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

In the Matter of the First Amended Accusation Against: Matthew John Butts, M.D. Physician's and Surgeon's Certificate No. C 150121 Respondent.	Case No. 800-2020-071032

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 October 3, 2022.

IT IS SO ORDERED September 2, 2022.

MEDICAL BOARD OF CALIFORNIA

Laurie Rose Lubiano, J.D., Chair
Panel A

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

In the Matter of the First Amended Accusation Against:

MATTHEW JOHN BUTTS, M.D., Respondent

Case No. 800-2020-071032

OAH No. 2022050582

PROPOSED DECISION

Marcie Larson, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by video conference on June 8, 2022, from Sacramento, California.

Jane Zack Simon, Supervising Deputy Attorney General, and Kendra Rivas, Deputy Attorney General, represented complainant William Prasifka, Executive Director, Medical Board of California (Board).

Respondent Matthew John Butts, M.D., appeared at the hearing and represented himself.

Evidence was received, the record closed, and the matter was submitted for decision on June 8, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. On or about June 28, 2017, the Board issued Physician's and Surgeon's Certificate Number C 150121 (license) to respondent. The license will expire on April 30, 2023, unless renewed or revoked.

2. In April 2022[1], complainant filed a Petition for an Interim Suspension Order (ISO) based on allegations that respondent was unsafe to practice medicine. On April 19, 2022, a hearing was held pursuant to Government Code section 11529. On April 20, 2022, an Order was issued granting the ISO and suspending respondent's license until an accusation was issued and a decision rendered thereon.

3. On May 13, 2022, complainant, in his official capacity, made and served a First Amended Accusation, seeking discipline against respondent's license. Complainant alleged: in September 2020 respondent was arrested and later convicted of driving under the influence of alcohol (DUI) with his minor child in the vehicle; in October 2020 respondent was arrested for violating a domestic violence restraining order and for resisting a public officer; in January 2021, respondent was arrested for DUI; three times in March 2021, respondent was detained by police related to public intoxication and erratic behavior; and on December 16, 2021, respondent was

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[1] The date of the filing of the Petition for Interim Suspension Order was not established at hearing.

intoxicated at work. Complainant alleged respondent's license is subject to discipline pursuant to Business and Professions Code sections 2234, 2239, and 2280.

4. 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.

Respondent's Criminal Conduct

SEPTEMBER 2020 ARREST AND SUBSEQUENT CONVICTION

5. On or about January 29, 2021, in the Superior Court of California, Del Norte County, respondent, on a guilty plea, was convicted of DUI, a violation of Vehicle Code section 23152, subdivision (b), with enhancements for driving with a blood alcohol level over .15 percent and driving with a child in the vehicle. Imposition of sentence was suspended. Respondent was ordered to serve six days in jail and placed on three years of informal probation. He was ordered to complete a nine-month first offender DUI course. He was also ordered to "totally refrain from the possession or consumption of alcohol." Respondent was ordered to pay approximately $2,000 in fines and fees.

6. The circumstances underlying the conviction occurred on September 18, 2020, at approximately 3:30 p.m. An officer with the California Highway Patrol (CHP) was dispatched to an area where a possible intoxicated driver was located. The officer was provided a description of the vehicle and driver. The officer located the vehicle traveling over the speed limit and initiated an enforcement stop. He approached the vehicle and spoke to the driver who was later identified as respondent. The officer smelled the odor of alcohol coming from inside the vehicle. While speaking to

respondent, the officer noticed respondent was slurring his words. Respondent appeared nervous and was visibly shaking.

The officer observed a child in the backseat of the vehicle, who respondent identified as his four-year-old son. The officer asked respondent to exit the vehicle. He then administered a series of field sobriety tests (FST), which respondent failed to satisfactorily perform. Respondent was placed under arrest for DUI. He completed a preliminary alcohol screening, which registered his BAC at .296 and .320 percent. Respondent was transported to jail, where he completed a breath test that registered his BAC at .27 percent.

OCTOBER 2020 ARREST

7. On October 23, 2020, a deputy from the Del Norte County Sheriff's Office was dispatched to respondent's home. Respondent's wife had contacted emergency services to report that respondent was violating a restraining order that required him to move out of their residence. Respondent's wife was not at the residence at the time she made the call.

8. When the deputy arrived at the residence, he observed a vehicle registered to respondent parked in the driveway. The deputy knocked on the front door of the home several times and announced he was from the Sherriff's Department. Respondent did not answer the door. The deputy left. He later received information from dispatch that respondent had sent his wife a text message in violation of the restraining order. The deputy spoke to respondent's wife and she agreed to send the deputy the text message. She also agreed to meet the deputy at the residence to allow him inside.

9. The deputy met respondent's wife at the residence. He attempted to enter the home with the key respondent's wife provided, but the door was locked with an interior deadbolt. Respondent's wife advised the deputy that respondent had previously broken a window to their master bedroom so he could get into the residence. The deputy observed the broken window and removed a board that had been covering it. He called into the residence for respondent. The deputy observed respondent come out of the master bathroom inside of the residence. The deputy spoke to respondent and asked him multiple times to come outside through the open window. Respondent refused.

The deputy entered the residence through the open window and attempted to place respondent in handcuffs. Respondent repeatedly resisted. The deputy had to place respondent on the ground to handcuff him and transport him to jail.

JANUARY 4, 2021 DUI ARREST

10. On January 4, 2021, at approximately 2:30 p.m., a CHP officer was dispatched to investigate a report of an unsafe driver who pulled his vehicle into a casino parking lot off Highway 101. The officer was provided a description of the vehicle and driver. When the officer arrived at the casino parking lot, he was flagged down by a man who reported the unsafe driver, later identified as respondent. The witness explained that the vehicle was "all over the road and was driving in the oncoming lane." The witness had followed the vehicle into the casino parking lot and observed respondent stumble while getting out of the vehicle from the driver side. Respondent was the only person in the vehicle. The witness provided the officer a description of what respondent was wearing and stated respondent was standing next to his vehicle.

11. The officer located the vehicle in the casino parking lot. Respondent was standing next to the open front passenger door of the vehicle. The officer spoke to respondent and noticed that he "appeared to be dazed." The officer smelled alcohol coming from respondent and noticed his eyes were red and watery. He was unsteady on his feet. Respondent identified himself and explained that he had tested positive for the corona virus five days earlier. Respondent told the officer he was not driving. Rather, a friend had driven his vehicle and dropped him off at the casino. The friend then left the casino in a different vehicle. Respondent would not provide the officer the telephone number of his friend.

The officer asked respondent a series of field sobriety questions. Respondent stated that he drank vodka but later stated he had not been drinking alcohol. Respondent also stated he took Klonopin at 11:45 a.m. and Gabapentin at 2:00 or 3:00 a.m. Respondent continued to tell the officer he testified positive for the corona virus. The officer administered a series of FST, which respondent failed to satisfactorily perform. The officer determined respondent had been driving under the influence of alcohol based upon the witness placing him as the driver, the vehicle keys inside respondent's shorts pocket, and the vehicle being registered to respondent.

The officer placed respondent under arrest and administered a breath test, which registered his BAC at .21 and .20 percent. While the officer was securing respondent's vehicle, he observed a "Potter's Premium Vodka bottle that was approximately 4/5's empty on the right front floorboard."

12. Due to respondent's report of being positive for the corona virus, the officer transported respondent to a hospital. He was tested several times for the corona virus. The tests were negative. Hospital staff also determined that the test respondent had taken five days before was also negative for the corona virus,

contradicting what he had told the officer and medical staff. Ultimately, respondent was medically cleared and transported to jail.

13. Later, the officer reviewed video from the casino parking lot where respondent had been arrested. The video showed respondent drove his vehicle into the casino parking lot.

MARCH 2021 PUBLIC INTOXICATION INCIDENTS

14. On March 10, 2021, at 6:30 p.m., an officer from the Crescent Police Department was dispatched to a restaurant to investigate a report of an intoxicated person in the parking lot. When the officer arrived, he observed a person, later identified a respondent, cross the street. Respondent was "staggering and having difficulty keeping his balance." The officer spoke to respondent. He noticed respondent had "bloodshot and watery eyes and his speech was very thick and slurred." Respondent almost fell several times. The officer asked respondent how much alcohol he drank. Respondent stated: "too much."

Based on the officer's observations, he determined respondent was unable to care for his safety or the safety of others. He detained respondent for public intoxication in violation of Penal Code section 647, subdivision (f). Respondent was handcuffed and transported to jail.

15. On March 12, 2021, at 2:50 a.m. a deputy from Del Norte County Sheriff's Office was dispatched to the Sutter Coast Hospital (hospital) in response to a report of a patient causing a disturbance. The patient was later identified as respondent. When the deputy arrived at the hospital, he learned respondent was admitted to the Emergency Room (ER) early in the evening due to his alcohol intoxication. Respondent was medically cleared but he was so intoxicated he could not be released under his

own care. Respondent repeatedly left his ER room and attempted to go into other patient's rooms inside of the ER. When asked by hospital staff to return to his room, respondent became aggressive and began shouting and posturing aggressively.

The deputy spoke to respondent and observed respondent's speech was slurred, his eyes were red and watery, and he smelled like alcohol. Respondent was also unsteady and appeared to sway when he stood on his feet. Based on the deputy's observations, he determined respondent was unable to care for his safety or the safety of others. He detained respondent for public intoxication in violation of Penal Code section 647, subdivision (f). Respondent was handcuffed and transported to jail.

16. On March 25, 2021, a deputy from the Del Norte County Sheriff's Office was dispatched to the hospital two times in response to respondent causing a disturbance. The first response was around 5:00 p.m. Respondent was heavily intoxicated and was unable to stand or walk. He was mumbling and had slurred speech. Respondent did not know the day or time. Due to his level of intoxication, the deputy was unable to transport respondent to jail for public intoxication. The deputy advised hospital staff and security to contact the Sherriff's office when respondent was ready to be released or if he caused another disturbance.

A deputy was dispatched to the hospital again at 9:55 p.m. Hospital staff reported respondent was not cooperating with them and he was medically cleared to leave. Staff requested the deputy remove respondent from the hospital. The deputy observed respondent was able to stand and walk but he was "highly unbalanced." Respondent did not have anyone to transport him home. Based on the deputy's observations, he determined respondent was unable to care for his safety or the safety of others. He detained respondent for public intoxication in violation of Penal Code section 647, subdivision (f). Respondent was handcuffed and transported to jail.

June 2, 2021 Board Interview

17. On June 2, 2021, Chris Jensen, Special Investigator for the Board interviewed respondent concerning his September 18, 2020 arrest and subsequent conviction for DUI. During that interview, respondent also disclosed his January 4, 2021 DUI arrest, but denied driving under the influence of alcohol. He did not disclose his three arrests in March 2021 for public intoxication. Rather, respondent stated that he stopped drinking alcohol on January 10, 2021, and thereafter attended an alcohol rehabilitation program. Respondent explained that he did not drink alcohol often, but when he did, he drank "a lot," which is why he decided to attend a rehabilitation program.

Events on December 16, 2021

18. On November 8, 2021, respondent began working as a physician for Southern Trinity Health Services (STHS), at a medical clinic in Scotia, California. Fred Wakil, M.D., was the Medical Director at STHS. Dr. Wakil prepared a declaration and testified at hearing. Dr. Wakil worked as an ER physician for 35 years prior to serving as the medical director for STHS.

Respondent was hired to work at STHS for a three-month probationary period. He worked under the supervision of Dr. Wakil, who monitored respondent's work performance and attendance. Dr. Wakil explained that respondent's attendance was poor. On multiple occasions he failed to report for work because of various illnesses and alleged exposure to the corona virus. Additionally, when respondent did treat patients, he was not timely charting. Dr. Wakil was working with respondent to address those issues.

19. On December 16, 2021, respondent reported for work in the morning. Dr. Wakil, Jasmine Victa, a Registered Nurse and Nursing Director for STHS, and Laurie Frye, Certified Clinical Medical Assistant for STHS, were present that day also. Ms. Frye prepared a declaration concerning the events of that day. Ms. Victa prepared a declaration and testified at hearing. Respondent had a full day of patients scheduled. Ms. Victa interacted with respondent in the morning and did not observe anything unusual. Dr. Wakil spoke to respondent at 10:00 a.m. Respondent was "alert" and had "good eye contact."

20. At approximately 3:00 p.m., Ms. Frye went into respondent's office to provide him with a report about a patient waiting to see him for steroid injections in his shoulders. Respondent was "seated at his desk, slouched over, with his head resting on the desk." Respondent did "not raise his head or make eye contact" with Ms. Frye when she provided him the report. He responded to her stating "'Yay, me' in a slurred manner." He then got up from his desk and walked to the laboratory room to prepare the steroid injection. Respondent appeared to be "shaky" as he walked. Ms. Frye observed respondent hold a syringe in front of him and struggle to fill the syringe with the steroid medication. He appeared "physically unsteady, wobbling, and his hands were shaking." Ms. Frye saw respondent place at "a large bore needle on a syringe, a needle that appeared too large for the procedure." Respondent then "attempted to withdraw the steroid liquid from a vial, but had managed to get the medication into the syringe cap instead of the syringe itself."

21. Ms. Frye immediately informed her supervisor, Ms. Victa, what she observed. Ms. Victa walked to the laboratory room. She saw respondent "holding a syringe and attempting to draw up a steroid medication." Respondent "was leaning to the side, swaying, and his speech was slurred." Ms. Victa asked respondent if he was

"okay, and if he had been drinking." Respondent stated he was "fine" and "denied drinking." Respondent's speech was slurred. Ms. Victa believed respondent was "under the influence of something and could not safely treat patients." She told respondent that he needed to talk to Dr. Wakil. Ms. Victa asked Ms. Frye to retrieve Dr. Wakil.

22. Ms. Frye informed Dr. Wakil of the concerns about respondent's behavior. Dr. Wakil walked to respondent's office. Dr. Wakil was trained as an ER physician to identify signs and symptoms of being under the influence of drugs and/or alcohol. Dr. Wakil noticed respondent "slurred his words, his movement was not purposeful, and his eyes were bloodshot." Dr. Wakil asked respondent "if he had a substance abuse issue." Respondent denied having any issue and stated he did not need help. Respondent stated he was tired. Dr. Wakil had a five-to-ten-minute exchange with respondent. Dr. Wakil determined based on his observations that respondent was unsafe to practice and may be under the influence of drugs and/or alcohol.

Dr. Wakil asked respondent to submit to an oral drug and alcohol test. Respondent agreed. Respondent was given a swab to place between his gum and lip for five minutes to capture saliva. Instead of leaving the swab in place, respondent moved it around his mouth and chewed on it. Dr. Wakil asked respondent not to chew on the swab. Respondent stated that he was not, while he was chewing on the swab. As a result, the oral test could not be completed.

Respondent was then given a urine test to complete. He was provided a cup to capture his urine. Dr. Wakil observed respondent "nearly f[all] over as he stood up and required assistance to get to the restroom." Respondent "was slurring his words and having difficulty forming thoughts." Respondent nearly fell two times while walking to the bathroom. Dr. Wakil explained that respondent "appeared confused and asked

what was happening." When respondent was walking into the bathroom, he asked Dr. Wakil "why do you care?" Dr. Wakil told respondent: "I see a man in trouble." Respondent went into a bathroom to complete the test. When respondent came out the bathroom, there was urine on the floor. The cup containing the urine specimen appeared to be watered down.

23. Dr. Wakil determined respondent needed to be driven home. Ms. Victa had previously provided respondent car rides to and from work because he did not have a driver's license. Ms. Victa agreed to take respondent home. Respondent needed assistance leaving the medical clinic. Staff stood on either side of respondent to help him downstairs. Respondent could not stay upright. It took ten minutes to get respondent down six stairs. He also needed assistance getting into the car was well, which Dr. Wakil described as a "herculean effort."

Dr. Wakil drove his vehicle behind Ms. Victa's vehicle to respondent's home. Dr. Wakil and Ms. Victa helped respondent out of her vehicle. Respondent fell when they attempted to get him up three steps into his home. When respondent opened the front door, Dr. Wakil saw empty vodka bottles on the table. Respondent entered his home and shut the door.

24. Dr. Wakil returned to the medical clinic and searched respondent's office. He found a case of hand sanitizer that contained a concentration of ethanol equivalent to 124 proof alcoholic beverages. One bottle was half empty. No bottles of alcohol were found in his office.

25. Respondent's urine was tested for Ethyl Glucuronide (EtG), a metabolite of ethyl alcohol. The test results of respondent's urine sample showed an EtG level of 10,000. The laboratory "cut off for incidental alcohol exposure, or light drinking in the

days before the test, is 500." Dr. Wakil opined that an EtG result of 10,000 is "very, very high."

EVENTS AFTER DECEMBER 16, 2021

26. For several weeks after December 16, 2021, respondent sent Dr. Wakil, Ms. Victa, and Traci Waid, Chief Operations Officer for STHS, messages asking to return to work. Ms. Waid prepared a declaration explaining that she informed respondent on December 20, 2021, that he was suspended from STHS without pay. Over several weeks, respondent continued to contact Ms. Waid and Dr. Wakil asking to return to work. His requests were denied.

27. The decision was made to terminate respondent from his position. Ms. Waid attempted to meet with respondent on several occasions but he refused. On February 7, 2022, Ms. Waid met with respondent at his apartment. Ms. Waid observed that respondent was "disheveled, and there was a strong odor of alcohol emanating from his apartment." She informed respondent that he was terminated from his job because he worked while under the influence of alcohol. Almost immediately after this meeting, respondent repeatedly sent Ms. Waid messages claiming his termination was illegal. The decision was made to allow respondent to resign from his position.

28. On February 1, 2022, Ms. Waid filed a complaint with the Board. Ms. Waid explained respondent appeared to be impaired while at work.

Board Investigation

29. On February 28, 2022, Douglas Becker, an Investigator with the Division of Investigation, Health Quality Investigation Unit, was assigned to investigate the STHS complaint. Mr. Becker prepared an investigation report dated March 28, 2022. As

part of his investigation, Mr. Becker interviewed Ms. Waid, Dr. Wakil, and Ms. Victa. Their statements were consistent with their declarations and testimony.

30. Mr. Becker interviewed respondent on March 23, 2022. Respondent denied working while impaired or hungover. Respondent stated he stopped drinking after his September 2020 DUI arrest. He relapsed when his "wife would not let him see his child on Christmas" in 2020. He stopped drinking again in January 2021 and went to a rehabilitation program. Respondent admitted to drinking again on December 11, 2021 "when he watched a college football game with his friend."

Respondent contended that "Dr. Wakil and other staff at STHS panicked, which is why he believes a complaint was filed against him." Respondent stated that "STHS should be investigated for running a poor clinic." Examples respondent offered in support of this claim was that there are "no shred bins and the medications are not locked up." He also claimed that the clinic did not have "proper syringes, which is why he could not load the steroid correctly on December 16, 2021."

Respondent's Testimony

31. Respondent admitted he was arrested in September 2020 for DUI and subsequently convicted in January 2021. Respondent explained that his October 2020 arrest for violating a restraining order occurred because he attempted to retrieve his belongings from his home, after he was served with the order. He had a gun that he took from his home to sell, but he was arrested.

32. Respondent denied he was driving under the influence of alcohol on January 4, 2021. Respondent explained he was staying with his best friend. He decided to go to a hotel to get drunk. He went into the hotel and drank 325 milliliters of vodka. He came out of the hotel and an officer was waiting for him and arrested him.

Respondent admitted to driving his vehicle without a license. However, he contends he will be able to "fight" the DUI.

33. Respondent also disputes he was drunk in public in March 2021. Respondent explained he has a tremor that causes his hand to shake. Respondent did not explain the cause of his behavior at the hospital on March 12 and 25, 2021.

34. Respondent also disputes he was intoxicated at work on December 16, 2021. Respondent contended that he was "fine all day." There was "nothing wrong with him at all that day" except that he was fatigued. Respondent takes medication for insomnia from which he has suffered since he was 10 years old. Respondent also stated that he would never consume hand sanitizer. To do so would be "insane."

35. Respondent explained that he is a recovering alcoholic. He contended he has not drunk alcohol since March 2021. He attends Alcoholics Anonymous (AA) meetings every day and works with a sponsor.

36. Respondent would like to return to work. He has three children to support. Respondent explained that he cannot work without his medical license. He contended he is an excellent doctor and performed in the top one percent in his physician examinations. Respondent was successful in running a medical clinic and had positive patient reviews. He contended that he is "not a danger to anyone."

Analysis

37. Complainant established by clear and convincing evidence that respondent is unsafe to practice medicine. January 29, 2021, he was convicted of DUI, with a blood alcohol content of over three times the legal limit. His four-year-old child was in the vehicle. Respondent's substance abuse and erratic behavior has continued

since his first arrest in September 2020. Respondent admittedly violated a restraining order. He had to be forcibly removed from his home. In January 2021, respondent was arrested again for DUI. Respondent admitted to going to a hotel for the purpose of getting drunk.

In March 2021, after respondent was ordered by the court not to consume alcohol, he was arrested three times for public intoxication. Two of the incidents in the hospital demonstrated respondent engaged in aggressive behavior.

Respondent's dangerous conduct culminated on December 16, 2021, while at work. Respondent was observed by three STHS employees during that day. Dr. Wakil and Ms. Victa's testimony about what occurred that day was extremely credible. (See Evid. Code §780). Both witnesses demonstrated genuine concern and compassion towards respondent. They described respondent as behaving normally in the morning, and not being able to stand or speak coherently by the afternoon. Respondent was preparing to treat a patient when he was observed swaying and slurring his speech. Respondent was unable to complete an oral saliva test. He almost fell several times on his way to the bathroom to complete a urine test.

Respondent needed help to walk downstairs to Ms. Victa's vehicle, which Dr. Wakil notably described as a "herculean effort." Respondent needed help to get in the car, out of the car, and into his home. The collective evidence from this day demonstrates respondent was impaired at work.

38. Respondent took no responsibility for his conduct. He repeatedly denied being under the influence of alcohol. He was repeatedly dishonest with law enforcement and the Board's investigators. Respondent minimized his alcohol abuse, despite the overwhelming evidence of his lengthy history of abuse and erratic conduct.

When all the evidence is considered, revocation of his license is necessary to protect the public health, safety, and welfare.

Costs

39. Pursuant to Business and Professions Code section 125.3, complainant requested that respondent be ordered to reimburse the Board for the reasonable costs of the investigation and adjudication of the case. Complainant submitted a Declaration of the Deputy Attorney General with an attached computer printout that lists the amounts charged by the Attorney General's Office by time, date, and task. The Declaration and computer printout show that the Attorney General's Office billed the Board $16,552.50 for prosecuting the case. Complainant also submitted a certification of investigation costs totaling $2,607. These costs, totaling $19,159.50 are reasonable in light of the allegations in this matter.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proving each of the grounds for discipline alleged in the First Amended Accusation and must do so by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Applicable Law

2. Business and Professions Code section 2227 provides in pertinent part that a licensee who has been found "guilty" of violations of the Medical Practices Act, shall:

> (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.

3. Business and Professions Code section 2234, requires the Board to "take action against any licensee who is charged with unprofessional conduct." Unprofessional conduct includes but is not limited to: "Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter" and "[t]he commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon." (Bus & Prof. Code, § 2234, subds. (a) and (e).)

4. Business and Professions Code section 2236, subdivision (a), provides:

> 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.

5. Business and Professions Code section 2239, subdivision (a) provides:

> 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.

6. Business and Professions Code section 2280 provides that "[n]o 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." A violation of this code section "constitutes unprofessional conduct and is a misdemeanor."

Cause for Discipline

7. Cause exists for discipline under Business and Professions Code sections 2234 and 2239, by reason of the matters set forth in Factual Findings 5 and 6. Respondent's criminal conviction for driving under the influence of alcohol with a blood alcohol level more than three times the legal limit, and with his child in the car, is substantially related to the qualifications, functions and duties of a physician and surgeon.

8. Cause exists for discipline under Business and Professions Code sections 2234 and 2239, subdivision (a), by reason of the matters set forth in the Factual Findings as a whole. Respondent used alcoholic beverages to the extent, or in such manner as to be dangerous or injurious to himself and to the public.

9. Cause exists for discipline under Business and Professions Code sections 2234 and 2280 by reason of the matters set forth in Factual Findings 18 through 25. Respondent was at work and attempted to treat patients when he was under the influence of alcohol.

10. Cause exists for discipline under Business and Professions Code sections 2234 and 2234, subdivision (e), by reason of the matters set forth in the Factual Findings as a whole. Respondent engaged in numerous dishonest, corrupt, and unprofessional acts related to his alcohol abuse.

11. As set forth in the Factual Findings as a whole, when all the evidence is considered, to protect the health, safety, and welfare of the public, respondent's license must be revoked.

Cost Recovery

12. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

13. Here, the scope of the investigation was appropriate to the alleged misconduct. Respondent was not successful at hearing in having charges dismissed or reduced. He had no colorable challenge to license revocation. However, respondent's income will likely be affected as a result of the revocation of his license. Although respondent did not establish a basis to reduce or eliminate the costs in this matter, in the event respondent's license is reinstated, he should be permitted to pay the costs imposed in installments.

ORDER

1. Physician's and Surgeon's Certificate Number C 150121 issued to Matthew John Butts, is REVOKED.

2. In the event respondent's license is reinstated, respondent shall pay the Board or its designee $19,159.50 in an installment plan approved by the Board or its designee.

DATE: July 5, 2022

Marcie Larson
Marcie Larson (Jul 5, 2022 16:37 PDT)

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 Accusation Against: **MATTHEW JOHN BUTTS, M.D.** **310 Skookum Ln** **Crescent City CA 95531-5958** **Physician's and Surgeon's Certificate No. C 150121,** Respondent.	Case No. 800-2020-071032 **FIRST AMENDED ACCUSATION**

Complainant Alleges:

PARTIES

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

2. On June 28, 2017, the Board issued Physician's and Surgeon's Certificate Number C 150121 to Matthew John Butts, M.D. (Respondent). The Physician's and Surgeon's Certificate is

renewed and current with an expiration date of April 30, 2023. However, the certificate is in suspended status by virtue of an Interim Suspension Order issued on April 20, 2022.

JURISDICTION

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

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

5. Section 2234 of the Code provides that the Board shall take action against any licensee who is charged with unprofessional conduct.

6. Section 2280 of the Code provides that it is unprofessional conduct for a licensee to practice medicine while under the influence of alcohol to such an extent as to impair his or her ability to safely practice.

7. Section 2239 of the Code provides that it is unprofessional conduct for a licensee to use alcohol, dangerous drugs or controlled substances 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.

8. Section 2236 of the Code provides, in pertinent part, that the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct.

9. Section 2228.1 of the Code provides, in pertinent part, that the Board shall require a licensee who is disciplined based on drug or alcohol abuse to the extent that such use impairs the ability of the licensee to practice safely to disclose to his or her patients information regarding his or her probation status. The licensee is required to disclose: Probation status, the length of the probation, the probation end date, all practice restrictions placed on the license by the Board, the

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Board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the Board's Internet Web site.

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL ALLEGATIONS

11. On September 18, 2020, Respondent was arrested for driving under the influence of alcohol. His blood alcohol content measured 0.296%. Respondent's 4-year-old child was in the vehicle. On January 29, 2021, Respondent pled guilty to driving under the influence with a blood alcohol level of .08% or more, with enhancements for the very high blood alcohol level and the presence of a child in the car.

12. In October 2020, Respondent was arrested for violating a domestic violence restraining order and for resisting a public officer.

13. On January 4, 2021, Respondent was again arrested for driving under the influence of alcohol after another motorist reported erratic and unsafe driving. The arresting officer noted signs of intoxication, and found a nearly empty bottle of vodka in Respondent's vehicle. Respondent denied he was driving, but video footage established Respondent had, in fact, been driving. Respondent falsely stated that he had COVID-19, an assertion that delayed officers and medical personnel in discharging their duties. He was driving on a suspended license. A breathalyzer test yielded results of .21 and .20. Criminal charges for driving under the influence, driving on a suspended license, giving false information to and obstructing a peace officer, were filed on March 5, 2021, and are currently pending.

14. On March 10, 2021, police officers responding to a dispatch regarding an intoxicated person in the parking lot of a fast food restaurant encountered Respondent. Officers described

Respondent as staggering and having difficulty maintaining his balance, and demonstrating obvious signs of intoxication. He was deemed unable to care for himself, detained for public intoxication, and subsequently released. On March 12, 2021, law enforcement officers were dispatched to a hospital in response to a disturbance complaint. Respondent had been admitted to the emergency room due to alcohol intoxication, had been medically cleared, but was too intoxicated to be safely released under his own care. He was aggressive with hospital staff and disruptive to the emergency room. Respondent was taken into custody for public intoxication, and later released. On March 25, 2021, police were again called to the hospital, because Respondent was again heavily intoxicated and disruptive. He was once more detained, then released when he was sufficiently sober.

15. On December 16, 2021, Respondent reported to the clinic where he worked as a primary care physician. He appeared to be fine in the morning, but later in the day, clinic staff noticed Respondent was under the influence. He slurred his words, had difficulty walking and remaining upright, was unfocused and confused, had difficulty forming thoughts, his hands were shaking and he had bloodshot eyes. Clinic staff observed Respondent attempting unsuccessfully to draw medication into a syringe, to be injected into a waiting patient. Respondent denied alcohol use. He agreed to submit to drug testing, but refused to complete the tests correctly. He chewed on an oral swab and urinated on the floor of the bathroom. Respondent was removed from duty and driven home by clinic staff. The biological fluid sample that was obtained showed an Ethyl Glucuronide (EtG) level of 10,000.

16. During a June 2, 2021, interview with the Board's investigators, Respondent consistently minimized his use of alcohol, and stated that he had not consumed alcohol since January 2021. Respondent spoke with the Board's investigator on March 23, 2022, and denied that he was impaired or under the influence on December 16, 2021; he reiterated his denial during the course of the April 2022 Interim Suspension Order proceeding. Respondent falsely informed law enforcement officers on January 4, 2021, that he was positive for COVID-19, and falsely denied he was driving his vehicle prior to his arrest.

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FIRST CAUSE FOR DISCIPLINE

(Substantially Related Conviction)

17. Respondent's criminal conviction for driving under the influence of alcohol with a blood alcohol level more than three times the legal limit, and with his child in the car, is substantially related to the qualifications, functions and duties of a physician and surgeon, and constitutes cause for discipline for unprofessional conduct pursuant to sections 2234 and/or 2236 of the Code.

SECOND CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

18. Respondent's Certificate is subject to disciplinary action by the Board for unprofessional conduct pursuant to sections 2234 and/or 2239 of the Code, in that he has repeatedly used alcohol to such an extent or in such a manner as to be dangerous to himself, others and the public.

THIRD CAUSE FOR DISCIPLINE

(Practice While Under the Influence or Impaired)

19. Respondent's Certificate is subject to disciplinary action by the Board for unprofessional conduct pursuant to sections 2234 and/or 2280 in that he was at work and attempted to treat patients when he was under the influence of alcohol.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Dishonest or Corrupt Acts)

20. Respondent's Certificate is subject to disciplinary action pursuant to sections 2234 and/or 2234(e) in that he engaged in repeated and consistent dishonest and corrupt acts and acts of unprofessional conduct in dealing with his alcohol abuse. Respondent continued to consume alcohol even after he was arrested and convicted for driving drunk with his small child in the car; he made numerous misrepresentations to law enforcement officers and medical personnel and impeded their ability to fulfill their official duties; he misrepresented his alcohol use to the Board's investigators and during the course of the Interim Suspension Order proceeding; and, he was impaired while at work and treating patients.

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 C 150121, issued to Matthew John Butts, M.D.;

2. Revoking, suspending or denying approval of Matthew John Butts, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Matthew John Butts, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

4. Ordering Matthew John Butts, M.D., if placed on probation, to provide patient notification in accordance with Business and Professions Code section 2228.1; and

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

DATED: MAY 13 2022

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