

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

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

Matthew Alan Lublin, M.D.

**Physician's and Surgeon's
Certificate No. A 82116**

Respondent.

Case No.: 800-2019-054671

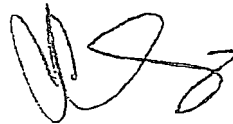
DECISION

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 February 17, 2023.

IT IS SO ORDERED: January 20, 2023.

MEDICAL BOARD OF CALIFORNIA



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

1 ROB BONTA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH
Deputy Attorney General
4 State Bar No. 173955
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6538
6 Facsimile: (916) 731-2117
Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

13 MATTHEW ALAN LUBLIN, M.D.

14
15 2001 Santa Monica Blvd # 1170W
Santa Monica, CA 90404

16 Physician's and Surgeon's Certificate A 82116,
17
18 Respondent.

Case No. 800-2019-054671

OAH No. 2022040493

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

21 **PARTIES**

22 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
23 California (Board). He brought this action solely in his official capacity and is represented in this
24 matter by Rob Bonta, Attorney General of the State of California, by Vladimir Shalkevich,
25 Deputy Attorney General.

26 2. Respondent Matthew Alan Lublin, M.D. (Respondent) is represented in this
27 proceeding by attorney Gregory Abrams, whose address is: 920 B 15th Avenue
28 Seattle, Washington 98122.

3. On February 28, 2003, the Board issued Physician's and Surgeon's Certificate No. A 82116 to Matthew Alan Lublin, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2019-054671, and will expire on February 28, 2023, unless renewed.

JURISDICTION

4. The First Amended Accusation in Case No. 800-2019-054671 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on August 25, 2022. Respondent timely filed his Notice of Defense contesting the First Amended Accusation.

5. A copy of First Amended Accusation No. 800-2019-054671 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2019-054671. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

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1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in First Amended
3 Accusation No. 800-2019-054671, if proven at a hearing, constitute cause for imposing discipline
4 upon his Physician's and Surgeon's Certificate.

5 10. Respondent does not contest that, at an administrative hearing, complainant could
6 establish a *prima facie* case with respect to the charges and allegations in First Amended
7 Accusation No. 800-2019-054671, a copy of which is attached hereto as Exhibit A. Respondent
8 hereby gives up his right to contest those charges, and that he has thereby subjected his
9 Physician's and Surgeon's Certificate, No. A 82116 to disciplinary action.

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

13 CONTINGENCY

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

24 13. Respondent agrees that if he ever petitions for early termination or modification of
25 probation, or if a First Amended Accusation and/or Petition to Revoke Probation is filed against
26 him before the Board, all of the charges and allegations contained in First Amended Accusation
27 No. 800-2019-054671 shall be deemed true, correct and fully admitted by respondent for
28

1 purposes of any such proceeding or any other licensing proceeding involving Respondent in the
2 State of California.

3 14. 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 15. 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 82116
11 issued to Respondent Matthew Alan Lublin, M.D. is revoked. However, the revocation is stayed
12 and Respondent is placed on probation for three (3) years on the following terms and conditions:

13 1. **CLINICAL COMPETENCE ASSESSMENT PROGRAM.** Within 60 calendar days
14 of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment
15 program approved in advance by the Board or its designee. Respondent shall successfully
16 complete the program not later than six (6) months after Respondent's initial enrollment unless
17 the Board or its designee agrees in writing to an extension of that time.

18 The program shall consist of a comprehensive assessment of Respondent's physical and
19 mental health and the six general domains of clinical competence as defined by the Accreditation
20 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to
21 Respondent's current or intended area of practice. The program shall take into account data
22 obtained from the pre-assessment, self-report forms and interview, and the Decision(s), First
23 Amended Accusation(s), and any other information that the Board or its designee deems relevant.
24 The program shall require Respondent's on-site participation for a minimum of three (3) and no
25 more than five (5) days as determined by the program for the assessment and clinical education
26 evaluation. Respondent shall pay all expenses associated with the clinical competence
27 assessment program.

28 At the end of the evaluation, the program will submit a report to the Board or its designee

1 which unequivocally states whether the Respondent has demonstrated the ability to practice
2 safely and independently. Based on Respondent's performance on the clinical competence
3 assessment, the program will advise the Board or its designee of its recommendation(s) for the
4 scope and length of any additional educational or clinical training, evaluation or treatment for any
5 medical condition or psychological condition, or anything else affecting Respondent's practice of
6 medicine. Respondent shall comply with the program's recommendations.

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

9 If Respondent fails to enroll, participate in, or successfully complete the clinical
10 competence assessment program within the designated time period, Respondent shall receive a
11 notification from the Board or its designee to cease the practice of medicine within three (3)
12 calendar days after being so notified. The Respondent shall not resume the practice of medicine
13 until enrollment or participation in the outstanding portions of the clinical competence assessment
14 program have been completed. If the Respondent did not successfully complete the clinical
15 competence assessment program, the Respondent shall not resume the practice of medicine until a
16 final decision has been rendered on Accusation and/or a Petition to Revoke Probation based on
17 failure to comply with this condition. The cessation of practice shall not apply to the reduction of
18 the probationary time period.]

19 2. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
20 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
21 monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose
22 licenses are valid and in good standing, and who are preferably American Board of Medical
23 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
24 relationship with Respondent, or other relationship that could reasonably be expected to
25 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
26 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
27 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

28 The Board or its designee shall provide the approved monitor with copies of the Decision(s)

1 and First Amended Accusation(s), and a proposed monitoring plan. Within 15 calendar days of
2 receipt of the Decision(s), First Amended Accusation(s), and proposed monitoring plan, the
3 monitor shall submit a signed statement that the monitor has read the Decision(s) and First
4 Amended Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the
5 proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the
6 monitor shall submit a revised monitoring plan with the signed statement for approval by the
7 Board or its designee.

8 Within 60 calendar days of the effective date of this Decision, and continuing throughout
9 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
10 make all records available for immediate inspection and copying on the premises by the monitor
11 at all times during business hours and shall retain the records for the entire term of probation.

12 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
13 date of this Decision, Respondent shall receive a notification from the Board or its designee to
14 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
15 shall cease the practice of medicine until a monitor is approved to provide monitoring
16 responsibility.

17 The monitor(s) shall submit a quarterly written report to the Board or its designee which
18 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
19 are within the standards of practice of medicine and whether Respondent is practicing medicine
20 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure
21 that the monitor submits the quarterly written reports to the Board or its designee within 10
22 calendar days after the end of the preceding quarter.

23 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
24 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
25 name and qualifications of a replacement monitor who will be assuming that responsibility within
26 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
27 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
28 notification from the Board or its designee to cease the practice of medicine within three (3)

1 calendar days after being so notified. Respondent shall cease the practice of medicine until a
2 replacement monitor is approved and assumes monitoring responsibility.

3 In lieu of a monitor, Respondent may participate in a professional enhancement program
4 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
5 review, semi-annual practice assessment, and semi-annual review of professional growth and
6 education. Respondent shall participate in the professional enhancement program at Respondent's
7 expense during the term of probation.

8 3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective
9 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in
10 advance by the Board or its designee. Respondent shall provide the approved course provider
11 with any information and documents that the approved course provider may deem pertinent.
12 Respondent shall participate in and successfully complete the classroom component of the course
13 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
14 complete any other component of the course within one (1) year of enrollment. The medical
15 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing
16 Medical Education (CME) requirements for renewal of licensure.

17 A medical record keeping course taken after the acts that gave rise to the charges in the
18 First Amended Accusation, but prior to the effective date of the Decision may, in the sole
19 discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the
20 course would have been approved by the Board or its designee had the course been taken after the
21 effective date of this Decision.

22 Respondent shall submit a certification of successful completion to the Board or its
23 designee not later than 15 calendar days after successfully completing the course, or not later than
24 15 calendar days after the effective date of the Decision, whichever is later.

25 4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
26 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
27 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
28 Respondent shall participate in and successfully complete that program. Respondent shall

1 provide any information and documents that the program may deem pertinent. Respondent shall
2 successfully complete the classroom component of the program not later than six (6) months after
3 Respondent's initial enrollment, and the longitudinal component of the program not later than the
4 time specified by the program, but no later than one (1) year after attending the classroom
5 component. The professionalism program shall be at Respondent's expense and shall be in
6 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

7 A professionalism program taken after the acts that gave rise to the charges in the First
8 Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of
9 the Board or its designee, be accepted towards the fulfillment of this condition if the program
10 would have been approved by the Board or its designee had the program been taken after the
11 effective date of this Decision.

12 Respondent shall submit a certification of successful completion to the Board or its
13 designee not later than 15 calendar days after successfully completing the program or not later
14 than 15 calendar days after the effective date of the Decision, whichever is later.

15 5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
16 Respondent shall provide a true copy of this Decision and First Amended Accusation to the Chief
17 of Staff or the Chief Executive Officer at every hospital where privileges or membership are
18 extended to Respondent, at any other facility where Respondent engages in the practice of
19 medicine, including all physician and locum tenens registries or other similar agencies, and to the
20 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage
21 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within
22 15 calendar days.

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

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

27 7. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
28 governing the practice of medicine in California and remain in full compliance with any court

1 ordered criminal probation, payments, and other orders.

2 8. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
3 ordered to reimburse the Board its costs of investigation and enforcement, including, but not
4 limited to, expert review, legal reviews, investigation(s), and subpoena enforcement, as
5 applicable, in the amount of \$9,075.00 (nine thousand and seventy-five dollars). Costs shall be
6 payable to the Medical Board of California. Failure to pay such costs shall be considered a
7 violation of probation.

8 Payment must be made in full within 30 calendar days of the effective date of the Order, or
9 by a payment plan approved by the Medical Board of California. Any and all requests for a
10 payment plan shall be submitted in writing by respondent to the Board. Failure to comply with
11 the payment plan shall be considered a violation of probation.

12 The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to
13 repay investigation and enforcement costs.

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

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

19 10. GENERAL PROBATION REQUIREMENTS.

20 Compliance with Probation Unit

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

22 Address Changes

23 Respondent shall, at all times, keep the Board informed of Respondent's business and
24 residence addresses, email address (if available), and telephone number. Changes of such
25 addresses shall be immediately communicated in writing to the Board or its designee. Under no
26 circumstances shall a post office box serve as an address of record, except as allowed by Business
27 and Professions Code section 2021, subdivision (b).
28

1 Place of Practice

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

5 License Renewal

6 Respondent shall maintain a current and renewed California physician's and surgeon's
7 license.

8 Travel or Residence Outside California

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

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

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

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

1 on probation with the medical licensing authority of that state or jurisdiction shall not be
2 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
3 period of non-practice.

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

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

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

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

16 13. COMPLETION OF PROBATION. Respondent shall comply with all financial
17 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
18 completion of probation. This term does not include cost recovery, which is due within 30
19 calendar days of the effective date of the Order, or by a payment plan approved by the Medical
20 Board and timely satisfied. Upon successful completion of probation, Respondent's certificate
21 shall be fully restored.

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

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

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

16 17. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
17 a new license or certification, or petition for reinstatement of a license by any other health care
18 licensing action agency in the State of California, all of the charges and allegations contained in
19 First Amended Accusation No. 800-2019-054671 shall be deemed to be true, correct, and
20 admitted by Respondent for the purpose of any Statement of Issues or any other proceeding
21 seeking to deny or restrict license.

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1 ACCEPTANCE

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

7
8 DATED: 8/28/22 

9 MATTHEW ALAN LUBLIN, M.D.
Respondent

10 I have read and fully discussed with Respondent Matthew Alan Lublin, M.D. the terms and
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
12 I approve its form and content.

13 DATED: 8/28/22 

14 GREGORY ABRAMS
Attorney for Respondent

15
16 ENDORSEMENT

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

19 DATED: August 29, 2022

20 Respectfully submitted,

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

23 
24 VLADIMIR SHALKEVICH
Deputy Attorney General
25 Attorneys for Complainant

26
27 LA2021601748
65378979.docx

Exhibit A

First Amended Accusation No. 800-2019-054671

1 ROB BONTA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH
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Attorneys for Complainant
7

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

12 In the Matter of the First Amended Accusation
Against:

Case No. 800-2019-054671

FIRST AMENDED ACCUSATION

13 **MATTHEW ALAN LUBLIN, M.D.**
14 2001 Santa Monica Blvd., # 1170W
Santa Monica, CA 90404

15 Physician's and Surgeon's Certificate
16 No. A 82116,

17 Respondent.

18 **PARTIES**

- 19 1. William Prasifka (Complainant) brings this First Amended Accusation solely in his
20 official capacity as the Executive Director of the Medical Board of California (Board).
21 2. On February 28, 2003, the Board issued Physician's and Surgeon's Certificate
22 Number A 82116 to Matthew Alan Lublin, M.D. (Respondent). That license was in full force and
23 effect at all times relevant to the charges brought herein and will expire on February 28, 2023,
24 unless renewed.

25 //

26 //

27 //

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 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

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

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

(d) Incompetence.

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

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

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

6. Section 2266 of the Code states: The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

COST RECOVERY

7. Effective on January 1, 2022, section 125.3 of the Code provides:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may 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.

(b) In the case of a disciplined licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may

1 reduce or eliminate the cost award, or remand to the administrative law judge if the
2 proposed decision fails to make a finding on costs requested pursuant to subdivision
(a).

3 (e) If an order for recovery of costs is made and timely payment is not made as
4 directed in the board's decision, the board may enforce the order for repayment in any
5 appropriate court. This right of enforcement shall be in addition to any other rights
the board may have as to any licensee to pay costs.

6 (f) In any action for recovery of costs, proof of the board's decision shall be
7 conclusive proof of the validity of the order of payment and the terms for payment.

8 (g) (1) Except as provided in paragraph (2), the board shall not renew or
9 reinstate the license of any licensee who has failed to pay all of the costs ordered
under this section.

10 (2) Notwithstanding paragraph (1), the board may, in its discretion,
11 conditionally renew or reinstate for a maximum of one year the license of any
12 licensee who demonstrates financial hardship and who enters into a formal agreement
with the board to reimburse the board within that one-year period for the unpaid
costs.

13 (h) All costs recovered under this section shall be considered a reimbursement for costs
14 incurred and shall be deposited in the fund of the board recovering the costs
to be available upon appropriation by the Legislature.

15 (i) Nothing in this section shall preclude a board from including the recovery of
16 the costs of investigation and enforcement of a case in any stipulated settlement.

17 (j) This section does not apply to any board if a specific statutory provision in
18 that board's licensing act provides for recovery of costs in an administrative
disciplinary proceeding.¹

19 FACTUAL ALLEGATIONS

20 8. On or about April 8, 2019, the Board received a Health Facility/Peer Review report
21 from St. John's Medical Center, pursuant to Business and Professions Code section 805 (805
22 Report), informing the Board that Respondent's staff privileges were restricted, effective on or
23 about February 27, 2019. Respondent was required to have a proctor assess a pre-operative
24 evaluation of the patient and agree that the planned procedure was appropriate, to have an
25 assistant surgeon for all surgeries, and must discuss with a qualified surgeon the patient's post-

26
27 ¹ Effective January 1, 2022, subdivision (k) of Section 125.3, which exempted physicians
28 and surgeons from seeking recovery of the costs of investigation and prosecution by the
Board, was repealed.

1 operative care on a daily basis until the patient is discharged or until Respondent's involvement
2 with the patient's surgical issue ends.

3 9. The Board investigated the circumstances surrounding the 805 Report and discovered
4 the following:

5 10. **Patient 1,**² a 40-year-old male, who had a long history of alcohol abuse known to
6 Respondent, was evaluated by Respondent on January 21, 2019 for right inguinal pain. During
7 his clinical examination, Respondent noted a palpable hernia for which he recommended a
8 surgical repair. Despite his knowledge of the patient's alcoholism, Respondent documented in
9 the patient's clinical history: "he reports that he does not drink alcohol." The patient was
10 evaluated pre-operatively by his primary care physician, on January 25, 2019, who noted a
11 "history of alcohol abuse with 10-12 alcoholic beverages per night, 4-5 days of the week."

12 11. The patient underwent pre-operative laboratory testing showing abnormally elevated
13 bilirubin of 6.0 and thrombocytopenia, but was "cleared for this outpatient right inguinal hernia
14 repair" by the primary care provider.

15 12. Respondent performed a robotic-assisted right inguinal hernia repair on January 28,
16 2019 at St. John's surgical center. The operative procedure notes an uneventful laparoscopic
17 abdominal entry. After the entry, Respondent noted, "there was some oozing noted...I switched
18 laparoscopy and was able to identify a small vessel. This was clipped." Respondent was
19 cognizant of bleeding and did address a bleeding vessel. However, his documentation asserts that
20 the most likely etiology of bleeding was a surgical sponge that "was being pulled down into the
21 pelvis, it brought the omentum with it and from the spleen." In this scenario, the traction injury
22 was due to improper surgical technique which led to the surgeon grasping and pulling both
23 sponge and omentum, resulting in hemorrhage. In most patients, this type of bleeding is self-
24 resolving; however, in patients with cirrhosis, thrombocytopenia, and portal hypertension, this
25 can lead to massive hemorrhage. Respondent noted at the conclusion of the operation that the
26 estimated blood loss was less than 100 mL.

27
28 ² Patients are designated by a number to protect their privacy. Patients' identities are
known to Respondent and have been or will be disclosed in discovery.

1 13. However, in the recovery room, the patient became hypotensive, with his blood
2 pressure measuring 57/32, with bleeding noted from his surgical sites. The patient's hemoglobin
3 was noted to be low at 4.7. The patient was re-intubated and transported to the St. John's
4 Emergency Department (ED), where Respondent planned for immediate surgical exploration in
5 the main operating room. Respondent performed an exploratory laparotomy, during which he
6 "noted a cirrhotic liver at this time. There was a capsular tear in the inferior pole of the spleen."
7 Given the estimated blood loss of greater than four liters, a splenectomy was necessary to control
8 the hemorrhage. The patient received transfusions of 20 units of red blood cells and 20 units of
9 fresh frozen plasma. Pathology analysis of the spleen noted "spleen with tear/disruption of the
10 capsule."

11 14. Post surgically, the patient continued to hemorrhage, and later on January 28, 2019,
12 he was taken to the OR for the third time for bleeding control. Surgical findings included
13 bleeding at the tail of the pancreas as well as in left upper quadrant. Bleeding was controlled and
14 the abdomen was packed and left open for further operative exploration. The patient was again
15 taken to the OR on February 1, 2019, February 4, 2019, and February 6, 2019. During these
16 procedures, the abdomen was sequentially closed.

17 15. Over the course of the patient's hospitalization, he developed renal failure requiring
18 hemodialysis, encephalopathy, and upper gastrointestinal bleeding. He continued to require
19 pressor support and developed abdominal compartment syndrome requiring abdominal fascial
20 release. By February 11, 2019, the patient became bradycardic, arrested, and eventually expired.
21 Postmortem autopsy revealed "an enlarged cirrhotic liver with fatty parenchymal changes." The
22 cause of death in the autopsy report was "attributed to the sequela of a splenic injury which
23 occurred during an operative procedure consisting of a robotic-assisted laparoscopic right
24 inguinal hernia repair with mesh. The manner of death is accident."

25 16. Patient 1's medical records contained multiple errors in charting and documentation,
26 and during his interview with the Board's investigators, Respondent stated: "I will admit that this
27 wasn't the best charting."
28

1 17. Patient 2 was a 57-year-old woman at the time when she saw Respondent, developed
2 epigastric and right upper quadrant pain, in approximately November of 2018. A CT scan
3 confirmed she had cholelithiasis. She was evaluated by Respondent on February 4, 2019, and
4 diagnosed with an umbilical hernia and cholelithiasis. She was scheduled for laparoscopic
5 cholecystectomy and umbilical hernia repair with possible mesh, on February 5, 2019.

6 18. Respondent's operative report mentions a modified Hasson direct entry into the
7 abdomen which he explained "I saw my duct and artery with no intervening structures..." The
8 remainder of the operation, including the hernia repair with mesh, was uneventful and no
9 complications were noted.

10 19. After the procedure, the patient was discharged home. However, she developed
11 severe abdominal pain that evening and, after calling Respondent's office, was instructed to
12 return to the ED. In the ED, she was noted to have an elevated white blood cell count (13.4) and
13 lactate (3.4). A CT scan noted a "small amount of postoperative fluid in the gallbladder fossa ...
14 not an unexpected finding. No unexpected findings are seen." Respondent admitted the patient
15 to the hospital for pain control, but thought that she was stable and he could see her in the
16 morning. The next day, the patient had persistent pain despite her laboratory studies showing
17 normal values. Respondent ordered a HIDA scan which was also normal.

18 20. By the morning of February 7, 2019, the patient became hypotensive with persistent
19 abdominal pain, lactic acidosis, and acute renal insufficiency. She was transferred to the ICU, and
20 after evaluation by Respondent, was returned to the operating room.

21 21. Operative findings on February 7, 2019, noted a 1 cm hole in the small bowel with
22 feculent peritonitis. Respondent noted, "There was a fair amount of fecal soilage...I then
23 identified a small 1-2cm enterotomy in the small bowel. This was closed in 2 interrupted layers
24 with 3-0 silk suture... There was no other enterotomies noted." During his interview, when asked
25 about the etiology of the perforation, Respondent noted it occurred "probably when I put the 5
26 mm trocar in...I assume at the point, I had a bowel injury."
27
28

22. Over the next three days, the patient progressively worsened and developed septic shock and multisystem organ failure. The patient was not able to overcome her overwhelming sepsis and expired on February 10, 2019.

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

23. Respondent Matthew Alan Lublin, M.D. is subject to disciplinary action under section 2234, subdivision (c) of the Code in that he was repeatedly negligent in the care and treatment of two patients. The circumstances are as follows:

24. The allegations in paragraphs 10 through 22 are incorporated herein by reference.

25. Each of the following constituted a departure from the standard of care by Respondent:

A) The improper medical record-keeping, with regard to Patient 1's severe liver disease, was a departure from the standard of care.

B) The inappropriate surgical technique which resulted in splenic injury and hemorrhage in Patient 1, was a departure from the standard of care.

C) The iatrogenic nature of the bowel injury sustained by Patient 2 was a departure from the standard of care.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

26. Respondent Matthew Alan Lublin, M.D., is subject to disciplinary action under section 2266 in that Respondent failed to keep accurate and records in his care and treatment of his patients. The circumstances are as follows:

27. The allegations of paragraphs 10 through 22 are incorporated herein by reference.

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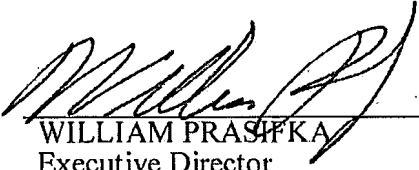
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1 **PRAYER**

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

- 4 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 82116,
5 issued to Matthew Alan Lublin, M.D.;
- 6 2. Revoking, suspending or denying approval of his authority to supervise physician
7 assistants and advanced practice nurses;
- 8 3. Ordering Respondent, Matthew Alan Lublin, M.D., to pay the Board reasonable costs
9 of investigation and prosecution incurred after January 1, 2022
- 10 4. If placed on probation, ordering him to pay the Board the costs of probation
11 monitoring; and
- 12 5. Taking such other and further action as deemed necessary and proper.

13
14 DATED: **AUG 25 2022**


15 WILLIAM PRASIFKA
16 Executive Director
17 Medical Board of California
18 Department of Consumer Affairs
19 State of California

20 *Complainant*

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