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

In the Matter of the First Amended Petition to Revoke Probation Against: Stacey Lynne Schirmer, M.D. Physician's & Surgeon's Certificate No A62148 Respondent	Case No.: 800-2019-062431

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the Petition for Reconsideration, filed by Respondent's Attorney, and the time for action having expired at 5:00 p.m. on January 15, 2021, the petition is deemed denied by operation of law.

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

In the Matter of the Petition to Revoke Probation Against: Stacey Lynne Schirmer, M.D. Physician's & Surgeon's Certificate No A62148 Respondent	Case No. 800-2019-062431 **ORDER GRANTING STAY** (Government Code Section 11521)

Albert Garcia, Esq., on behalf of Respondent, Stacey Lynne Schirmer, has filed a Request for Stay of Execution of the Decision in this matter with an effective date of January 8, 2021, at 5:00 p.m..

Execution is stayed until January 15, 2021, at 5:00 p.m.

This Stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: January 8, 2021

Jenna Jones, Jenna Jones Chief of Enforcement
For: William Prasifka
Executive Director
Medical Board of California

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

In the Matter of the First Amended Petition to Revoke Probation Against: Stacey Lynne Schirmer, M.D. Physician's and Surgeon's Certificate No. A 62148 Respondent.	Case No. 800-2019-062431

ORDER CORRECTING NUNC PRO TUNC
CLERICAL ERROR IN "SPELLING OF BOARD MEMBER'S NAME" PORTION OF DECISION

On its own motion, the Medical Board of California (hereafter "Board") finds that there is a clerical error in the "Board member's name" portion of the Decision in the above-entitled matter and that such clerical error should be corrected so that the name will conform to the correct spelling.

IT IS HEREBY ORDERED that the name contained on the Decision Order Page in the above-entitled matter be and hereby is amended and corrected nunc pro tunc as of the date of entry of the decision to read as "Kristina D. Lawson, J.D.".

December 10, 2020

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

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

In the Matter of the First Amended Petition to Revoke Probation Against: **Stacey Lynne Schirmer, M.D.** **Physician's and Surgeon's Certificate No. A 62148** **Respondent.**	**Case No. 800-2019-062431**

DECISION

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

This Decision shall become effective at 5:00 p.m. on JAN 0 8 2021.

IT IS SO ORDERED DEC 0 9 2020.

MEDICAL BOARD OF CALIFORNIA



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

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

In the Matter of the First Amended Petition to Revoke Probation Against:

STACEY LYNNE SCHIRMER, M.D., Respondent

Case No. 800-2019-062431

OAH No. 2020060959

PROPOSED DECISION

Marcie Larson, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter telephonically and by video conference on October 9, 2020, in Sacramento, California.

Ryan Yates, Deputy Attorney General, represented complainant William J. Prasifka, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

Albert Garcia, Attorney at Law, represented respondent Stacey Lynne Schirmer, M.D., who appeared at the hearing by video.

Evidence was received, the record remained open for the submission of additional documents. Respondent filed a Cease Practice Order, marked and admitted

as Exhibit E. Complainant filed a First Amended Petition to Revoke Probation marked for as Exhibit 20. Respondent did not oppose the amendment. The record closed, and the matter was submitted for decision on October 12, 2020.

FACTUAL FINDINGS

Background and Procedural History

1. On April 25, 1997, the Board issued respondent Physician's and Surgeon's Certificate Number A 62148 (certificate).

2. On August 19, 2011, complainant Linda Whitney, former Executive Officer of the Board, issued an interim suspension order immediately suspending respondent's certificate.[1] On January 16, 2013, Ms. Whitney signed and thereafter filed against respondent a Second Amended Accusation, seeking to discipline her certificate on the grounds that she: 1) had two alcohol-related convictions; 2) was dishonest by writing a prescription for an antibiotic in someone else's name when the drug was actually for her own use; 3) prescribed Norco, a controlled substance, without conducting an appropriate medical examination; 4) prescribed medication without maintaining records of the treatment and care provided to the patient; 6) obtained controlled substances from patients and her office's supply of medication; and 7) was convicted of practicing medicine while under the influence of drugs or alcohol and using a controlled substance, crimes which were substantially related to the qualifications, functions, and duties of a physician. The controlled substances included

[1] At the time, respondent's last name was Hoffmann.

Norco and Tylenol with codeine. Respondent had a six- or seven-year history of taking "pills."

3. On February 7, 2013, petitioner entered into a Stipulated Surrender of License and Order whereby she admitted the truth of the allegations in the Second Amended Accusation and agreed to surrender her certificate. The Board approved the Stipulated Surrender of License and Order on April 22, 2013, effective the following week.

PETITION FOR REINSTATEMENT

4. On January 18, 2018, the Board received from respondent a signed petition for reinstatement of her surrendered certificate (Petition for Reinstatement). On May 16, 2019, a hearing concerning the Petition was heard before ALJ Coren D. Wong, OAH, State of California. Respondent was present at the hearing and represented by counsel.

5. On June 11, 2019, ALJ Wong issued a Proposed Decision granting the Petition for Reinstatement. A certificate was to be issued to respondent and immediately revoked. The revocation was stayed and respondent was placed on probation for five years pursuant to the following relevant terms and conditions:

> 1. **Clinical Diagnostic Evaluations and Reports:**
> Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, petitioner shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed, Board-certified physician and surgeon. The

examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator- shall not have a current or former financial, personal, or business relationship with petitioner within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether petitioner has a substance abuse problem, whether petitioner is a threat to herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to petitioner's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that petitioner is a threat to herself or others, the evaluator shall

notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether petitioner is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: petitioner's license type; petitioner's history; petitioner's documented length of sobriety (i.e., length of time that has elapsed since petitioner's last substance use); petitioner's scope and pattern of substance abuse; petitioner's treatment history, medical history and current medical condition; the nature, duration and severity of petitioner's substance abuse problem or problems; and whether petitioner is a threat to herself or the public.

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assign [sic] the matter.

The Board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether petitioner is safe to return to either part-time or

full-time practice and what restrictions or recommendations shall be imposed on petitioner based on the recommendations made by the evaluator. Petitioner shall not be returned to practice until she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that she has not used, consumed, ingested, or administered to herself a prohibited substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by petitioner.

Petitioner shall not engage in the practice of medicine until notified by the Board or its designee that she is fit to practice medicine safely. The period of time that petitioner is not practicing medicine shall not be counted toward completion of the term of probation. Petitioner shall undergo biological fluid testing as required in this Decision at least two (2) times per week while awaiting the notification from the Board if she is fit to practice medicine safely.

Petitioner shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified by the Board or its designee.

[¶ . . . ¶]

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

During the first year [of] probation, petitioner shall be subjected to 52 to 104 random tests. During the second year [of] probation and for the duration of the probationary term, up to five (5) years, petitioner shall be subject to 36 to

104 random tests per year. Only if there have been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

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

[¶ . . . ¶]

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

[¶ . . . ¶]

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

If a biological fluid test result indicates petitioner has used, consumed, ingested, or administered to herself a prohibited substance, the Board shall order petitioner to cease practice and instruct petitioner to leave any place of work where

petitioner is practicing medicine or providing medical services. The Board shall immediately notify all of petitioner's employers, supervisors and work monitors, if any, that petitioner may not practice medicine or provide medical services while the cease-practice order is in effect.

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

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

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

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriate licensed health care provider for use by petitioner and approved by the Board, alcohol, or any other substance petitioner has been

instructed by the Board not to use, consume, ingest, or administer to herself.

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

4. **Substance Abuse Support Group Meetings:** Within thirty (30) days of the effective date of this Decision, petitioner shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which she shall attend for the duration of probation. Petitioner shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Petitioner shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business

relationship with petitioner within the last five (5) years. Petitioner's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

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

[¶ . . . ¶]

6. **Violation of Probation Condition for Substance-Abusing Licensees:** Failure to fully comply with any term or condition of probation is a violation of probation.

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

1) Issue an immediate cease-practice order and order petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5,

subdivision (c)(1), of Title 16 of the California Code of Regulations, at petitioner's expense. The cease-practice order issued by the Board or its designee shall state that petitioner must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time petitioner must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty (30) calendar days. Petitioner may not resume the practice of medicine until notified in writing by the Board or its designee that she may do so.

2) Increase the frequency of biological fluid testing.

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

B. If petitioner commits a minor violation of probation as defined by section 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

1) Issue a cease-practice order.

2) Order practice limitations.

3) Order or increase supervision of petitioner.

4) Order increase documentation.

5) Issue a citation and fine, or a warning letter.

6) Order petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at petitioner's expense.

7) Take any other action as determined by the Board or its designee.

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

[¶ . . . ¶]

8. **Controlled Substances — Abstain from Use:** Petitioner 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 petitioner by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, petitioner 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.

If petitioner has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner 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 petitioner

requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner 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 30 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, request 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 petitioner with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

[¶ . . . ¶]

15. **General Probation Requirements:** Petitioner shall comply with the Board's probation unit.

Petitioner shall, at all times, keep the Board informed of petitioner'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).

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

Petitioner shall maintain a current and renewed California physician's and surgeon's license.

Petitioner 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 petitioner should leave the State of California to reside or to practice petitioner shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

[¶ . . . ¶]

19. **Violation of Probation:** Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the Board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

[¶ . . . ¶]

21. **Probation Monitoring Costs:** Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

6. On July 10, 2019, the Board adopted ALJ Wong's Proposed Decision. The Decision was effective on August 9, 2019. Respondent did not appeal.

CEASE PRACTICE ORDER AND PETITION TO REVOKE PROBATION

7. On January 20, 2020, complainant Christine Lally, former Interim Executive Director of the Board, issued a Cease Practice Order (Order) against

respondent. The Order alleged respondent violated Probation Conditions 1, 3, and 8. Generally, the Order states the clinical examiner determined respondent was to immediately cease the use of any controlled prescription medication, even if prescribed by a healthcare provider. However, respondent continued to consume the medication. As a result, on three occasions she tested positive for metabolites of opiates-codeine. She also failed to submit biological fluid samples three times.

By the Order, respondent was prohibited from engaging in the practice of medicine. Respondent was also ordered not to resume the practice of medicine until a final decision was issued on an accusation and/or a petition to revoke probation was filed in the matter.

8. On January 24, 2020, Ms. Lally signed and thereafter filed against respondent a Petition to Revoke Probation. On October 12, 2020, complainant filed a First Amended Petition to Revoke Probation (Petition). Generally, complainant alleged respondent's certificate should be revoked because she violated the terms of her probation, including failing to: comply with the recommendations of the clinical evaluator's orders; biological fluid test; cooperate with the Boards' Probation Unit; abstain from use of controlled substances; and comply with her probation condition related to substance-abusing licensees.

9. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Probation Violations

10. Jennifer Saucedo, Biological Fluid Analyst for the Board, testified at hearing. Ms. Saucedo is assigned to monitor biological fluid testing compliance of physicians on probation. On August 1, 2019, Ms. Saucedo sent respondent a letter explaining she would be monitoring respondent's compliance with the "biological fluid testing and abstain from alcohol and controlled substances conditions of [her] probation." Ms. Saucedo also explained to respondent that she was required to enroll with FirstSource Solutions (FirstSource), a Board-approved laboratory, to have the testing conducted. The testing could include but is not limited to "urine, blood, breathalyzer, hair follicle testing or similar drug screening."

Ms. Saucedo further explained the daily requirements for checking in with FirstSource to determine if she was required to provide a sample. Ms. Saucedo also informed respondent that failure to comply with the fluid testing requirement is a violation of the terms of her probation. Respondent was required to sign and return by August 9, 2019, several forms including a medical release and list of any medications respondent was lawfully prescribed. Respondent signed and returned the forms as required. Respondent also enrolled with FirstSource.

11. On August 1, 2019, Christopher King, Probation Unit Manager for the Board, sent respondent a letter explaining he would be monitoring respondent's compliance with probation. Mr. King testified at hearing that at the time he began monitoring respondent's probation, he was an Inspector I with the Board. He was recently promoted to Probation Unit Manager. The letter Mr. King sent respondent requested that she contact him to set up a time for an intake interview. He explained during the interview he would review the terms of her probation. After receiving the letter, respondent contacted Mr. King and scheduled an interview for August 7, 2019.

12. On August 7, 2019, Mr. King met with respondent. Mr. King explained to respondent the terms of her probation, which was scheduled to begin on August 9, 2019. Mr. King went through each line of the probation terms with respondent to ensure she understand the terms and had the opportunity to ask any questions. Mr. King also explained to respondent that she was required to undergo a clinical diagnostic evaluation before she could work as a physician. Mr. King provided respondent several documents to review and sign, including an "Acknowledgment of Decision," which respondent signed acknowledging she received a copy of the Board's Decision placing her certificate on probation for five years and she understood the terms of her probation.

13. On or about Sunday, August 25, 2019, respondent sent Ms. Saucedo and Mr. King an email explaining she was prescribed by her dentist, acetaminophen (Tylenol) with codeine, in addition to meloxicam, for jaw pain. Respondent explained that she had "ongoing appointments" with her dentist and she was "sure he will make some adjustments so that narcotic pain relief will not be needed regularly." Respondent also reported that she had taken the medication and anticipated her biological fluid testing would detect the medication.

14. On August 27, 2019, Ms. Saucedo sent respondent an email asking her to send a photograph of the prescription bottle so that she could add it to respondent's "file." On September 3, 2019, respondent emailed Ms. Saucedo pictures of the prescription bottle.

15. On October 4, 2019, David Taylor, M.D. a board-certified psychiatrist selected by the Board, conducted a psychiatric clinical diagnostic evaluation of respondent, pursuant to the terms of her probation. He prepared a report of his findings dated October 11, 2019. As part of the evaluation, Dr. Taylor reviewed the

Boards' Decision placing respondent on probation. Dr. Taylor conducted one and a-half hour psychiatric interview, which included obtaining a psychiatric history. Respondent disclosed to Dr. Taylor her use of Tylenol with codeine. Dr. Taylor also administered several tests including the Beck Anxiety Inventory, Beck Depression Inventory, Alcohol Use Disorders Identification Test and Minnesota Multiphasic Personality Inventory (MMPI-2).

Dr. Taylor opined that respondent's "history is notable for chronic, severe, untreated psychiatric illness." He further opined respondent "demonstrated limited insight into the extent and severity of these issues, and poor judgment as evidenced by her ongoing use of prescription medications." Dr. Taylor explained that he was concerned that respondent is "at high-risk for relapse of substance abuse." He was also concerned that respondent's 30-year history of daily alcohol use may have caused cognitive impairment, although he did not observe respondent had any "cognitive difficulties during the interview."

Dr. Taylor diagnosed respondent with: "1) Alcohol Use Disorder, severe, in sustained remission; and 2) Opioid Use Disorder, severe, in early remission." Dr. Taylor opined respondent "is unsafe to practice medicine in any capacity at this time." He also opined that if respondent "wishes to have her medical license reinstated in the future" he recommended the following conditions:

- [Respondent] must remain indefinitely abstinent from alcohol use.
- [Respondent] must demonstrate her sobriety with Soberlink monitoring to occur not less than once per day.

- [Respondent] must immediately stop using any controlled prescription medication (e.g. Tylenol with codeine, Norco, etc.) even if prescribed by a healthcare provider.

- [Respondent] must under[go] a neuropsychological evaluation to assess for possible cognitive impairments.

- [Respondent] must successfully participate and complete a substance abuse rehabilitation program preferably at a center specializing in the treatment of impaired professionals. Her successful participation must occur for one to two years and include at a minimum, an intensive outpatient program, mental health treatment, aftercare program and random drug testing.

16. On October 11, 2019, respondent was selected by FirstSource to submit a blood sample. Respondent submitted a urine sample instead. Ms. Saucedo sent respondent a "Non-Compliance Letter" by email and regular mail, explaining that her failure to provide a blood test as directed, was a violation of her probation. Respondent was asked to provide an explanation for the violation by October 24, 2019.

17. On October 18, 2019, Mr. King received Dr. Taylor's report concerning his evaluation of respondent. The same day, Mr. King sent respondent a letter explaining Dr. Taylor's finding she was unsafe to practice medicine. Mr. King also listed Dr.

Taylor's recommendations, including that she immediately cease the use of any controlled prescription medication. Mr. King informed respondent that pursuant to the terms of her probation, she is required to comply with "any restrictions or conditions recommended by the evaluating physician within 15 calendar days after being notified by the Board."

18. By letter dated October 21, 2019, to Ms. Saucedo, respondent explained that her failure to provide a blood sample on October 11, 2019, as directed by FirstSource was an "oversight." Respondent explained that up until October 11, 2019, she was directed to provide urine samples. When she checked the FirstSource website on October 11, 2019, she did not notice she was directed to provide a blood sample. Respondent explained that she would be "more diligent in reading the test orders in the future."

19. On October 29, 2019, respondent had a quarterly interview with Mr. King and his supervisor. Mr. King discussed with respondent Dr. Taylor's opinions and recommendations. Respondent explained that she did not believe she needed to follow Dr. Taylor's recommendations. Mr. King explained to respondent that implementing Dr. Taylors' recommendations are a requirement of probation.

20. On October 31, 2019, respondent sent Ms. Saucedo an email explaining that she had received two refills of Tylenol with codeine over the past month, but she stopped taking medication as directed by the Board. Respondent also explained that she had been called in for five biological fluid tests in an eight-day period, which she described as "excessive." Respondent also stated that she believed there was an "ulterior motive" behind the "excessive" biological fluid testing. The same day, Ms. Saucedo responded to the email and reminded respondent that on October 18, 2019, she was notified to immediately cease use of the Tylenol with codeine.

21. On November 1, 2019, Mr. King sent respondent a "Non-Compliance Letter" as a "follow-up" to his October 29, 2019 meeting with respondent. Mr. King informed respondent that she failed to comply with Dr. Taylor's recommendations. Respondent was notified again that she was to immediately cease use of any controlled prescription medication, including Tylenol with codeine, even if prescribed by a healthcare provider.

22. On November 12, 2019, respondent was selected to provide a urine sample. On November 18, 2019, Ms. Saucedo received laboratory results from respondent's urine sample, which revealed respondent tested positive for the metabolites of opiates-codeine. The same day, Ms. Saucedo sent respondent a letter requesting a written explanation from her by November 20, 2019, as to why she tested positive for the metabolites of a controlled substance and her plan for ensuring that she did not test positive again.

23. On November 23, 2019, respondent sent Ms. Saucedo an email explaining she had five or six Tylenol with codeine pills from her October 16, 2019 prescription. The pain in her jaw became "unbearable" so she took the medication and also obtained a refill, which she faxed to Ms. Saucedo the week before. On November 25, 2019, Ms. Saucedo sent respondent an email explaining that on October 18, 2019, respondent was notified to "immediately cease use" of her prescription medication. Ms. Saucedo further explained to respondent that continued use of the prescription was a violation of her probation.

24. On November 20, 2019, and November 27, 2019, respondent was selected to provide a urine sample. Ms. Saucedo received laboratory results from the urine samples, which revealed respondent tested positive for the metabolites of opiates-codeine. On or about December 2, 2019, Ms. Saucedo had a telephone call

with respondent to discuss her test results and a missed test on November 29, 2019. Respondent admitted she continued using Tylenol with codeine.

25. On or about December 2, 2019, Respondent was selected to provide a urine sample. Ms. Saucedo received the laboratory results from the urine sample, which revealed Respondent tested positive for the metabolites of opiates-codeine.

26. On or about December 3, 2019, Ms. Saucedo sent respondent a letter, requesting a written explanation by December 6, 2019, concerning why she tested positive for the metabolites of a controlled substance on November 20, 2019, and November 27, 2019, and her plans to ensure that she does not test positive again Respondent did not provide an explanation.

27. On or about December 4, 2019, respondent was selected to provide a urine sample. Ms. Saucedo received the laboratory results from the urine sample, which revealed respondent tested positive for the metabolites of opiates-codeine.

28. On or about December 11, 2019, Ms. Saucedo sent respondent a letter, requesting a written explanation by December 14, 2019, concerning why she tested positive for the metabolites of a controlled substance and her plans to ensure that she does not test positive again. Respondent did not submit an explanation.

29. On or about December 11, 2019, respondent was selected to provide a urine sample. Ms. Saucedo received the laboratory results from the urine sample, which revealed respondent tested positive for the metabolites of opiates-codeine.

30. On or about December 13, and 16, 2019, respondent was selected to provide hair and/or urine samples. Respondent failed to provide samples for both

days. Additionally, on or about December 25, 2019, Respondent failed to check-in with FirstSource.

31. On or about December 27, 2019, Ms. Saucedo sent respondent two letters, requesting written explanations by January 2, 2020, concerning why she tested positive for metabolites of a controlled substance on December 11, 2019, and why she failed to provide urine and hair samples on December 13 and 16, 2019.

32. On or about January 2, 2020, respondent sent an email to Ms. Saucedo stating the following, in part:

> With regard to testing positive for the metabolites of a controlled substance, I continue to take Tylenol #4 (containing codeine) as prescribed by my dentist for ongoing pain related to severe TMJ arthopathy. With regard to my tests I have not submitted, I have only refused to submit to a hair follicle test ONLY because of financial hardship. The Board's decision of my license re-instatement included probationary terms for which I will continue to comply once I am truly on probation, i.e. working back in the medical field and proving that I am safe to do so.

33. On or about January 2, 2020, Ms. Saucedo received notification from Soberlink that respondent failed to submit to a scheduled breathalyzer. The following day, Ms. Saucedo had a conversation with respondent concerning her failure to provide a hair sample on December 16, 2019. Ms. Saucedo also informed respondent that she did not provide a urine sample on December 27, 2019, as directed. Ms. Saucedo sent respondent a follow-up email the same day explaining to respondent

that she was notified on October 18, 2019, to immediately cease the use of all controlled substance prescription medication.

34. Between December 27, 2019, and October 9, 2020, respondent failed to submit any biological fluid samples for testing. The Board's Probation Unit continued to send respondent Non-Compliance Letters listing the dates which respondent failed to submit biological fluid samples for testing.

Respondent's Evidence

35. Respondent disagrees with Dr. Taylor's opinions and recommendations. She explained that her "problem" was alcohol, not opioid abuse. Her sobriety date from alcohol is July 7, 2014. Even though respondent disagreed with Dr. Taylor's recommendation, she stopped taking the Tylenol with codeine. Respondent was prescribed the medication from her dentist due to bone spurs on the right side of her jaw. The medication was temporary to help address her pain while other treatment options were explored. Respondent only stopped taking the medication because she believed she would be able to work as a physician. Initially, respondent believed that if she followed Dr. Taylor's recommendations, she could start work.

36. However, when respondent met with Mr. King on October 29, 2019, he explained that she would not be able to practice medicine for at least a year while she complied with Dr. Taylor's recommendations. Respondent had already borrowed $30,000 to pay for the mandated clinical assessment program, biological fluid testing, and other requirements of her probation. Respondent believed she would be working as a physician and able to pay for the cost of probation. Without the anticipated income, she could not afford to continue paying for her probation requirements. Respondent works part-time as an adjunct professor at a community college, and does

not make enough money to pay for the requirements of her probation, which costs approximately $1,000 per month.

37. In November 2019, respondent joined an outpatient rehabilitation program. Respondent explained that she has twice as many years of sobriety as the other members of the group. Respondent had to pay $200 per week to attend the program, so she stopped attending. Respondent still attends Alcoholics Anonymous (AA) and is "very involved." Respondent also previously attended a physician's support group, that she would be willing to continue attending. Respondent also completes twice-daily Soberlink breathalyzer tests. Respondent has also stayed current with her continuing medical education.

38. Respondent admitted that she missed tests and stopped submitting biological fluid samples in December 2019. Respondent did not submit a hair sample as directed because of the travel time it would have taken to go to the testing site. She also could not afford a hair sample test. Instead, respondent submitted a urine sample. Respondent also explained that she had family issues that made it difficult for her to comply with probation. Respondent's 91-year-old father was having difficulties. Her son had school and medical problems. Her husband had back surgery. As a result, respondent had devoted her time to her family. Respondent has addressed her family issues and can now focus her energy on complying with probation.

39. Respondent is no longer taking Tylenol with codeine for pain. Respondent explained that she is willing to comply with the terms of her probation, "within reason," but she must be allowed to work as a physician.

CHARACTER WITNESS AND LETTERS OF SUPPORT

40. Alan Levine, M.D. testified at hearing and wrote a letter for support for respondent. Dr. Levine is an Anesthesiologist and Internist. He is also the Chair of Wellness Community at Adventist Health in Sonora, California. Dr. Levine has known respondent for over 12 years. He and respondent were practice partners. Dr. Levine is aware of respondent's alcoholism and recovery. Dr. Levine believes respondent is eager to move on from her past problems. Dr. Levine also opined that respondent has a "firm footing in on-going recovery and is entirely capable of resuming a medical practice."

41. Respondent submitted three additional letters of support from a nurse who worked with respondent, a friend, and her AA sponsor. The letters describe respondent as a competent physician who is committed to her sobriety.

Analysis

42. Complainant established by a preponderance of the evidence that respondent violated the terms of her probation. Pursuant to Probation Condition No. 19, if she violates the terms of her probation, the Board may set aside the stay order and revoke her certificate.

43. The conduct that resulted in respondent's surrender of her certificate was serious and resulted in a significant risk to her patients and the public. Respondent has a long history of alcoholism, two alcohol-related criminal convictions, and practiced medicine under the influence of alcohol. However, respondent also had a six- to seven-year history of taking pain pills, including Norco and Tylenol with codeine. As a result, respondent's contention that her "problem" was alcohol and not controlled substances, demonstrates her continued lack of insight into her addiction.

44. Respondent initially stopped taking Tylenol with codeine, as directed by Dr. Taylor and Mr. King. Respondent explained that she would speak to her dentist about treatment options other than Tylenol with codeine. Respondent also had the option of seeking judicial review of the Board's decision if she disagreed with the terms. She did not do so. Rather, respondent ultimately made the decision to resume taking the medication, when she realized that to practice medicine, she would need to demonstrate sustained compliance with the terms of her probation. Even now, respondent will not agree to comply with the terms of her probation. Instead, respondent contends that she will comply with the terms of her probation "within reason," but she must be allowed to work as a physician.

45. The Board must ensure that respondent can exercise good judgment, comply with the Board's rules and regulations, and that she will not pose a threat to the health, safety, or welfare of the public. Respondent was given the opportunity to demonstrate she can comply with the terms of her probation. Despite the numerous efforts to remind respondent of her obligations, she failed to comply. She continued taking a controlled substance and stopped submitting biological fluid samples in December 2019. Since that time, she has made almost no effort to comply with the terms of her probation.

46. The Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th Edition), provides that for a violation of probation, the maximum penalty is an outright revocation of the licensee's certificate. The Board's guidelines state: "The maximum penalty should be given for repeated similar offenses or for probation violations revealing a cavalier or recalcitrant attitude."

47. When all the facts and circumstances are considered, it would be contrary to the public interest to allow respondent to remain licensed at this time.

Respondent demonstrated a recalcitrant attitude, which poses a risk to the public health, safety, and welfare. Pursuant to Probation Condition No. 19 of respondent's probation, the appropriate discipline is to set aside the stay order and impose the stayed revocation of respondent's certificate.

LEGAL CONCLUSIONS

1. The purpose of the Medical Practice Act is to assure the high quality of medical practice; in other words, to keep unqualified and undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.) The purpose of administrative discipline is not to punish, but to protect the public by eliminating those practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

Burden of Proof

2. In a petition to revoke probation complainant must show by a preponderance of evidence that respondent's license should be revoked. (*Sandarg v. Dental Board of California* (2010) 184 Cal.App.4th 1434). If complainant meets his burden, rehabilitation is akin to an affirmative defense; consequently, the burden of proof of establishing an affirmative defense is on the respondent. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

Applicable Law

3. Business and Professions Code section 315.2, provides:

(a) A board, as described in Section 315, shall order a licensee of the board to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program.

(b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A cease practice order under this section shall not constitute disciplinary action.

(d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.

4. Pursuant to Business and Professions Code section 2004, the Board shall have the responsibility for the following in relevant part:

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

(b) The administration and hearing of disciplinary actions.

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

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

5. Business and Professions Code section 2234, provides in relevant 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.

Cause to Revoke Probation

6. As set forth in Factual Findings 4 through 34, respondent failed to comply with Dr. Taylor's orders. Therefore, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent's license, pursuant to Probation Condition No.19.

7. As set forth in Factual Findings 4 through 34, respondent failed to comply with the biological fluid testing requirements of her probation. Therefore, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent's license, pursuant to Probation Condition No.19.

8. As set forth in Factual Findings 4 through 34, respondent failed to comply with the biological fluid testing requirements of the Boards probation unit. Therefore, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent's license, pursuant to Probation Condition No.19.

9. As set forth in Factual Findings 4 through 34, respondent failed to comply with the conditions for substance-abusing licensees. Therefore, cause exists to

set aside the stay order and impose the stayed discipline of revocation of respondent's license, pursuant to Probation Condition No.19.

10. As set forth in Factual Findings 4 through 34, respondent failed to abstain from use of controlled substances. Therefore, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent's license, pursuant to Probation Condition No.19.

ORDER

Physician's and Surgeon's Certificate No. A 62148 issued to Stacey Lynne Schirmer, M.D. is revoked.

DATE: November 5, 2020

Marcie Larson
Marcie Larson (Nov 5, 2020 14:11 PST)

MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings

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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 First Amended Petition to Revoke Probation Against: **STACEY LYNNE SCHIRMER, M.D.** **16565 Crestridge Avenue** **Sonora, CA 95370-8133** **Physician's and Surgeon's Certificate No. A 62148** Respondent.	Case No. 800-2019-062431 OAH No. 2020060959 **FIRST AMENDED PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. William Prasifka (Complainant) brings this First Amended Petition to Revoke Probation solely in his official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about April 25, 1997, the Medical Board of California issued Physician's and Surgeon's Certificate No. A 62148 to Stacey Lynne Schirmer, M.D. (Respondent).

3. In a disciplinary action titled "In the Matter of the Second Amended Accusation Against Stacey L. Hoffmann, M.D.," Case No. 02-2008-192729, the Medical Board of California, issued a decision, effective April 22, 2013, in which Respondent's Physician's and Surgeon's

Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was surrendered. A copy of that decision is attached as Exhibit A and is incorporated by reference.

4. On January 18, 2018, Respondent filed a Request for Administrative Action – Petition for Reinstatement of Surrendered License, Case No. 800-2018-040165 (Petition). Following a hearing at the Office of Administrative Hearings, on July 10, 2019, the Board issued a Decision, effective August 9, 2019, which granted the Respondent's Petition and placed Respondent on Probation for five (5) years with certain terms and conditions. Respondent's probation terms included substance abusing licensee provisions as set forth in Title 16 Code of California Regulations section 1361.5. Paragraph 6 of the Decision and Order in Case No. 800-2018-040165, specifically states, "VIOLATION OF PROBATION. (f) failure to fully comply with any term or condition of probation is a violation of probation." A copy of that decision is attached as Exhibit B and is incorporated by reference.

JURISDICTION

5. This First Amended Petition to Revoke Probation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. On January 7, 2020, the Board issued a Cease Practice Order pursuant to Respondent's violation of the probation conditions contained in the terms and conditions of the Decision and Order in Case No. 800-2018-040165. The Cease Practice Order is currently in effect. Pursuant to Probation Conditions 1, 3, 6, 8, and 15, the Board must file an Accusation within fifteen (15) days of notifying the Respondent that his license is under a cease practice order. Pursuant to the probation conditions, the Board must provide a hearing within thirty (30) days of receipt of Respondent's request for a hearing. The Cease Practice Order shall dissolve if the Board does not meet those timing requirements.

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7. This First Amended Petition to Revoke Probation 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.

8. Section 315.2 of the Code states:

"(a) A board, as described in Section 315, shall order a licensee of the board to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program.

"(b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

"(c) A cease practice order under this section shall not constitute disciplinary action.

"(d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2."

9. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

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

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

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

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

"..."

10. 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.

"..."

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FIRST CAUSE TO REVOKE PROBATION

(Failure to Comply with Designated Clinical Evaluator's Orders)

11. At all times after the effective date of Respondent's probation, Conditions stated, in part:

"1. Clinical Diagnostic Evaluations and Reports: Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, petitioner shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed, board-certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

"The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee...The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether petitioner has a substance abuse problem, whether petitioner is a threat to herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to petitioner's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that petitioner is a threat to herself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

"In formulating his or her opinion...the evaluator shall consider the following factors: petitioner's license type; petitioner's history; petitioner's documented length of sobriety (i.e., length of time that has elapsed since petitioner's last substance use); petitioner's scope and pattern of substance abuse; petitioner's treatment history, medical history and current medical condition; the nature, duration and severity of petitioner's substance abuse problem or problems; and whether petitioner is a threat to herself or the public.

"...

"3. **Biological Fluid Testing:** Petitioner shall immediately submit to biological fluid testing, at petitioner's expense, upon request of the Board or its designee...Petitioner shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Petitioner shall be tested on the date of the notification as directed by the Board or its designee. The Board may order petitioner to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by petitioner.

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

". . .

"(m)

". . .

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

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

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

". . .

"4. **Substance Abuse Support Group Meetings:** Within thirty (30) days of the effective date of this Decision, petitioner shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which she shall attend for the duration of probation. Petitioner shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Petitioner shall pay all substance abuse support group meeting costs. The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations.

"The facilitator shall not have a current or former financial, personal, or business relationship with petitioner within the last five (5) years. Petitioner's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship. The facilitator shall provide a signed document to the Board or its designee showing petitioner's name, the group name, the date and location of the meeting, petitioner's attendance, and petitioner's level of participation in progress. The facilitator shall report any unexcused absence by petitioner from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence."

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"6. **Violation of Probation Condition for Substance-Abusing Licensees:** Failure to fully comply with any term or condition of probation is a violation of probation.

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

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

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

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

"B. If petitioner *commits* a minor violation of probation as defined by section 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

"(1) Issue a cease-practice order.

"(2) Order practice limitations.

"(3) Order or increase supervision of petitioner.

"(4) Order increase documentation.

"(5) Issue a citation and fine, or a warning letter.

"(6) Order petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(l), of Title 16 of the California Code of Regulations, at petitioner's expense.

"(7) Take any other action as determined by the Board or its designee.

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

". . .

"8. Controlled Substances - Abstain from Use: Petitioner 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 petitioner by another practitioner for a bona fide illness or condition.

"Within fifteen (15) calendar days of receiving any lawfully prescribed medications, petitioner 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.

"If petitioner has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner 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 thirty (30) days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within thirty (30) days of the request, unless petitioner 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 thirty (30) days of submission of the matter. Within fifteen (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 fifteen (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, request 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 thirty (30) days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within thirty (30) days of a such a request, the notification of cease practice shall be dissolved.

". . .

"15. **General Probation Requirements:** Petitioner shall comply with the Board's probation unit.

". . .

"19. Violation of Probation: Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the Board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

". . .

"21. Probation Monitoring Costs: Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical

Board of California and delivered to the Board or its designee no later than January 31 of each calendar year."

12. Respondent's probation is subject to revocation because she failed to comply with Probation Conditions 1, 3, 6, 8, and 15, referenced above. The facts and circumstances regarding this violation are as follows:

A. On or about August 1, 2019, the Board sent a letter to Respondent advising her that she needed to enroll and participate in FirstSource—a drug testing organization—as part of her pending probationary requirements. Respondent was ordered to check their system daily to determine if she was selected to provide a biological fluid sample.

B. On August 7, 2019, Respondent received a copy of the Decision with full explanation of the probation conditions. On that day, she signed an "Acknowledgement of Decision," indicating she understood the conditions.

C. On or about September 3, 2019, Respondent notified the Board of a lawfully prescribed prescription for acetaminophen (Tylenol) with codeine. Respondent stated the prescription was for pain relief and she did not expect the prescription to be needed regularly.

D. On or about October 11, 2019, Respondent was selected to provide a blood sample. Instead, Respondent provided a urine sample in place of a blood sample. A non-compliance letter was issued for the violation and sent to Respondent, via U.S. mail and email on or about October 21, 2019.

E. On or about that day, Respondent participated in a clinical evaluation, as part of her probationary requirements. The evaluator found, the following, in part:

> "It is my opinion that Dr. Schirmer is unsafe to practice medicine in any capacity at this time. If she wishes to have her medical license reinstated in the future, I recommend the following:
>
> ". . .
>
> "Dr. Schirmer must immediately stop using any controlled prescription medication (e.g., Tylenol with codeine, Norco, etc.) even if prescribed by a healthcare provider.
>
> ". . .
>
> "Dr. Schirmer must successfully participate and complete a substance abuse rehabilitation program preferably at a center specializing in the treatment of impaired professionals. Here successful participation must occur for one to two years and

include, at a minimum, an intensive outpatient program, mental health treatment, aftercare program and random drug testing."

F. On October 18, 2019, Respondent's probation monitor sent her a letter notifying her she was unsafe to practice medicine and was to comply with any restrictions or conditions recommended by the evaluating physician within fifteen (15) calendar days of being notified by the Board, including immediately ceasing use of any controlled prescription medication.

G. On October 31, 2019, Respondent confirmed, via email, she had permanently discontinued use of her prescription medication.

H. On November 1, 2019, the Board sent Respondent a non-compliance letter for failure to comply with recommendations made in the clinical diagnostic evaluation within fifteen (15) days of notification from the Board. Respondent was notified again that she was to immediately cease use of any controlled prescription medication, even if prescribed by a healthcare provider.

I. On November 12, 2019, Respondent was selected to provide a urine sample. On November 18, 2019, the Board received laboratory results from the urine sample, which revealed Respondent tested positive for the metabolites of opiates-codeine.

J. On November 18, 2019, Dr. Schirmer was sent a letter, via U.S. mail and email, requesting a written explanation as to why she tested positive for the metabolites of a controlled substance. On November 23, 2019, Dr. Schirmer replied, via email, stating she chose to continue use of her Tylenol with codeine prescription.

K. On November 20, 2019, and November 27, 2019, Respondent was selected to provide a urine sample. The Board received laboratory results from the urine samples, which revealed Respondent again tested positive for the metabolites of opiates-codeine. On or about December 2, 2019, a Board Enforcement Analyst spoke to Respondent telephonically. Respondent confirmed she tested positive for a controlled substance, and stated that she had continued use of her Tylenol with codeine prescription.

L. On or about December 2, 2019, Respondent was selected to provide a urine sample. The Board received the laboratory results from the urine sample, which revealed Respondent tested positive for the metabolites of opiates-codeine.

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M. On or about December 3, 2019, the Board sent Respondent a letter, requesting a written explanation as to why she tested positive for the metabolites of a controlled substance on November 20, 2019 and November 27, 2019. As of the date of this writing, Respondent has not submitted a reply to the Board.

N. On or about December 4, 2019, Respondent was selected to provide a urine sample. The Board received the laboratory results from the urine sample, which revealed Respondent tested positive for the metabolites of opiates-codeine.

O. On or about December 11, 2019, the Board sent Respondent a letter, requesting a written explanation as to why she tested positive for the metabolites of a controlled substance. As of the date of this writing, Respondent has not submitted a reply to the Board.

P. On or about December 11, 2019, Respondent was selected to provide a urine sample. The Board received the laboratory results from the urine sample, which revealed Respondent tested positive for the metabolites of opiates-codeine.

Q. On or about December 13, 2019, and December 16, 2019, Respondent was selected to provide hair and/or urine samples. Respondent failed to provide samples for both days.

R. On or about December 25, 2019, Respondent failed to check-in with FirstSource (drug/alcohol testing service.)

S. On or about December 27, 2019, the Board sent Respondent a letter, requesting a written explanation as to why she failed to provide urine samples on December 13, 2019, and December 16, 2019. The Board additionally sent Respondent a second letter, requesting a written explanation as to why she tested positive for the metabolites of a controlled substance, regarding her December 11, 2019, urine sample.

T. On or about December 27, 2019, Respondent sent the following, in part, to the Board, via email:

> "With regard to testing positive for the metabolites of a controlled substance, I continue to take Tylenol #4 (containing codeine) as prescribed by my dentist for ongoing pain related to severe TMJ arthropathy. With regard to my tests I have not submitted, I have only refused to submit to a hair follicle test ONLY because of financial hardship. The Board's decision of my license re-instatement included probationary terms for which I will continue to comply once I am truly on probation, i.e. working back in the medical field and proving that I am safe to do so. . ."

U. On or about January 2, 2020, the Board received notification from Soberlink that Respondent failed to submit to a scheduled breathalyzer.

V. Between on or about December 27, 2019 to on or about October 9, 2020, Respondent repeatedly failed to submit biological fluid testing to the Board's Probation Unit.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Comply with Biological Fluid Testing Requirements)

13. Respondent's probation is subject to revocation, in that she failed to comply with the biological fluid testing requirements of her probation, as described in paragraphs 11 through 12, above, and those paragraphs are incorporated by reference as if fully set forth herein.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Comply with the Board's Probation Unit)

14. Respondent's probation is subject to revocation, in that she failed to comply with the biological fluid testing requirements of the Board's probation unit, as described in paragraphs 11 through 13, above, and those paragraphs are incorporated by reference as if fully set forth herein.

FOURTH CAUSE TO REVOKE PROBATION

(Violation of Probation Condition for Substance-Abusing Licensees)

15. Respondent's probation is subject to revocation, in that she violated her probation conditions for substance-abusing licensees, as described in paragraphs 11 through 14, above, and those paragraphs are incorporated by reference as if fully set forth herein.

FIFTH CAUSE TO REVOKE PROBATION

(Failure to Abstain from use of Controlled Substances)

16. Respondent's probation is subject to revocation, in that she violated her probation conditions requiring her to abstain from use of controlled substances, as described in paragraphs 11 through 15, above, and those paragraphs are incorporated by reference as if fully set forth herein.

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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 the probation that was granted by the Medical Board of California in Case No. 800-2019-062431 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. A 62148 issued to Stacey Lynne Schirmer, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. A 62148, issued to Stacey Lynne Schirmer, M.D.;

3. Revoking, suspending or denying approval of Stacey Lynne Schirmer, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;

4. Ordering Stacey Lynne Schirmer, M.D. to pay the Medical Board of California the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring; and

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

DATED: OCT 12 2020

WILLIAM PRASIFKA
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SA2019106396
34483678.docx

Exhibit A

Decision and Order

Medical Board of California Case No. 02-2008-192729

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

In the Matter of the Second Amended Accusation Against:	)	
STACEY L. HOFFMANN, M.D.	)	Case No. 02-2008-192729
Physician's and Surgeon's Certificate No. A 62148	)	
Respondent.	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on April 29, 2013

IT IS SO ORDERED April 22, 2013.

MEDICAL BOARD OF CALIFORNIA

By: _____
Linda K. Whitney
Executive Director

KAMALA D. HARRIS
Attorney General of California
GAIL M. HEPPELL
Supervising Deputy Attorney General
JANNSEN L. TAN
Deputy Attorney General
State Bar No. 237826
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 445-3496
Facsimile: (916) 327-2247
Attorneys for Complainant

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

In the Matter of the Second Amended Accusation Against: **STACEY L. HOFFMANN, M.D.** 183 South Fairview Lane, Suite A - B Sonora, CA 95370 Physician's and Surgeon's Certificate No. A 62148 Respondent.	Case No. 02-2008-19729 OAH No. 2011050257 **STIPULATED SURRENDER OF LICENSE AND ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Medical Board of California of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Second Amended Accusation Case No. 02-2008-19279.

PARTIES

1. Linda K. Whitney (Complainant) is the Executive Officer of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Jean-Pierre Francillette, Deputy Attorney General.

2. Stacey L. Hoffmann, M.D. (Respondent) is not represented by legal counsel.

3. On or about April 25, 1997, the Board issued Physician's and Surgeon's Certificate Number A 62148 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in the First Amended Accusation Case No. 02-2008-192729, and expired on September 30, 2012. On August 19, 2011, an interim suspension order was ordered against Respondent.

JURISDICTION

4. Second Amended Accusation No. 02-2008-192729 was filed before the Board and is currently pending against Respondent. The Second Amended Accusation and all other statutorily required documents were properly served on Respondent on January 16, 2013. Respondent timely filed her Notice of Defense contesting the Second Amended Accusation. A copy of the Second Amended Accusation No. 02-2008-192729 is attached as Exhibit A, and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read and fully understands the charges and allegations in the Second Amended Accusation No. 02-2008-192729. Respondent also has carefully read and fully understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Second Amended Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on her 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.

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

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CULPABILITY

8. Respondent admits to the charges and and allegations in the Second Amended Accusation No. 02-2010-211099. Respondent agrees that cause exists for discipline and hereby surrenders her Physician's and Surgeon's Certificate No. G 70136 for the Board's formal acceptance.

9. Respondent further understands that by signing this stipulated surrender she enables the Board to issue an order accepting the surrender of her license without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her 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 Surrender 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.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. 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 Order:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate Number A 62148, issued to Respondent Stacey L. Hoffmann, M.D., is surrendered and accepted by the Board.

13. The surrender of Respondent's physician's and surgeon's certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline

against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

14. Respondent shall lose all rights and privileges as a medical doctor in California as of the effective date of the Board's Decision and Order.

15. Respondent shall cause to be delivered to the Board both her wall license certificate and, if one was issued, pocket license on or before the effective date of the Decision and Order.

16. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in the Second Amended Accusation No. 02-2008-192729 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

17. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in the Second Amended Accusation No. 02-2008-192729 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order. I fully understand the stipulation and the effects it will have on my Physician's and Surgeon's license, and my ability to practice medicine in the State of California. I enter into this Stipulated Surrender of License and Order freely, voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: January 7, 2013

STACEY L. HOFFMANN, M.D.
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: April 12, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GAIL M. HEPPELL
Supervising Deputy Attorney General

JANNSEN L. TAN
Deputy Attorney General
Attorneys for Complainant

KAMALA D. HARRIS
Attorney General of California
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Attorneys for Petitioner

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO January 14, 2013
BY: ANALYST

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

In the Matter of the Second Amended Accusation Against: **STACEY L. HOFFMANN, M.D.** **183 South Fairview Lane, Suite A-B** **Sonora, CA 95370** **Physician's and Surgeon's Certificate No. A 62148** Respondent.	Case No. 02-2008-192729 **SECOND AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this Second Amended Accusation solely in her official capacity as the Executive Director of the Medical Board of California.

2. On or about April 25, 1997, the Medical Board of California issued Physician's and Surgeon's Certificate Number A 62148 to Stacey L. Hoffmann, M.D. (Respondent). Said certificate is current and set to expire on September 30, 2012. On August 19, 2011, an interim suspension order was ordered against Respondent.

JURISDICTION

3. This Second Amended Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 490 of the Code provides:

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

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

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

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

5. Section 493 of the Code provides:

"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."

6. Section 2227 of the Code provides, in pertinent part, 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 Division[1] deems proper.

7. Section 2234 of the Code, in pertinent part, provides that, "The Division of Medical Quality 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.
>
> . . .
>
> (d) Incompetence.
>
> (e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.
>
> (f) Any action or conduct which would have warranted the denial of a certificate.
>
> . . . ."

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

8. Section 2236 of the Code provides:

(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. 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 of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

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

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

9. Section 2238 of the Code provides that, "A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

10. 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."

11. Section 2242 of the Code, in pertinent part, provides that the prescribing, dispensing, or furnishing dangerous drugs as defined in section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

12. Section 2266 of the Code provides that, "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

13. Section 2280 of the Code, in pertinent part, provides that, "No licensee shall practice medicine while under the influence of any narcotic drug or alcohol to such an extent as to impair his or her ability to conduct the practice of medicine with safety to the public and his or her patients. Violation of this section constitutes unprofessional conduct . . . ."

14. Health and Safety Code section 11170 provides that, "No person shall prescribe, administer, or furnish a controlled substance for himself."

15. California Code of Regulations, title 16, section 1360, provides:

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it

evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

FIRST CAUSE FOR DISCIPLINE
[Bus. & Prof. Code Sections 2234, and 2239(a) and (b)]
(Alcohol Misuse; Convictions - DUI)

16. Respondent is subject to disciplinary action under sections 2234, and 2239(a) and (b) of the Code as follows:

17. On or about June 2, 2008, Respondent was arrested for driving under the influence (DUI). The CHP officer observed Respondent's vehicle weaving on the road, and travelling at approximately fifty (50) miles per hour in a thirty (30) miles per hour zone. After making contact with Respondent, the officer noticed a strong smell of an alcoholic beverage. Respondent indicated to the officer that she had been weaving on the road because she was trying to eat a Subway sandwich while driving. Respondent was given field sobriety tests, which she failed. The preliminary alcohol screen (PAS) was 0.104% and 0.109%. The breath test done after she was arrested showed 0.10% and 0.10%. On or about September 4, 2008, in a criminal proceeding entitled, *The People of the State of California v. Stacey L. Hoffman*, in Tuolumne Superior Court, Case Number CRM26827, Respondent pled guilty on count one, a misdemeanor, California Vehicle Code section 23152(a), and was placed on formal probation for a period of five (5) years, with a condition that probation may be converted to summary probation if Respondent complied with all probationary terms and conditions, and upon completion of a DUI program as directed by the Probation Officer, after one year of the offense. Respondent was prohibited from excessive use of alcohol or drugs, ordered to consent to blood/urine testing upon the request of any peace officer, was fined ($1,970), was ordered to spend two (2) days in jail, and was ordered to complete an alcohol driver training program.

18. On or about September 11, 2008, Respondent surrendered for her first day of day jail, and was given a PAS test with results of 0.05%. On or about September 12, 2008, Respondent surrendered for her second day of day jail, and was given a PAS test with the result of 0.016%. Respondent was also given a PAS test with results of 0.017%. In pertinent part, Condition Number 4 of the probationary terms placed upon Respondent on or about September 4, 2008, states that Respondent shall not appear at the County Probation Department, work program, alcohol program, jail or drive a vehicle with any measurable amount of alcohol or drugs in her system. On or about October 14, 2008, Respondent was arraigned on her probation violation of positive blood alcohol, and was sentenced to 10 days work release or jail.

19. On or about September 3, 2009, the Probation Officer wrote a letter to Judge Eleanor Provost informing her that Respondent had not complied with the conditions of Respondent's formal probation, and that the Probation Department continued to supervise Respondent's case as a result. On or about October 27, 2009, Respondent's probation was converted to summary probation. On or about August 12, 2010, Respondent's probation was revoked in regards to this matter (Case Number CRM26827), and Respondent was ordered to twenty (20) days work release.

20. On or about March 7, 2010, Respondent was arrested again for DUI. Respondent was arrested for driving under the influence of alcohol, driving under the influence of alcohol with a blood alcohol content (BAC) of 0.08% or more, and child endangerment. Respondent's two sons, one was 11 years old and the other was 7 years old, were also in the vehicle at the time of the stop. Respondent consented to a PAS test, which showed her breath alcohol level to be above the legal limit at 0.225% BAC at 2222 hours. The officer notes that Respondent showed objective symptoms of intoxication. The officer noted that Respondent's eyes were bloodshot and watery, and Respondent had a strong odor of an alcoholic beverage emitting from her person and she had a very unsteady gait. Respondent displayed great difficulty in performing the standardized Field Sobriety Test (FST). During the FST of Respondent, the officer had to grab onto Respondent's arm twice so that she would not fall over. The officer decided to stop the test for safety reasons. Respondent's blood sample contained 0.26% alcohol.

21. On or about August 12, 2010, in a criminal proceeding entitled, *The People of the State of California v. Stacey Lynn-Tillery Hoffman*, in Tuolumne County Superior Court, Case Number CRM31933, Respondent gave a guilty plea regarding the second count in the related complaint, violation of Vehicle Code section 23152(b), a misdemeanor. Respondent admitted to having been convicted previously for DUI. Respondent was placed on five (5) years summary probation, ordered to serve eight (8) days of day jail, and ordered to pay a fine of $2,500.00. Respondent was also ordered to enroll in thirty (30) days of work release, and to have all applicable fees paid before October 15, 2010.

22. Respondent is subject to disciplinary action under sections 2239 (a) and (b) of the Code, in that she suffered two alcohol related convictions as set forth above, and this constitutes unprofessional conduct.

SECOND CAUSE FOR DISCIPLINE
[Bus. & Prof. Code Section 2234(e)]
(Dishonesty)

23. Respondent is subject to disciplinary action under sections 2234(e) of the Code, as follows:

24. Complainant realleges paragraphs 17 through 21, and those paragraphs are incorporated by reference as if fully set forth herein.

25. On or about July 29, 2010, Respondent met with a Board investigator, at Respondent's office. Respondent indicated that she wrote a prescription for an antibiotic (Clindamycin) in her boyfriend's, Patient #6, name which was actually for Respondent's use.

26. Respondent is subject to disciplinary action pursuant to Code sections 2234(e), in that she wrote a prescription for her boyfriend, Patient #6, while she intended to administer the drug to herself, and this constitutes unprofessional conduct.

THIRD CAUSE FOR DISCIPLINE
[Bus. & Prof. Code Section 2242]
(Prescribing Dangerous Drugs Without An Appropriate Prior Examination)

27. Respondent is subject to disciplinary action under section 2242 of the Code as follows:

28. Complainant realleges paragraphs 17 through 21, 25 and those paragraphs are incorporated by reference as if fully set forth herein.

29. During the July 29, 2010, meeting with the Board investigator, Respondent indicated that she would write prescriptions for her boyfriend, Patient #6, when he asked and told her he was in pain. Respondent prescribed 270 Norco a month, or more, on average to Patient #6. Patient #6's physician, Dr. Spitze, prescribed 90 Norco a month to Patient #6 on average. Patient #6 would get his prescriptions from Dr. Spitze filled at one pharmacy, and his prescriptions written by Respondent at other pharmacies. Respondent claimed that Patient #6's insurance would be running out for a time and that he was stockpiling medication for the time he would be without insurance. Respondent did not seem aware of the overall amounts nor the frequency of the prescriptions, especially their relation to the prescriptions Patient #6 was getting from Dr. Spitze. Dr. Spitze was not aware that Patient #6 was receiving additional prescriptions from Respondent, his girlfriend.

30. Respondent is subject to disciplinary action pursuant to Code section 2242, in that she prescribed Norco to Patient #6, her boyfriend, without conducting an appropriate prior examination of Patient #6, constitutes unprofessional conduct.

FOURTH CAUSE FOR DISCIPLINE

[Bus. & Prof. Code Section 2266]

(Failure to Maintain Accurate and Adequate Records of Provided Services)

31. Respondent is subject to disciplinary action under section 2266 of the Code as follows:

32. Complainant realleges paragraphs 17 through 21, 25, 29 and those paragraphs are incorporated by reference as if fully set forth herein.

33. Respondent indicated to the Board investigator that she did not maintain medical records in regards to her boyfriend, Patient #6 Respondent also indicated that she would write prescriptions for Patient #6 when he asked and told her that he was in pain, and that she prescribed Clindamycin to Patient #6, although she administered the antibiotic to herself.

34. Respondent is subject to disciplinary action pursuant to Code section 2266, in that she prescribed medications to Patient #6, but failed to maintain any records regarding her treatment and care of him, or of her prescriptions to him, and this constitutes unprofessional conduct.

FIFTH CAUSE FOR DISCIPLINE

[Bus. & Prof. Code §§ 2234(d) and 2280]

(Practice Under Influence of Narcotics or Alcohol, and Incompetence – Unprofessional Conduct)

35. Respondent is subject to disciplinary action under sections 2234(d) and 2280 of the Code as follows:

36. Complainant realleges paragraphs 17 through 21, 25, 29, 33 and those paragraphs are incorporated by reference as if fully set forth herein.

37. Commencing at a date unknown and continuing until at least August 8, 2011, Respondent has been using and abusing alcohol and controlled substances. While under the influence, Respondent treated patients. The Medical Board received a complaint from Paul Durand. Mr. Durand is a Registered Nurse who worked for Respondent's office from November of 2010 until he quit on June 24, 2011. The complaint indicated that Respondent was coming to work under the influence of narcotics and/or alcohol, and patients have had to be sent home for their safety on more than one occasion. Patients' drug containers were found in Respondent's purse with the patients' names blacked out. Respondent instructed the staff to ask patients to bring their medications with them to appointments, and then she would send the patients out for labs. Respondent would then take some of the patient's medications while the patients were away. Respondent went to a substance abuse meeting on June 21, 2011 under the influence and was sent home by taxi, but returned to work. Staff retrieved her car and an open bottle of wine rolled out from under the seat. Her staff attempted an intervention but Respondent was not receptive and indicated that she did not need rehabilitation.

38. On June 21, 2011, Patient #1 went to see Respondent. She was the first patient of the day. Her chief complaint was that her rheumatoid arthritis had flared in her knee. Respondent looked alright at first, but she always has an "alcoholic" look to her, according to Patient #1. Patient #1 then noticed Respondent had some problems using the computer mouse. Patient #1

had some skin areas which needed to be frozen on her face and legs. Respondent first did the areas on her lower cheeks, near her chin, one on each side, which went alright. Then, Respondent sat on the floor to do Patient #1's legs. When Respondent sat down, Respondent looked up and her eyes rolled to the back of her head. There were seven areas on her legs which needed to be frozen. Respondent said she wanted to make sure she got those areas on the legs really well, so she kept burning or freezing those areas.

39. Respondent then asked her about being a teacher. Patient #1 reminded Respondent that she is a personnel specialist at the prison. Then, Respondent asked her, "So, what do you teach?" Patient #1 said again, "No, I'm not a teacher." Patient #1 thought Respondent was drunk and "as high as a kite," and that Respondent had burned her unnecessarily during the treatment.

40. Patient #1 then developed blisters on her legs which were 2" in length. She had to go to Prompt Care as the blisters popped. She was asked at Prompt Care if she was a diabetic, which she is not, because they looked like diabetic sores. She was diagnosed with 3rd degree burns on her legs, and she was given antibiotics. Patient #1 called Respondent's office about her knee pain, and Respondent prescribed sleeping pills for her.

41. On July 5, 2011, Patient #1's knee was hurting so she went to the E.R. The doctor asked her if she was a diabetic after seeing the burns. She told the doctor she was not a diabetic and 3rd degree burns were again diagnosed. Patient #1 was referred to an orthopedic doctor, Dr. Nygaard. Dr. Nygaard did an injection to the knee, which helped, although her knee "popped" on the side and was very painful.

42. She was referred to a rheumatoid arthritis specialist. On July 18, 2011, she returned from vacation and returned to Respondent's office and showed the burns to Toni Butler, Respondent's office manager. Ms. Butler got her to the wound care center at Sonora Regional Medical Center for care for the 3rd degree burns. The wound center is removing the scabs and using collagen in the wounds so the cells have something to grow into.

43. On July 29, 2011, a Board investigator received a faxed complaint from Bobbi Brennan, an employee [receptionist] of Respondent. The complaint indicated numerous complaints against Respondent, including that Respondent (1) came to work drunk and under the

influence of narcotics, (2) treated patients while she was under the influence, and (3) would take patient medication for her own usage, at least some of which she would carry in her purse.

44. On August 1, 2011, a Board investigator received a phone call from Respondent's office indicating that Respondent was again impaired while at the office. A Board investigator and another Board employee travelled to Respondent's office that same day (August 1, 2011). A Board employee and a Board investigator interviewed Respondent at her office. Respondent said she had started to drink alcoholic beverages again in November of 2010, in violation of her probation for two prior DUIs. Respondent indicated that she thought she could drink socially and stay in control. Respondent indicated that she was unable to stop drinking alcohol, as she has been doing so for the past 30 years, despite her currently being on probation for two prior DUIs. Respondent indicated that she has been taking pills for the past 6 or 7 years.

45. During her interview with a Board investigator and a Board employee, Respondent said she had received a prescription for 90 Norco on July 20, 2011 and was out by July 29 or July 30, 2011. She said Christopher Mills, M.D. prescribed the Norco to her as a courtesy when she told him her back hurt. He did not examine her and she said she planned on seeing him "today" [August 1, 2011]. Respondent said that on July 31, 2011 and into the morning of August 1, 2011, she drank 3 glasses of wine and a beer, finishing her beer at 1:00 am on August 1, 2011. She then took two Tylenol #4's and went to bed. She admitted the Tylenol #4's were from her office supply, which she purchases from Moore Medical, a wholesaler. She said the reason she took the Tylenol #4 tablets was because her feet hurt. She insisted she was not under the influence and could practice safely.

46. During the August 1, 2011, interview with a Board investigator and a Board employee, Respondent was asked about a period in May 2011 where some patients expressed concerns about her ability to safely see them. She admitted she was impaired with peppermint schnapps. She tearfully admitted the patients expressed concern about her ability to practice that day in May 2011. This was a day the office was closed due to her impairment, due to alcohol or narcotics, or both. She indicated this was when her staff attempted to do an intervention.

47. Respondent had a safe in her office and she had medications and blank prescription pads in the safe. She had a key to the safe and one employee knows where she hides the key. Respondent had a bulk bottle of phentermine on her desk, a controlled substance, which she placed in the safe while Board employees were at her office. Respondent had two bottles of medications on her desk which she said were given to her by a patient. Respondent indicated that she will recycle returned medications to save patients money by dispensing the returned medications to other patients. She said she only recycles medications from trusted patients. A Board investigator looked in one pill vial and discovered two different medications inside. Respondent was told to not accept returned medications and to instruct her patients on how to properly dispose of medications themselves.

48. During the August 1, 2011 interview, Respondent admitted she was dispensing medications to her patients in an envelope with instructions written on the envelope. Respondent did not have childproof containers. She did not have proper labels for the medication. She did not have any inventory control system to account for the various medications. She was instructed on how to log and keep a proper inventory of medications. She said she was logging dispensed medications in the patients' charts. Respondent had no way to account for medications which may be going elsewhere, for example if she or an employee took medications from the bottles for themselves. The safe was not locked and the door was open when the Board employees arrived at her office and anyone could have entered her personal office and could have taken medications from the bulk bottles without Respondent's knowledge. Respondent has not been making any reports to CURES (Controlled Substance Utilization Review & Evaluation System), as is required when controlled substances are dispensed.

49. Because Respondent appeared to be impaired, a Board investigator performed several eye tests on Respondent with her permission. A Board investigator checked her horizontal gaze nystagmus and found that Respondent had nystagmus at 45 degrees. Respondent's pupils were constricted to 1.5 mm. Respondent did not have vertical nystagmus. A Board investigator checked for convergence and Respondent's right eye after less than 1 second, started jerking to where it was looking straight ahead and then back towards the penlight. A Board investigator

then started to test for rebound dilation, and Respondent refused to participate in any more tests. A Board investigator formed the opinion that Respondent was indeed impaired and under the influence of opiates and alcohol, from Respondent's own admissions about what medications she had taken, her demeanor, her appearance, and the eye tests a Board investigator had performed. On this same day (August 1, 2011), Respondent also provided a urine sample to a Board investigator. The urine sample was sealed and packaged in Respondent's presence. This sample was sent by UPS to the lab to be tested.

50. Due to Respondent's impairment, a Board investigator and a Board employee told Respondent that she could not continue to see any patients that day (August 1, 2011), and that Respondent's medical office would need to be closed, due to Respondent's impairment.

51. On August 5, 2011, the results from Respondent's urine test (from her urine sample provided on August 1, 2011) were received from MedTox. The results show her Ethanol (Urine) level was 0.105 g/dl. Her methadone level was 1542 ng/ml, her codeine level was over 20,000 ng/ml (confirmation threshold is 300 ng/ml), morphine was 7112 ng/ml (confirmation threshold is 300 ng/ml), and hydrocodone was 1329 ng/ml (confirmation threshold is 300 ng/ml). These results clearly indicate that Respondent was highly impaired on August 1, 2011.

52. The following Monday, on August 8, 2011, a Board investigator again spoke to Respondent, and Respondent's speech was slurred and she was not able to form her words very well. A Board investigator asked her if she was drunk and she admitted to drinking over the weekend but said she was okay. A Board investigator discussed the drug test results with Respondent. Respondent did not dispute the alcohol findings, but said she had not taken any methadone and did not know where that came from. A Board investigator told her some of the findings could be metabolites for drugs she had taken. A Board investigator explained to Respondent that the test reinforced the fact that she was too impaired to see patients last Monday (August 1, 2011).

53. Respondent's conduct as set forth above constitutes unprofessional conduct in that she practiced medicine while under the influence of alcohol or drugs or narcotics, in violation of sections 2234(d) and 2280 of the Code.

SIXTH CAUSE FOR DISCIPLINE

[Bus. & Prof. Code §§ 2234 and 2238;
Health and Safety Code § 11170]
(Unlawfully Procuring Controlled Substances)

54. Respondent is subject to disciplinary action under sections 2234 and 2238 of the Code, and under Health and Safety Code section 11170, as follows:

55. Complainant realleges paragraphs 17 through 21, 25, 29, 33, 37 through 52 and those paragraphs are incorporated by reference as if fully set forth herein.

56. Respondent's conduct as set forth above, in regards to her procuring controlled substances from patients, and from her office's supplies, and her excessive alcohol use, constitutes unprofessional conduct in violation of sections 2234 and 2238 of the Code, in conjunction with violating Health and Safety Code section 11170.

SEVENTH CAUSE FOR DISCIPLINE

[Bus. & Prof. Code §§ 490, 493, 2234, 2236, 2239 and 2280;
Health and Safety Code § 11170; California Code of Regulations Title 16 § 1360]
(Conviction of a Crime Substantially Related to the Practice of Medicine)

57. Respondent is subject to disciplinary action under sections 490, 493, 2234,2236, 2239 and 2280 of the Code, Health and Safety Code section 11170, and Title 16 Section 1360 of the California Code of Regulation, as follows:

58. Complainant realleges paragraphs 17 through 21, 25, 29, 33, 37 through 52 and those paragraphs are incorporated by reference as if fully set forth herein.

59. On or about September 29, 2011, in a criminal proceeding entitled, *The People of the State of California v. Stacey Lynn-Tillery Hoffman*, in Tuolumne County Superior Court, Case Number CRM36730, Respondent was charged with nine (9) counts of Misdemeanor violation of section 2280 of the Code, Practice of Medicine While Under the Influence of a Narcotic Drug or Alcohol, to such an extent as to impair her ability to conduct the practice of medicine with safety to the public and her patients. The charges stemmed from events that transpired from February 2011 through August 2011 as specifically alleged *supra*. Respondent was also charged with one (1) count of Misdemeanor violation of the California Health and Safety Code section 11170,

Controlled Substance for Self use, when Respondent administered and prescribed controlled substances (codeine, hydrocodone and methadone) to herself as specifically alleged *supra*.

60. On February 23, 2012, Respondent plead guilty to one (1) count of Misdemeanor Practice of Medicine While Under the Influence (Count IV of the Complaint), and one (1) count of Misdemeanor Controlled Substance for Self use (Count X of the Complaint). Respondent was placed on two (2) years summary probation, with other terms and conditions and was ordered to pay a fine of $2,000.00.

61. Respondent's conduct as set forth above, in regards to her conviction for practicing medicine while under the influence of a narcotic drug or alcohol and controlled substances for self use constitutes a conviction of a crime that is substantially related to the qualifications, functions, or duties of the practice of medicine in violation of sections 490, 493, 2234, 2236, 2239 2280 of the Code and Title 16 of the California Code of Regulation section 1360; in conjunction with violating Health and Safety Code section 11170.

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 62148, issued to Stacey L. Hoffmann, M.D.;

2. Revoking, suspending or denying approval of Stacey L. Hoffmann, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Stacey L. Hoffmann, M.D. to pay the Medical Board of California the costs of probation monitoring, if probation is imposed;

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

DATED: 11/16/13

LINDA K. WHITNEY
Executive Director
Medical Board of California
State of California
Complainant

Exhibit B

Decision and Order

Medical Board of California Case No. 800-2018-040165

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

In the Matter of the Petition for Reinstatement of Surrendered Certificate of:	)	
Stacey Lynne Schirmer, M.D.	)	Case No. 800-2018-040165
Physician's and Surgeon's Certificate No. A 62148	)	
Petitioner	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on August 9, 2019.

IT IS SO ORDERED: July 10, 2019.

MEDICAL BOARD OF CALIFORNIA

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

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

In the Matter of the Petition for Reinstatement of Surrendered Certificate of:	Case No. 800-2018-040165
STACEY LYNNE SCHIRMER, M.D.,	OAH No. 2019021077
Petitioner.	

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on May 16, 2019, in Sacramento, California.

Ryan Yates, Deputy Attorney General, appeared on behalf of the people of the State of California, pursuant to Government Code section 11522.

Attorney Paul Chan of the law firm Kravitz & Chan, LLP, represented petitioner Stacey Lynne Schirmer, MD, who was present throughout the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on May 16, 2019.

FACTUAL FINDINGS

Procedural History

1. The Board issued Physician's and Surgeon's Certificate Number A 62148 to petitioner on April 25, 1997. The certificate was surrendered April 29, 2013.

2. On August 19, 2011, an interim suspension order was issued, and petitioner's certificate was immediately suspended. On January 16, 2013, a Second Amended Accusation was filed, seeking to discipline petitioner's certificate on the grounds that she: 1) suffered two alcohol-related convictions; 2) was dishonest by writing a prescription for an antibiotic in someone else's name when the drug was actually for her own use; 3) prescribed Norco without conducting an appropriate medical examination; 4) prescribed medication without maintaining records of the treatment and care provided to that person; 6) obtained

controlled substances from patients and her office's supplies; and 7) was convicted of practicing medicine while under the influence of drugs or alcohol and using a controlled substance, crimes which were substantially related to the qualifications, functions, and duties of a physician.[1]

3. On February 7, 2013, petitioner entered into a Stipulated Surrender of License and Order whereby she admitted the truth of the allegations in the Second Amended Accusation, and agreed to surrender her certificate. The Board approved the Stipulated Surrender of License and Order on April 22, 2013, effective the following week.

Petition for Reinstatement

4. Petitioner signed a Petition for Penalty Relief requesting reinstatement of her surrendered certificate, which the Board received January 18, 2018. She explained in her attached narrative statement:

> My difficulties on the road to successful Recovery, my position as a healthcare professional, and my willingness to be public about offer [*sic*] me opportunities to help those silently suffering in our community and my profession. When I return to medicine, I bring with me a deep and sincere empathy for the many who agonize over this very common yet devastating malady, particularly, the medical professionals who feel they **must** remain hidden and silent. I've been gifted an insight into a disease which kills many, is misunderstood by most, and remains an illness of frustration and impotency for the medical community. You must lived [*sic*] this disease to have any chance of ever understanding it or possessing some ability to help those who are quietly suffering. I am hopeful that you will provide me this opportunity by allowing me to practice medicine once again.

(Bold original.)

Petitioner's Evidence

5. Petitioner readily admitted that she "absolutely" is an alcoholic. Her grandfather, father, and uncle are alcoholics, and her abuse of alcohol started in her late teens when her fiancé was killed in a car accident. She initially drank alcohol "just not to hurt." Over time, she learned that consuming alcohol "could stop that pain" she felt from her loss. By her mid-20s, she had abused alcohol to such an extent that her physician told her she was near liver failure.

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[1] The original Accusation was filed March 1, 2011.

6. Petitioner stopped consuming alcohol for a short period of time after being warned of the serious effects it was having on her health. However, her abstinence was short-lived, and she continued to abuse alcohol throughout her undergraduate program, medical school, residency, and medical practice. There were extended periods of time during her residency that she did not consume alcohol because of her work schedule, but her cravings for alcohol still remained and she would plan for her next drink based on her work schedule. She described such behavior as a "classic" sign of alcoholism.

7. Petitioner first sought treatment for alcoholism when she enrolled in a 30-day residential treatment program at Hazelden Springbrook in Newberg, Oregon, on June 16, 2008. At the time, she was the chief medical officer and a staff physician at the Tuolumne Me-Wuk Indian Health Clinic. She explained that she was motivated to obtain treatment by "fear," because she "knew the secret was out" and her friends and colleagues would not tolerate her continued abuse of alcohol.

8. Petitioner "completed the program premature[ly] with staff approval on 7/14/08." She explained, however, "when you're not ready, you're not ready," and she resumed drinking "within a week" of her discharge.

9. Petitioner opened her own medical practice on March 1, 2010. She continued to consume alcohol, initially in the bathroom, but eventually more openly. She recalled at least two occasions on which staff had to cancel her appointments due to her inebriated state.

10. Eventually, petitioner became so addicted to the altered state caused by her alcohol consumption that she convinced herself that by consuming opioids, she could achieve the same altered state without her staff smelling the alcohol on her breath. She obtained her opioid supply from the medications she kept in her office for patients. She never used street drugs, and lost access to opioids once her certificate was suspended and she closed her office in August 2011.

11. On August 11, 2011, petitioner admitted herself into a 30-day residential treatment program at Changing Echoes in Angels Camp, California. She successfully completed the program early, and was discharged on September 5, 2011. However, it was only a "matter of hours" before she began drinking again.

12. Petitioner continued drinking, even after her certificate was suspended and eventually surrendered. Her first job after closing her medical practice was as an instructor at Kaplan College in Stockton, California, and she explained that she knew she did not have to regain or maintain sobriety to keep her job. After six months, however, the Stockton campus closed, and she was out of a job.

13. Unemployed, petitioner had more time to consume alcohol, and she did so. Her drinking led to her boyfriend kicking her out, and to her two sons moving in with their father. Petitioner moved back home to live with her father, a person with whom she did not

really get along. She felt like she had "nothing to live for." For the first time, petitioner seriously contemplated sobriety.

14. July 4, 2014, is petitioner's date of sobriety. That night, she decided to go out for a jog after having consumed alcohol. She stepped in a pothole, fell into the gutter, and suffered several abrasions. She recalled at hearing seeing her youngest son's reaction to her getting hurt, and his reaction helped convince her to stop drinking. She called her boyfriend, and asked if she could move back in with him. He agreed to her moving back in, provided she stopped drinking. She kept her agreement, and they were married in October 2017.

15. Petitioner began attending Alcoholics Anonymous (AA) meetings on July 4, 2014. She attended meetings daily for the first 90 days of her sobriety. Now, she tries to attend AA meetings at least three or four times each week. She also talks to her sponsor by telephone two or three additional days each week.

16. Petitioner has completed the 12-steps of AA, and is currently reworking Steps 6 and 7. She has served as a sponsor for three other AA members, but has found that she is better able to help other members by working various committees rather than serving as a sponsor. She is currently the treasurer of one of her AA meeting groups, and has served as its secretary in the past.

17. Petitioner's AA sponsor wrote a letter of support confirming petitioner's date of sobriety and commitment to maintaining her sobriety. Petitioner's sponsor explained that she has sponsored numerous women during her 31 years of sobriety, and identified petitioner as "the only one . . . who has come to me as a newcomer and has stayed sober since the day she asked me to sponsor her." Petitioner's sponsor described a program petitioner created at Sonora Regional Medical Center which involves AA members ministering to patients suffering from drug and/or alcohol abuse.

18. Petitioner began teaching human anatomy and physiology at Modesto Junior College part-time on January 10, 2017. As of the date of hearing, she had completed her "first round interview" for obtaining tenure, and was preparing for her second round interview. If her certificate is reinstated, she intends to continue teaching part-time, and would like to work for a family medicine practice part-time. She lives in Sonora, California, and described a severe shortage of primary care physicians in the area.

19. Petitioner explained she wished she could reassure the Board she will never consume alcohol again, but candidly admitted she cannot. She explained she continues attending AA meetings and being of service in order to maintain a strong fellowship with her fellow AA members in order to avoid relapse. She also described how much she values her sobriety, and recognizes how much she has gained and could lose if she relapses. She explained "good things" started happening once she achieved sobriety — she reunited with her children, got married, and obtained her job at Modesto Junior College.

20. On July 7, 2018, Colleen Moore performed a forensic substance abuse evaluation of petitioner. Ms. Moore holds a Master of Art degree in clinical psychology, and is a licensed marriage and family therapist. She is recognized as a Master Addiction Counselor by the National Association for Alcoholism and Drug Abuse Counselors, and is certified as an Addiction-Free Pain Management Specialist.

21. Ms. Moore concluded that petitioner has a history of an Alcohol Use Disorder, Sustained in Full Remission. She further concluded that while petitioner briefly abused opiates, the extent of her abuse did not meet the DSM-5 criteria for an opiate use disorder. She identified petitioner's abstinence and recovery as being "above average when compared to the general population practicing abstinence," which means petitioner is at a lower risk of relapse than the norm. Ms. Moore uncovered no evidence indicating petitioner "currently presents a danger to the public or to herself or to her patients should her medical license be reinstated."

22. Ms. Moore's conclusions were based on the following: 1) petitioner "was exceptionally transparent and self-effacing" during her two interviews, and the information presented during both interviews was consistent, which suggested to Ms. Moore that the information was accurate; 2) the extent of petitioner's involvement with AA suggests she is more likely than the average person to maintain abstinence; 3) petitioner is in the Middle Recovery Stage of Terrence Gorski, PhD's, well-accepted developmental recovery model "The Stages of Recovery;" 4) the numerous letters of support written by professionals who have known petitioner before and after she obtained sobriety is a strong testament to her commitment to maintaining sobriety; 5) petitioner's husband provided information which confirmed her self-described history of substance abuse and sobriety, and expressed unwavering support and confidence in her maintaining sobriety; and 6) petitioner's AA sponsor confirmed petitioner's date of sobriety and commitment to maintaining sobriety.

Letters of Support from Medical Professionals

23. Alan Levine, M.D., is an anesthesiologist who has known petitioner professionally since before 2005. In the past, they shared many patients. Dr. Levine described petitioner as "an excellent clinician" who "had a very busy practice of loyal patients for years."

24. Dr. Levine is well aware of petitioner's struggles with alcoholism, and was the chairman of the Wellness Committee at Sonora Regional Medical Center when she was first arrested for driving under the influence of alcohol. He was not surprised when petitioner reported her arrest to the Wellness Committee, because he knew she overindulged in alcohol during her personal time.

25. Dr. Levine maintained social contact with petitioner after she surrendered her certificate. He described her as initially refusing to accept responsibility for her misconduct which led to the Board seeking to discipline her certificate, but explained she has since

recognized and accepted responsibility for her wrongdoing. He expressed confidence in her ability to return to practicing medicine safely.

26. Todd Stolp, M.D., practices family medicine in Tuolumne County, and has known petitioner professionally since 1998 when she first joined the "call group" he was a part of. He described her as an intelligent physician who "practiced a high quality of medicine" and whose "patients expressed great satisfaction with her services."

27. Dr. Stolp was the chairperson of a local hospital's Physician Aid/Medical Staff Aid Committee when petitioner's abuse of alcohol first came to light, and was involved in efforts to evaluate the severity of her abuse and support her in obtaining sobriety. He explained: "it was clear at that point that she lacked insight into the profound influence of her substance use disorder on her ability to safely practice medicine and, most importantly, on her own social dysfunction." He further explained that petitioner shunned efforts to get her into a recovery program until alcoholism led to her surrendering her certificate. "Even then, Stacey remained transfixed against the Board's actions and in denial of her condition."

28. Dr. Stolpe noticed a change in petitioner's attitude starting in 2014 when she committed herself to obtaining sobriety and begin attending AA meetings. He watched her slowly reconstruct "her life from the ground up." He also watched her initial "bitterness towards the Medical Board for its actions" turn "to genuine gratitude."

29. Dr. Stolpe expressed confidence in petitioner's ability to return to the practice of medicine in a safe manner. He explained her "own willingness to discuss her personal experience with substance use pathology and her recognition of the need for ongoing care is in sharp contrast to her status three years ago and, in my opinion, is the most important factor predicting a successful and sustained recovery."

Discussion

30. Petitioner has a long history of abusing alcohol, which includes two alcohol-related criminal convictions and a conviction for practicing medicine under the influence of alcohol. While she initially held much animosity towards the Board for seeking to discipline her certificate and refused to take responsibility for her underlying conduct, she has since had a change of heart and has gained substantial insight into her past conduct. Petitioner testified openly and candidly about her history of abusing alcohol, and demonstrated significant insight into her disease of alcoholism. She obtained sobriety from alcohol on July 4, 2014, and has maintained it ever since. She has dedicated her life to maintaining her sobriety by continuing to attend AA meetings, reworking the 12-steps after having completed them, maintaining regular contact with her sponsor, and continuing to be of service to other AA members. Her new state of sobriety has led to her reunification with her two sons, a 2017 marriage, and job at Modesto Junior College. She enjoys the support of her professional colleagues.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Petitioner has the burden of proving her entitlement to reinstatement of her certificate, and she must do so by clear and convincing evidence to a reasonable certainty. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315 [an applicant seeking reinstatement of licensure has the burden of presenting sufficient evidence of fitness for licensure to overcome the prior decision to revoke her license].) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899, italics original.)

Applicable Law

2. A physician who surrendered her certificate while disciplinary proceedings were pending "may petition the board for reinstatement.", (Bus. & Prof. Code, § 2307, subd. (a).) If the pending charges were for unprofessional conduct, the petition may be filed three years after the effective date of the surrender. (Bus. & Prof. Code, § 2307, subd. (b)(1).) The Board "shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument." (Gov. Code, § 11522.)

3. A petition for reinstatement "may be heard by a panel of the board," or "the board may assign the petition to an administrative law judge." (Bus. & Prof. Code, § 2307, subd. (d).) If it is heard by an administrative law judge, a proposed decision shall be provided to the Board, and the Board shall issue a final decision within 100 calendar days of the date on which the proposed decision was received. (*Ibid*; Bus. & Prof. Code, § 2335; Gov. Code, § 11517, subd. (c)(2).)

4. Factors relevant to deciding a petition for reinstatement include: "all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability." (Bus. & Prof. Code, § 2307, subd. (e).) The administrative law judge hearing the petition "may recommend the imposition of any terms and conditions deemed necessary." (Bus. & Prof. Code, § 2307, subd. (f).)

Conclusion

5. Petitioner established by clear and convincing evidence that she is capable of practicing medicine in a manner consistent with public health, safety, and welfare, subject to restrictions, for the reasons discussed in Factual Finding 30. Therefore, her certificate should

be reinstated on a probationary basis, subject to the terms and conditions specified in the Order below.

ORDER

Petitioner Stacey Lynne Schirmer's petition for reinstatement of surrendered certificate is hereby GRANTED. A certificate shall be ISSUED to petitioner. Said certificate shall immediately be REVOKED. However, the revocation is STAYED and petitioner is placed on PROBATION for five years upon the following terms and conditions.

1. **Clinical Diagnostic Evaluations and Reports:** Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, petitioner shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed, board-certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with petitioner within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether petitioner has a substance abuse problem, whether petitioner is a threat to herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to petitioner's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that petitioner is a threat to herself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether petitioner is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: petitioner's license type; petitioner's history; petitioner's documented length of sobriety (i.e., length of time that has elapsed since petitioner's last substance use); petitioner's scope and pattern of substance abuse; petitioner's treatment history, medical history and current medical condition; the nature, duration and severity of petitioner's substance abuse problem or problems; and whether petitioner is a threat to herself or the public.

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assign the matter.

The Board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether petitioner is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on petitioner based on the recommendations made by the evaluator. Petitioner shall not be returned to practice until she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that she has not used, consumed, ingested, or administered to herself a prohibited substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by petitioner.

Petitioner shall not engage in the practice of medicine until notified by the Board or its designee that she is fit to practice medicine safely. The period of time that petitioner is not practicing medicine shall not be counted toward completion of the term of probation. Petitioner shall undergo biological fluid testing as required in this Decision at least two (2) times per week while awaiting the notification from the Board if she is fit to practice medicine safely.

Petitioner shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified by the Board or its designee.

2. **Notice of Employer or Supervisor Information:** Within seven (7) days of the effective date of this Decision, petitioner shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Petitioner shall also provide specific, written consent for the Board, petitioner's worksite monitor, and petitioner's employers and supervisors to communicate regarding petitioner's work status, performance, and monitoring. For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when petitioner has medical staff privileges.

3. **Biological Fluid Testing:** Petitioner shall immediately submit to biological fluid testing, at petitioner's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Petitioner shall make daily contact with the Board or its designee to determine whether biological fluid

testing is required. Petitioner shall be tested on the date of the notification as directed by the Board or its designee. The Board may order petitioner to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by petitioner.

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

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

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

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

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

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

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

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

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

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

(i) It maintains testing sites located throughout California.

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

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

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

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

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

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Petitioner shall maintain this laboratory or service contract during the period of probation.

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

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

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

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

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

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

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

4. **Substance Abuse Support Group Meetings:** Within thirty (30) days of the effective date of this Decision, petitioner shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which she shall attend for the duration of probation. Petitioner shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Petitioner shall pay all substance abuse support group meeting costs.

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

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

5. **Worksite Monitor for Substance-Abusing Licensee:** Within thirty (30) calendar days of the effective date of this Decision, petitioner shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring petitioner at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with petitioner, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to

the Board or its designee. If it is impractical for anyone but petitioner's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall petitioner's worksite monitor be an employee or supervisee of petitioner.

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

Petitioner shall pay all worksite monitoring costs.

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

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

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

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

cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

6. **Violation of Probation Condition for Substance-Abusing Licensees:** Failure to fully comply with any term or condition of probation is a violation of probation.

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

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

(2) Increase the frequency of biological fluid testing.

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

B. If petitioner commits a minor violation of probation as defined by section 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue a cease-practice order.

(2) Order practice limitations.

(3) Order or increase supervision of petitioner.

(4) Order increase documentation.

(5) Issue a citation and fine, or a warning letter.

(6) Order petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at petitioner's expense.

(7) Take any other action as determined by the Board or its designee.

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

7. **Controlled Substances — Total Restriction:** Petitioner shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

Petitioner shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5.

If petitioner forms the medical opinion, after an appropriate prior examination and a medical indication, that a patient's medical condition may benefit from the use of marijuana, petitioner shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and a medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, petitioner shall inform the patient or the patient's primary caregiver that petitioner is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on petitioner's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Petitioner shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits petitioner from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

8. **Controlled Substances — Abstain from Use:** Petitioner 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 petitioner by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, petitioner 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.

If petitioner has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner 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 petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner 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 30 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, request 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 petitioner with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

9. **Alcohol — Abstain from Use:** Petitioner shall abstain completely from the use of products or beverages containing alcohol.

If petitioner has a confirmed positive biological fluid test for alcohol, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner 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 petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless the petitioner 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 30 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, request 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 petitioner with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

10. **Clinical Competence Assessment Program:** Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Petitioner shall successfully complete the program not later than six (6) months after petitioner's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of petitioner's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to petitioner's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require petitioner's on-site participation for a minimum of three and no more than five days as determined by the program for the assessment and clinical education evaluation. Petitioner shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether petitioner has demonstrated the ability to practice safely and independently. Based on petitioner's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with the program's recommendations.

Determination as to whether petitioner successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If petitioner fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, edition or shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If petitioner did not successfully complete the clinical competence assessment program, petitioner shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

11. **Notification:** Within seven (7) days of the effective date of this Decision, petitioner 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 petitioner, at any other facility where petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to petitioner. Petitioner shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

12. **Supervision of Physician Assistants and Advanced Practice Nurses:** During probation, petitioner is prohibited from supervising physician assistants and advanced practice nurses.

13. **Obey All Laws:** Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

14. **Quarterly Declarations:** Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

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

15. **General Probation Requirements:** Petitioner shall comply with the Board's probation unit.

Petitioner shall, at all times, keep the Board informed of petitioner'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).

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

Petitioner shall maintain a current and renewed California physician's and surgeon's license.

Petitioner 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 petitioner should leave the State of California to reside or to practice petitioner shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

16. **Interview with the Board or its Designee:** Petitioner shall be available in person upon request for interviews either at petitioner's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

17. **Non-practice While on Probation:** Petitioner 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 petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If petitioner resides in California and is considered to be in non-practice, petitioner shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve petitioner from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

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

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

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

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

18. **Completion of Probation:** Petitioner shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, petitioner's certificate shall be fully restored.

19. **Violation of Probation:** Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the Board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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

21. **Probation Monitoring Costs:** Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATED: June 11, 2019

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Coren D. Wong
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COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings