

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

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

Andrew Sumarto, M.D.

**Physician's and Surgeon's
Certificate No. A 136147**

Case No.: 800-2017-038200

Respondent.

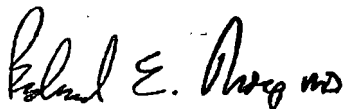
DECISION

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

This Decision shall become effective at 5:00 p.m. on January 6, 2022.

IT IS SO ORDERED: December 7, 2021.

MEDICAL BOARD OF CALIFORNIA



**Richard E. Thorp, M.D., Chair
Panel B**

1 ROB BONTA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 CLAUDIA MOREHEAD
Deputy Attorney General
4 State Bar No. 205340
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 269-6482
Facsimile: (916) 731-2117
7 *Attorneys for Complainant*

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

12
13 In the Matter of the Accusation Against:

14 ANDREW SUMARTO, M.D.

15
16 1400 North Kraemer Boulevard
Post Office Box 84
17 Placentia, California 92871-1400

18 Physician's and Surgeon's Certificate A 136147,
19 Respondent.
20

Case No. 800-2017-038200

OAH No. 2021010133

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

23 **PARTIES**

24 1. William Prasifka ("Complainant") is the Executive Director of the Medical Board of
25 California ("Board"). He brought this action¹ solely in his official capacity and is represented in
26

27
28 ¹ Christine Lally, former Interim Executive Director of the Board, was the Complainant
when the Accusation was filed.

1 this matter by Rob Bonta, Attorney General of the State of California, by Claudia Morehead,
2 Deputy Attorney General.

3 2. Respondent Andrew Sumarto, M.D. ("Respondent") is represented in this proceeding
4 by attorney Peter R. Osinoff of Bonne, Bridges, Mueller, O'Keefe & Nichols, 355 South Grand
5 Avenue, Suite 1750, Los Angeles, California, 90071.

6 3. On May 9, 2015, the Board issued Physician's and Surgeon's Certificate A 136147 to
7 Respondent. That Certificate was in full force and effect at all times relevant to the charges
8 brought in Accusation No. 800-2017-038200, and will expire on May 31, 2023, unless renewed.

9 **JURISDICTION**

10 4. Accusation No. 800-2017-038200 was filed before the Board, and is currently
11 pending against Respondent. The Accusation and all other statutorily required documents were
12 properly served on Respondent on April 27, 2020. Respondent timely filed his Notice of Defense
13 contesting the Accusation.

14 5. A copy of Accusation No. 800-2017-038200 is attached as Exhibit A and is
15 incorporated herein by reference.

16 **ADVISEMENT AND WAIVERS**

17 6. Respondent has carefully read, fully discussed with counsel, and understands the
18 charges in Accusation No. 800-2017-038200. Respondent has also carefully read, fully discussed
19 with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

28 //

1 **CULPABILITY**

2 9. Respondent understands and agrees that the charges in Accusation No. 800-2017-
3 038200, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and
4 Surgeon's Certificate.

5 10. Respondent agrees that, at a hearing, Complainant could establish a prima facie case
6 for the charges in the Accusation, and that Respondent hereby gives up his right to contest those
7 charges.

8 11. Respondent does not contest that, at an administrative hearing, Complainant could
9 establish a prima facie case with respect to the charges and allegations in Accusation No. 800-
10 2017-038200, a true and correct copy of which is attached hereto as Exhibit A, and that he has
11 thereby subjected his Physician's and Surgeon's Certificate No. A 136147 to disciplinary action.

12 12. Respondent agrees that if he ever petitions for early termination or modification of
13 probation, or if an accusation and/or petition to revoke probation is filed against him before the
14 Board, all of the charges and allegations contained in Accusation No. 800-2017-038200 shall be
15 deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or
16 any other licensing proceeding involving Respondent in the State of California.

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

20 **CONTINGENCY**

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

1 action between the parties, and the Board shall not be disqualified from further action by having
2 considered this matter.

3 15. The parties understand and agree that Portable Document Format (PDF) and facsimile
4 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
5 signatures thereto, shall have the same force and effect as the originals.

6 16. In consideration of the foregoing admissions and stipulations, the parties agree that
7 the Board may, without further notice or opportunity to be heard by the Respondent, issue and
8 enter the following Disciplinary Order:

9 **DISCIPLINARY ORDER**

10 **IT IS HEREBY ORDERED THAT** Physician's and Surgeon's Certificate No. A 136147
11 issued to Respondent Andrew Sumarto, M.D. is revoked. However, the revocation is stayed and
12 Respondent is placed on probation for thirty-five (35) months on the following terms and
13 conditions:

14 1. **CONTROLLED SUBSTANCES - ABSTAIN FROM USE.** Respondent shall abstain
15 completely from the personal use or possession of controlled substances as defined in the
16 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and
17 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not
18 apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide
19 illness or condition.

20 Within 15 calendar days of receiving any lawfully prescribed medications, Respondent
21 shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone
22 number; medication name, strength, and quantity; and issuing pharmacy name, address, and
23 telephone number.

24 2. **PSYCHIATRIC EVALUATION.** One (1) calendar year after the effective date of
25 this Decision, but before December 31, 2022, and on whatever periodic basis thereafter may be
26 required by the Board or its designee, Respondent shall undergo and complete a psychiatric
27 evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified
28 psychiatrist, who shall consider any information provided by the Board or designee and any other

1 information the psychiatrist deems relevant, and shall furnish a written evaluation report to the
2 Board or its designee. Psychiatric evaluations conducted prior to the effective date of the
3 Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay
4 the cost of all psychiatric evaluations and psychological testing.

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

7 3. MEDICAL EVALUATION AND TREATMENT. One (1) calendar year after the
8 effective date of this Decision, but before December 31, 2022, and on a periodic basis thereafter
9 as may be required by the Board or its designee, Respondent shall undergo a medical evaluation
10 by a Board-appointed physician who shall consider any information provided by the Board or
11 designee and any other information the evaluating physician deems relevant and shall furnish a
12 medical report to the Board or its designee. Respondent shall provide the evaluating physician
13 with any information and documentation that the evaluating physician may deem pertinent.

14 Following the evaluation, Respondent shall comply with all restrictions or conditions
15 recommended by the evaluating physician within 15 calendar days after being notified by the
16 Board or its designee. If Respondent is required by the Board or its designee to undergo medical
17 treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the
18 Board or its designee for prior approval the name and qualifications of a California licensed
19 treating physician of Respondent's choice. Upon approval of the treating physician, Respondent
20 shall within 15 calendar days undertake medical treatment and shall continue such treatment until
21 further notice from the Board or its designee.

22 The treating physician shall consider any information provided by the Board or its designee
23 or any other information the treating physician may deem pertinent prior to commencement of
24 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or
25 its designee indicating whether or not the Respondent is capable of practicing medicine safely.
26 Respondent shall provide the Board or its designee with any and all medical records pertaining to
27 treatment that the Board or its designee deems necessary.

28 If, prior to the completion of probation, Respondent is found to be physically incapable of

1 resuming the practice of medicine without restrictions, the Board shall retain continuing
2 jurisdiction over Respondent's license and the period of probation shall be extended until the
3 Board determines that Respondent is physically capable of resuming the practice of medicine
4 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

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

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

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

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

1 of random tests to the first-year level of frequency for any reason.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 After the issuance of a cease-practice order, the Board shall determine whether the positive
28 biological fluid test is in fact evidence of prohibited substance use by consulting with the

specimen collector and the laboratory, communicating with the licensee, his or 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 a Respondent'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 appropriately licensed health care provider for use by Respondent and approved by the Board, alcohol, or any other substance the Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself or herself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, Respondent 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 Respondent's rehabilitation.

6. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he or she shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent 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 Respondent within the last five (5) years. Respondent'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 Respondent's name, the group name, the date and location of the meeting, Respondent's

1 attendance, and Respondent's level of participation and progress. The facilitator shall report any
2 unexcused absence by Respondent from any substance abuse support group meeting to the Board,
3 or its designee, within twenty-four (24) hours of the unexcused absence.

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

10 The worksite monitor shall not have a current or former financial, personal, or familial
11 relationship with Respondent, or any other relationship that could reasonably be expected to
12 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its
13 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite
14 monitor, this requirement may be waived by the Board or its designee, however, under no
15 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

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

20 Respondent shall pay all worksite monitoring costs.

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

25 The worksite monitor shall verbally report any suspected substance abuse to the Board and
26 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected
27 substance abuse does not occur during the Board's normal business hours, the verbal report shall
28 be made to the Board or its designee within one (1) hour of the next business day. A written

1 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
2 any other information deemed important by the worksite monitor shall be submitted to the Board
3 or its designee within 48 hours of the occurrence.

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

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

23 8. VIOlation OF PROBATION CONDITION FOR SUBSTANCE ABUSING
24 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of
25 probation.

26 A. If Respondent commits a major violation of probation as defined by section
27 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take
28 one or more of the following actions:

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

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

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

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

16 (1) Issue a cease-practice order;

17 (2) Order practice limitations;

18 (3) Order or increase supervision of Respondent;

19 (4) Order increased documentation;

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

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

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

25 C. Nothing in this Decision shall be considered a limitation on the Board's authority
26 to revoke Respondent's probation if he or she has violated any term or condition of probation. If
27 Respondent violates probation in any respect, the Board, after giving Respondent notice and the
28 opportunity to be heard, may revoke probation and carry out the disciplinary order that was

1 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed
2 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
3 is final, and the period of probation shall be extended until the matter is final.

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

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

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

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

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

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

24 13. GENERAL PROBATION REQUIREMENTS.

25 Compliance with Probation Unit

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

27 Address Changes

28 Respondent shall, at all times, keep the Board informed of Respondent's business and

1 residence addresses, email address (if available), and telephone number. Changes of such
2 addresses shall be immediately communicated in writing to the Board or its designee. Under no
3 circumstances shall a post office box serve as an address of record, except as allowed by Business
4 and Professions Code section 2021, subdivision (b).

5 Place of Practice

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

9 License Renewal

10 Respondent shall maintain a current and renewed California physician's and surgeon's
11 license.

12 Travel or Residence Outside California

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

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

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

22 15. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
23 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
24 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
25 defined as any period of time Respondent is not practicing medicine as defined in Business and
26 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
27 patient care, clinical activity or teaching, or other activity as approved by the Board. If
28 Respondent resides in California and is considered to be in non-practice, Respondent shall

1 comply with all terms and conditions of probation. All time spent in an intensive training
2 program which has been approved by the Board or its designee shall not be considered non-
3 practice and does not relieve Respondent from complying with all the terms and conditions of
4 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
5 on probation with the medical licensing authority of that state or jurisdiction shall not be
6 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
7 period of non-practice.

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

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

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

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

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

24 17. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
25 of probation is a violation of probation. If Respondent violates probation in any respect, the
26 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
27 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
28 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have

1 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
2 the matter is final.

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

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

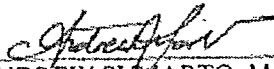
18 20. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
19 a new license or certification, or petition for reinstatement of a license, by any other health care
20 licensing action agency in the State of California, all of the charges and allegations contained in
21 Accusation No. 800-2017-038200 shall be deemed to be true, correct, and admitted by
22 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
23 restrict license.

24 ACCEPTANCE

25 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
26 discussed it with my attorney, Peter R. Osinoff. I understand the stipulation and the effect it will
27 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
28 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the

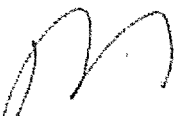
Decision and Order of the Medical Board of California.

DATED: 7/22/21


ANDREW SUMARTO, M.D.
Respondent

I have read and fully discussed with Respondent Andrew Sumarto, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 7/22/2021


PETER R. OSINOFF, ESQ.
Attorney for Respondent

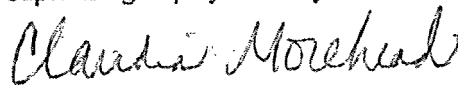
ENDORSEMENT

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

DATED: 7/22/21

Respectfully submitted,

ROB BONTA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General


CLAUDIA MOREHEAD
Deputy Attorney General
Attorneys for Complainant

LA2020500592
64372199.docx

Exhibit A

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 CLAUDIA RAMIREZ
Deputy Attorney General
4 State Bar No. 205340
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 269-6482
Facsimile: (916) 731-2117
7 E-mail: Claudia.Ramirez@doj.ca.gov
Attorneys for Complainant
8

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

13 In the Matter of the Accusation Against:

Case No. 800-2017-038200

14 ANDREW SUMARTO, M.D.

A C C U S A T I O N

15 1400 North Kraemer Blvd.
16 P.O. Box 84
Placentia, CA 92871-1400

17 Physician's and Surgeon's Certificate A 136147,

18 Respondent.
19

20 **PARTIES**

21 1. Christine J. Lally ("Complainant") brings this Accusation solely in her official
22 capacity as the Interim Executive Director of the Medical Board of California ("Board").

23 2. On May 9, 2015, the Board issued Physician's and Surgeon's Certificate Number A
24 136147 to Andrew Sumarto, M.D. ("Respondent"). That license was in full force and effect at all
25 times relevant to the charges brought herein and will expire on May 31, 2021, unless renewed.

26 //

27 //

28 //

JURISDICTION

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

4. Section 2227 of the Code states:

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

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

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

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

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

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

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

5. Section 2234 of the Code states:

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

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

(b) Gross negligence.

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

(1) An initial negligent diagnosis followed by an act or omission medically

1 appropriate for that negligent diagnosis of the patient shall constitute a single
2 negligent act.

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

8 (d) Incompetence.

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

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

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

16 6. Section 2239 of the Code states:

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

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

7. Health and Safety Code section 11170 states:

"No person shall prescribe, administer, or furnish a controlled substance for himself."

FIRST CAUSE FOR DISCIPLINE

(Self-Use and Self-Administration of Drugs)

8. Respondent is subject to disciplinary action under Code section 2239, and Health and
Safety Code section 11170 in that he self-used and self-administered dangerous drugs and

1 controlled substances without a prescription from another physician and surgeon. The
2 circumstances are as follows:

3 9. From approximately July of 2016, to approximately October of 2016, Respondent
4 diverted, self-used, and self-administered fentanyl,¹ hydromorphone,² morphine,³ and propofol,⁴
5 on an alternating basis, to help him sleep and be able to carry on with his workload. After a
6 three-month gap, from approximately February of 2017, to approximately September 29, 2017,
7 Respondent again diverted, self-used and self-administered propofol while on call at work to help
8 him sleep and be able to carry on with his workload.

9 10. On or about October 11, 2017, Respondent entered an addiction treatment program.
10 He was released from the program on or about January 8, 2018. He also participated in a sober
11 living program from on or about December 11, 2017, to on or about February 8, 2018.
12 Respondent continues to receive support and treatment for his addiction and has not relapsed.

13 11. Respondent's acts and/or omissions as set forth in Paragraphs 8 through 10, inclusive
14 above, whether proven individually, jointly, or in combination thereof, constitute the self-use and
15 self-administration of dangerous drugs and controlled substances under Code section 2239, and
16 Health and Safety Code section 11170. Therefore, cause for discipline exists.

17 //

18 //

19
20 ¹ Fentanyl is an opioid pain medication. It is a Schedule II controlled substance as defined
21 by section 1308.12, subdivision (c)(9) of Title 21 of the Code of Federal Regulations and
California Health and Safety Code section 11055, subdivision (c)(8). It is a dangerous drug as
defined in Business and Professions Code section 4022.

22 ² Hydromorphone (Dilaudid) is an opioid pain medication. It is a Schedule II controlled
23 substance as defined by section 1308.12, subdivision (b)(1)(vii) of Title 21 of the Code of Federal
Regulations and California Health and Safety Code section 11055, subdivision (b)(1)(J). It is a
24 dangerous drug as defined in Business and Professions Code section 4022.

25 ³ Morphine is an opioid pain medication. It is a Schedule II controlled substance as
26 defined by section 1308.12, subdivision (b)(1)(ix) of Title 21 of the Code of Federal Regulations
and California Health and Safety Code section 11055, subdivision (b)(1)(L). It is a dangerous
drug as defined in Business and Professions Code section 4022.

27 ⁴ Propofol (Diprivan) is a short-acting medication that results in a decreased level of
28 consciousness and lack of memory for events. Its uses include the starting and maintenance of
general anesthesia, sedation for mechanically ventilated adults, and procedural sedation. It is a
dangerous drug as defined in Business and Professions Code section 4022.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(General Unprofessional Conduct)**

3 12. Respondent is subject to disciplinary action under Code section 2234 in that he
4 engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct
5 which is unbecoming to a member in good standing of the medical profession. The
6 circumstances are as follows:

7 13. The facts and allegations as set forth in Paragraphs 8 through 11, above, are
8 incorporated by reference and re-alleged as if fully set forth herein.

9 14. Respondent's acts and/or omissions as set forth in Paragraphs 8 through 11, inclusive
10 above, whether proven individually, jointly, or in any combination thereof, constitute
11 unprofessional conduct under Code section 2234. Therefore, cause for discipline exists.

12 **PRAYER**

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

15 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 136147,
16 issued to Respondent Andrew Sumarto, M.D.;

17 2. Revoking, suspending or denying approval Andrew Sumarto, M.D.'s authority to
18 supervise physician assistants and advanced practice nurses;

19 3. If placed on probation, ordering Andrew Sumarto, M.D. to pay the Board the costs of
20 probation monitoring; and

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

22
23
24 DATED: **APR 27 2020**

25 
26 CHRISTINE J. LALLY
27 Interim Executive Director
28 Medical Board of California
Department of Consumer Affairs
State of California
Complainant