restitution totaling $1,905. In lieu of paying the fines and other charges, Respondent could perform 12 days of community service; (3) Pay restitution to the victim; (4) Complete a nine-month licensed first-offender alcohol and other drug education and counseling program; (5) Enroll within 21 days in an AB1353 Program (nine-month, first-time DUI offender education program); (6) Attend six alcoholics anonymous/narcotics anonymous meetings; (7) Do not operate a car with a measurable amount of alcohol or drugs in the blood or refuse to take and complete DUI-related tests when requested by a peace officer; (8) Do not operate a car without a valid driver's license or without liability insurance in at least the minimum amounts required by law; and (9) Do not communicate with any person believed to be or known to be a gang member.[2]

[2] There was no allegation in the criminal case and there is no allegation in the instant administrative case that Respondent has or had any affiliation with a gang member.

23. Respondent's acts and/or omissions as set forth in paragraphs 13 through 22, inclusive above, whether proven individually, jointly, or in any combination thereof, constitute the dangerous use of alcohol pursuant to Code section 2239. Therefore, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

24. Respondent is subject to disciplinary action under Code sections 2236, 490, and 493 and California Code of Regulations, title 16, section 1360, in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a physician and surgeon. The circumstances are as follows:

25. The facts and allegations in paragraphs 13 through 22, above, are incorporated by reference and re-alleged as if fully set forth herein.

26. Respondent's acts and/or omissions as set forth in paragraphs 13 through 22, inclusive above, whether proven individually, jointly, or in any combination thereof, constitute conviction of a crime substantially related to the qualifications, functions, and duties of a physician and surgeon pursuant to Code sections 2236, 490, and 493 and California Code of Regulations, title 16, section 1360. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

27. Respondent is subject to disciplinary action under Code section 2234 in that he engaged in unprofessional conduct based on acts and/or omissions described in the First and Second Causes for Discipline. The circumstances are as follows:

28. The facts and allegations in paragraphs 12 through 26, above, are incorporated by reference and re-alleged as if fully set forth herein.

29. Respondent's acts and/or omissions as set forth in paragraphs 12 through 26, inclusive above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct pursuant to Code section 2234. Therefore, cause for discipline exists.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 116712, issued to Respondent Digish Dinesh Shah, M.D.;

2. Revoking, suspending or denying approval of Respondent Digish Dinesh Shah, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Digish Dinesh Shah, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: May 8, 2019

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

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