

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

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

John Eric Heess, M.D.

**Physician's and Surgeon's
Certificate No. A 60636**

Case No.: 800-2021-081904

Respondent.

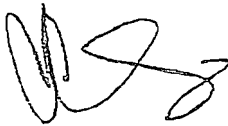
DECISION

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

This Decision shall become effective at 5:00 p.m. on March 16, 2023.

IT IS SO ORDERED: February 14, 2023.

MEDICAL BOARD OF CALIFORNIA



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

1 ROB BONTA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 LATRICE R. HEMPHILL
Deputy Attorney General
4 State Bar No. 285973
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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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 **JOHN ERIC HEESS, M.D.**
14 **1331 Lookout Drive**
Templeton, CA 93465

15 **Physician's and Surgeon's Certificate No. A**
16 **60636,**

17 Respondent.

Case No. 800-2021-081904

OAH No. 2022050767

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18
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 Latrice R. Hemphill, Deputy
25 Attorney General.

26 2. Respondent John Eric Heess, M.D. (Respondent) is represented in this proceeding by
27 attorney Kevin D. Cauley, whose address is: 624 South Grand Avenue, 22nd Floor, Los Angeles,
28 CA 90017-3323.

3. On or about July 29, 1996, the Board issued Physician's and Surgeon's Certificate No. A 60636 to John Eric Heess, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2021-081904, and will expire on January 31, 2024, unless renewed.

JURISDICTION

4. Accusation No. 800-2021-081904 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 21, 2022. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2021-081904 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS.

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2021-081904. 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 Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2021-081904, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2021-081904, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. A 60636 to disciplinary action.

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

CONTINGENCY

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

13. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2021-081904 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 60636 issued to Respondent JOHN ERIC HEES, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for seven (7) years on the following terms and conditions:

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

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

2. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the use of products or beverages containing alcohol.

3. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written

1 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
2 psychotherapist with any information and documents that the psychotherapist may deem
3 pertinent.

4 Respondent shall have the treating psychotherapist submit quarterly status reports to the
5 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric
6 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of
7 probation, Respondent is found to be mentally unfit to resume the practice of medicine without
8 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
9 period of probation shall be extended until the Board determines that Respondent is mentally fit
10 to resume the practice of medicine without restrictions.

11 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

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

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

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

1 the Board or its designee, the scheduling of biological fluid testing shall be done on a random
2 basis. The cost of biological fluid testing shall be borne by the Respondent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 If a biological fluid test result indicates Respondent has used, consumed, ingested, or
26 administered to himself or herself a prohibited substance, the Board shall order Respondent to
27 cease practice and instruct Respondent to leave any place of work where Respondent is practicing
28 medicine or providing medical services. The Board shall immediately notify all of Respondent's

1 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or
2 provide medical services while the cease-practice order is in effect.

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

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

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

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

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

21 6. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of
22 the effective date of this Decision, Respondent shall submit to the Board or its designee, for its
23 prior approval, the name of a substance abuse support group which he or she shall attend for the
24 duration of probation. Respondent shall attend substance abuse support group meetings at least
25 once per week, or as ordered by the Board or its designee. Respondent shall pay all substance
26 abuse support group meeting costs.

27 The facilitator of the substance abuse support group meeting shall have a minimum of three
28 (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed

1 or certified by the state or nationally certified organizations. The facilitator shall not have a
2 current or former financial, personal, or business relationship with Respondent within the last five
3 (5) years. Respondent's previous participation in a substance abuse group support meeting led by
4 the same facilitator does not constitute a prohibited current or former financial, personal, or
5 business relationship.

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

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

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

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

27 Respondent shall pay all worksite monitoring costs.

28 The worksite monitor shall have face-to-face contact with Respondent in the work

1 environment on as frequent a basis as determined by the Board or its designee, but not less than
2 once per week; interview other staff in the office regarding Respondent's behavior, if requested
3 by the Board or its designee; and review Respondent's work attendance.

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

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

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

responsibility.

8. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING

LICENSEES. Failure to fully comply with any term or condition of probation is a violation of probation.

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

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

(2) Increase the frequency of biological fluid testing.

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

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

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

(6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in

1 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
2 Regulations, at Respondent's expense;

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

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

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

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

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

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

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1 12. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
2 ordered to reimburse the Board its costs of investigation and enforcement in the amount of
3 \$13,246.00 (thirteen thousand two hundred forty-six dollars). Costs shall be payable to the
4 Medical Board of California. Failure to pay such costs shall be considered a violation of
5 probation.

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

10 The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility
11 to repay investigation and enforcement costs, including expert review costs (if applicable).

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

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

17 14. GENERAL PROBATION REQUIREMENTS.

18 Compliance with Probation Unit

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

20 Address Changes

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

26 Place of Practice

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

1 facility.

2 License Renewal

3 Respondent shall maintain a current and renewed California physician's and surgeon's
4 license.

5 Travel or Residence Outside California

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

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

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

15 16. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
16 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
17 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
18 defined as any period of time Respondent is not practicing medicine as defined in Business and
19 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
20 patient care, clinical activity or teaching, or other activity as approved by the Board. If
21 Respondent resides in California and is considered to be in non-practice, Respondent shall
22 comply with all terms and conditions of probation. All time spent in an intensive training
23 program which has been approved by the Board or its designee shall not be considered non-
24 practice and does not relieve Respondent from complying with all the terms and conditions of
25 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
26 on probation with the medical licensing authority of that state or jurisdiction shall not be
27 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
28 period of non-practice.

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

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

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

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

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

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

26 19. LICENSE SURRENDER. Following the effective date of this Decision, if
27 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
28 the terms and conditions of probation, Respondent may request to surrender his or her license.

1 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
2 determining whether or not to grant the request, or to take any other action deemed appropriate
3 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
4 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
5 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
6 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
7 application shall be treated as a petition for reinstatement of a revoked certificate.

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

13 21. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
14 a new license or certification, or petition for reinstatement of a license, by any other health care
15 licensing action agency in the State of California, all of the charges and allegations contained in
16 Accusation No. 800-2021-081904 shall be deemed to be true, correct, and admitted by
17 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
18 restrict license.

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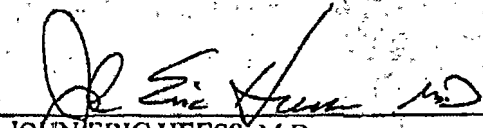
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1 ACCEPTANCE

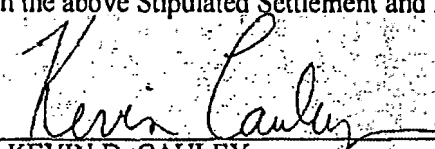
2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Kevin D. Cauley. I understand the stipulation and the effect it will
4 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
5 Disciplinary 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: 12/14/2022


JOHN ERIC HEESS, M.D.
Respondent

10 I have read and fully discussed with Respondent John Eric Heess, 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: December 14, 2022


KEVIN D. CAULEY
Attorney for Respondent

16 ENDORSEMENT

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

19
20 DATED: _____

Respectfully submitted,

21 ROB BONTA
Attorney General of California
22 JUDITH T. ALVARADO
Supervising Deputy Attorney General

23
24 LATRICE R. HEMPHILL
25 Deputy Attorney General
26 Attorneys for Complainant

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13 DATED: _____

14 KEVIN D. CAULEY
Attorney for Respondent

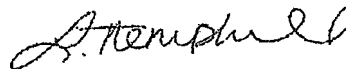
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27 Deputy Attorney General
28 *Attorneys for Complainant*

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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:

Case No. 800-2021-081904

13 **JOHN ERIC HEESS, M.D.**
1331 Lookout Dr.
14 Templeton, CA 93465-8741

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. A 60636,**

Respondent.
17

18
19 **PARTIES**

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

23 2. On or about July 29, 1996, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 60636 to John Eric Heess, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on January 31, 2024, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 2234 of the Code, states:

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

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

10 (b) Gross negligence.

11 (c) Repeated negligent acts. To be repeated, there must be two or more
12 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.

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

15 (2) When the standard of care requires a change in the diagnosis, act, or
16 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
17 licensee's conduct departs from the applicable standard of care, each departure
constitutes a separate and distinct breach of the standard of care.

18 (d) Incompetence.

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

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

22 (g) The failure by a certificate holder, in the absence of good cause, to attend
23 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.

24 5. Section 2239 of the Code states:

25 (a) The use or prescribing for or administering to himself or herself, of any
26 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
27 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
28 self-administration of any of the substances referred to in this section, or any

1 combination thereof, constitutes unprofessional conduct. The record of the
2 conviction is conclusive evidence of such unprofessional conduct.

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

13
14 6. Section 820 of the Code states:

15 Whenever it appears that any person holding a license, certificate or permit
16 under this division or under any initiative act referred to in this division may be
17 unable to practice his or her profession safely because the licentiate's ability to
18 practice is impaired due to mental illness, or physical illness affecting competency,
19 the licensing agency may order the licentiate to be examined by one or more
20 physicians and surgeons or psychologists designated by the agency. The report of the
21 examiners shall be made available to the licentiate and may be received as direct
22 evidence in proceedings conducted pursuant to Section 822.

23
24 7. Section 822 of the Code states:

25 If a licensing agency determines that its licentiate's ability to practice his or her
26 profession safely is impaired because the licentiate is mentally ill, or physically ill
27 affecting competency, the licensing agency may take action by any one of the
28 following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency
in its discretion deems proper.

The licensing section shall not reinstate a revoked or suspended certificate or
license until it has received competent evidence of the absence or control of the
condition which caused its action and until it is satisfied that with due regard for the
public health and safety the person's right to practice his or her profession may be
safely reinstated.

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1 COST RECOVERY

2 8. Section 125.3 of the Code states:

3 (a) Except as otherwise provided by law, in any order issued in resolution of a
4 disciplinary proceeding before any board within the department or before the
5 Osteopathic Medical Board, upon request of the entity bringing the proceeding, the
6 administrative law judge may direct a licensee found to have committed a violation or
7 violations of the licensing act to pay a sum not to exceed the reasonable costs of the
8 investigation and enforcement of the case.

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

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

17 (d) The administrative law judge shall make a proposed finding of the amount
18 of reasonable costs of investigation and prosecution of the case when requested
19 pursuant to subdivision (a). The finding of the administrative law judge with regard
20 to costs shall not be reviewable by the board to increase the cost award. The board
21 may reduce or eliminate the cost award, or remand to the administrative law judge if
22 the proposed decision fails to make a finding on costs requested pursuant to
23 subdivision (a).

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

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

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

(2) Notwithstanding paragraph (1), the board may, in its discretion,
conditionally renew or reinstate for a maximum of one year the license of any
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.

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

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

(j) This section does not apply to any board if a specific statutory provision in

1 that board's licensing act provides for recovery of costs in an administrative
2 disciplinary proceeding.

3 **FACTUAL ALLEGATIONS**

4 9. Respondent is an anesthesiologist who worked for the Bahamas Surgery Center, in
5 Bakersfield, CA, specializing in outpatient surgery.

6 10. On or about September 3, 2021, officers were dispatched to assist medics on a report
7 of an unresponsive male. Upon arrival, officers observed Respondent laying on his side,
8 breathing and responsive. Respondent was extremely sweaty and had difficulty keeping his eyes
9 open.

10 11. An officer made contact with Respondent's partner, J.C., who indicated that earlier in
11 the evening the two were cooking dinner and drinking wine but Respondent felt nauseous. J.C.
12 noticed Respondent sweating profusely and Respondent went to lie down. J.C. noticed that
13 Respondent appeared gray in color and began making odd noises. J.C. called family members
14 and they started CPR before the medics arrived.

15 12. J.C. hesitantly stated that Respondent could have taken drugs that evening. J.C.
16 added that Respondent had a history of substance abuse and using methamphetamine. As a result,
17 about one year prior, J.C. hired a sober living coach to live with Respondent during the weekdays,
18 since he lived and worked in Bakersfield, California during the week. However, J.C. noticed a
19 change in Respondent's behavior over the last year, and believed Respondent could possibly be
20 using drugs again.

21 13. Respondent was evaluated by paramedics, who recommended he go to the hospital
22 for further evaluation and monitoring. However, Respondent declined to go to the hospital.

23 14. One paramedic stated that Respondent appeared under the influence of drugs based
24 on symptoms he was displaying, such as small pupils, profuse sweating, and difficulty with fine
25 motor skills.

26 15. On or about September 17, 2021, the Board received the incident report from the San
27 Luis Obispo County Sheriff's Office.

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16. Respondent entered into an in-patient treatment program at Bradford Health Services (Bradford) on or about September 9, 2021. Respondent was discharged from Bradford on November 12, 2021.

17. Following Respondent's discharge from in-patient care, Respondent agreed to monitoring by and participation in the California Pacific Assistance Program (PAG) for five years.

18. On or about November 30, 2021, Respondent agreed to the Board's request that he voluntarily submit to a physical and mental evaluation to determine if he could safely practice medicine.

19. Following his mental evaluation, performed on December 17, 2021, Respondent was found to suffer from the following: Stimulant use disorder, which is severe, in early remission; Sedative use disorder, which is severe, in early remission; Cannabis use disorder, which is mild, in early remission; Hallucinogen use disorder, which is severe, in early remission; and Opioid use disorder, which is severe, in early remission.

20. The psychiatrist who performed the mental examination stated that anesthesiologists have a higher rate of substance abuse than most other physicians. As such, the psychiatrist recommended that Respondent continue to abide by the treatment plan developed by Bradford, which included random drug biological testing, participating in a 12-step program, outpatient psychiatric care, treatment by an addictionologist, and participation in a professional support group. The psychiatrist also recommended Respondent remove the firearm from his home.

FIRST CAUSE FOR DISCIPLINE

(Inability to Practice Medicine Safely Due to Mental and/or Physical Condition)

21. Respondent is subject to disciplinary action under Code section 822 in that Respondent has a mental illness or condition that requires monitoring, treatment, and practice restrictions. The circumstances are as follows:

22. Complainant refers to and, by this reference, incorporates paragraphs 9 through 20, above, as though set forth fully herein.

III

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Use of Drugs and/or Alcohol in a Dangerous Manner)**

3 23. Respondent is subject to disciplinary action under Code section 2239 insofar as
4 Respondent used drugs to the extent, or in such a manner, as to be dangerous or injurious to
5 himself, as more particularly alleged in paragraphs 9 through 20, above, which are incorporated
6 herein by reference as if fully set forth.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct)**

9 24. Respondent is subject to disciplinary action under Code section 2234 in that he
10 engaged in unprofessional conduct. The circumstances are as follows:

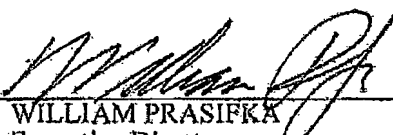
11 25. The allegation in the Second Cause for Discipline, in paragraph 23, above, is
12 incorporated herein by reference as if fully set forth.

13 **PRAYER**

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

- 16 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 60636,
17 issued to John Eric Heess, M.D.;
- 18 2. Revoking, suspending or denying approval of John Eric Heess, M.D.'s authority to
19 supervise physician assistants and advanced practice nurses;
- 20 3. Ordering John Eric Heess, M.D., to pay the Board the costs of the investigation and
21 enforcement of this case, and if placed on probation, the costs of probation monitoring; and
- 22 4. Taking such other and further action as deemed necessary and proper.

23
24 DATED: **MAR 21 2022**

25 
26 WILLIAM PRASIFKA
27 Executive Director
28 Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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