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

In the Matter of the Accusation Against: ALBERT J. SHARF, M.D. Physician's and Surgeon's Certificate No. G72122, Respondent.	Case No. 800-2015-016082 OAH No. 2016060489

DECISION AFTER NON-ADOPTION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 5, and 6, 2016, in San Diego, California.

Jason J. Ahn, Deputy Attorney General, Department of Justice, State of California, represented complainant, the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs, State of California.

David Rosenberg, Attorney at Law, and Chad Edwards, Attorney at Law, represented respondent, Albert J. Sharf, M.D.

The matter was submitted on December 6, 2016. Panel B of the Board declined to adopt the proposed decision and issued an Order of Non-Adoption on February 7, 2017, and subsequently issued a Notice of Oral Argument on March 27, 2017. As both Complainant and Respondent summited written argument, and both presented oral argument on this matter on April 26, 2017, the Panel, having read and reviewed the administrative record and heard and considered the arguments presented, Panel B of the Board hereby makes and enters the following as its decision in this matter.

SUMMARY

On July 22, 2015, Dr. Sharf consumed alcoholic beverages to excess, drove a motor vehicle while under the influence, and caused a rear-end traffic collision in Newport Beach. On November 13, 2015, he was convicted of driving under the influence. Grounds exist to discipline Dr. Sharf's medical certificate: He used alcoholic beverages in a manner and to the extent dangerous to himself and others; he violated provisions of the Medical Practice Act; he conducted himself in an

unprofessional manner; and, he was convicted of a crime substantially related to the qualifications, functions and duties of a physician.

Dr. Sharf is a recovering alcoholic who is confident he will not consume alcohol again. He asserts the events taking place on July 22, 2015, were unique and out of character, and his involvement in the traffic collision was a life-changing experience. He claims he immediately embarked on a program of abstinence and recovery following the traffic collision, and has not consumed alcoholic beverages since then. His testimony, the testimony of others, and documentary evidence support these claims.

Public protection does not require Dr. Sharf's medical certificate be placed on probation. He has undergone a meaningful and sustained period of rehabilitation. He is not a substance-abusing physician, and the likelihood of his use of alcohol in the future is negligible. The public will be protected by the issuance of a public reprimand.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 19, 2016, complainant signed Accusation Case No. 800-2015016082. The accusation alleges respondent, Albert J. Sharf, M.D., used alcohol in a manner or to the extent dangerous to himself or others (first cause for discipline); was convicted of a crime substantially related to the qualifications, functions or duties of a physician (second cause for discipline); violated provisions of the Medical Practice Act (third cause for discipline); and engaged in general unprofessional conduct (fourth cause for discipline).

The accusation and other documents were served on Dr. Sharf, whose attorney timely filed a notice of defense.

On December 5, 2016, the administrative record was opened; jurisdictional documents were presented; opening statements were given. On December 5 and 6, 2016, official notice was taken; sworn testimony was received; and documentary evidence was produced. On December 6, 2016, closing arguments were given; the record was closed; and the matter was submitted.

Dr. Sharf's License History

2. On July 30, 1991, the Medical Board issued Physician's and Surgeon's Certificate No. G72122 to Dr. Sharf. There is no history of any disciplinary action having been imposed against Dr. Sharf's certificate.

Dr. Sharf's Background, Education, Training, and Experience

3. Dr. Sharf was born in April 1961. He graduated with a bachelor's degree from New York University in 1982. He graduated from New Jersey Medical School, the medical school of

Rutgers University, with a medical degree in 1986. He completed an internship at the Long Island Jewish Medical Center in 1986, a residency in Internal Medicine at that institution in 1989, and a fellowship in Cardiology at that institution in 1992.

Dr. Sharf became licensed in California in 1991, moved with his family to California in 1992, and established a medical practice in National City. He has practiced medicine in National City since 1992.

The American Board of Internal Medicine certified Dr. Sharf in Internal Medicine in 1989 and in Cardiovascular Disease in 1991. He successfully underwent recertification. He is a member of the American Society of Nuclear Cardiology, American Heart Association, San Diego County Medical Society, American College of Cardiology Affiliates, and American College of Physicians Diplomate.

Dr. Sharf holds staff privileges at Paradise Valley Hospital in National City and at Sharp Medical Center in Chula Vista. His privileges at those institutions have been in effect since 1992. His privileges have never been revoked, suspended, or limited.

Dr. Sharf has served as Medical Director of the Department of Cardiology at Paradise Valley Hospital since 1994, and was Paradise Valley Hospital's Chief of Staff in 1994. He is currently a member of Paradise Valley Hospital's Governing Board.

4. Dr. Sharf practices noninvasive cardiology. Most of his patients live in the National City area, an underprivileged part of San Diego County. His patients range in age between 16 and 100. Most patients have insurance or are Medicare or Medi-Cal qualified.

Dr. Sharf evaluates and treats patients who present with a cardiovascular diseases, including high blood pressure, congestive heart failure, coronary artery disease, chest pain, atrial fibrillation, ventricular arrhythmia, and cardiomyopathy. Dr. Sharf has approximately 130 to 140 patient contacts per week, and he estimated he has treated more than 20,000 patients over the course of his career.

Dr. Sharf described his role as a gatekeeper and caregiver. He consults with other physicians to determine the nature and extent of a patient's cardiovascular status; he refers patients who need aggressive intervention to cardiologists, surgeons, and other specialists; he evaluates patients to determine their fitness to undergo surgery; he recommends what precautions, if any, should be taken during invasive procedures and surgeries; and he cares for patients following surgeries and other procedures.

Dr. Sharf was mistakenly sued on one occasion for medical negligence many years ago, but the case was dismissed shortly after it was filed when it was determined Dr. Sharf was not negligent and should not have been named as a defendant. Neither Dr. Sharf nor his insurance carriers have ever paid anything to any individual to settle a malpractice claim. Other than the lawsuit occurring many years ago, Dr. Sharf was not aware of any patient complaints having been filed against him with any insurance carrier, hospital, health care facility, governmental agency, or

other entity.

5. Dr. Sharf married while he was in medical school. He and his wife have nine children, ranging from thirty years of age to eight years of age. After more than 30 years of marriage, Dr. Sharf and his wife separated in September 2014.

Dr. Sharf's Use of Alcoholic Beverages

6. Dr. Sharf testified he first consumed an alcoholic beverage when he was 17 or 18 years old. He didn't like the taste and decided drinking alcohol was not something he wanted to do. He did not consume alcoholic beverages in college, during medical school, or during his formal medical training.

Dr. Sharf testified he began drinking a "rare glass of wine" after moving to San Diego County. He did not purchase the wine he consumed. He testified he had a glass of wine every three months or so.

At age 35, Dr. Sharf's consumption of wine progressed to two or three glasses of wine on a Friday or Saturday evening. He did not consume wine to the point of intoxication. He controlled and enjoyed his consumption of wine without thought or effort. He never consumed beer or hard liquor.

Around age 45, Dr. Sharf decided to become a connoisseur and began collecting wine. His consumption of wine increased to the extent he drank three or four glasses of wine on a weekend evening when he was not on call. He did not drink on weekdays, and he never drank before 5:00 p.m. On three or four occasions, his wife became very unhappy and warned him he had consumed too much.

To appease his wife, Dr. Sharf began attending Alcoholic Anonymous meetings at the Miramar Alano Club. He very much enjoyed the fellowship there and obtained an AA sponsor. He did not work AA's 12 steps of recovery. During this period of his life, he thought he did not have a significant problem with alcohol and he could easily control his consumption of wine. He continued drinking an occasional glass of wine even though he attended AA meetings, had a sponsor, and identified himself as an alcoholic at AA meetings. On at least one occasion, he "took a dirty token," meaning he accepted a chip to celebrate a period of abstinence when, in fact, he had consumed an alcoholic beverage. He admitted during this hearing that he was not fully committed to AA's program of recovery, which he finally abandoned. No personal or professional consequences immediately attended his continuing consumption of wine and withdrawal from the AA program.

Dr. Sharf's life significantly changed when he was in his early fifties. His father died a painful death after battling cancer for many years. His marriage became increasingly difficult, ultimately resulting in his separation from his wife. He found that heavy exercise was no longer effective in relieving stress. He was lonely much of the time. He worried about his family, marriage, children, and finances. His consumption of wine increased, although he continued his practice of not drinking on weekdays, not drinking on weekends when he was on call, and never

drinking before 5:00 p.m. In retrospect, Dr. Sharf believes it highly significant that he began "obsessing about relief from stress" and thought the consumption of alcohol might help in that regard.

All of these factors, in combination, created what respondent's psychiatrist, Dr. Houts, described as "a perfect storm" that gave rise to the events occurring on July 22, 2015.

The July 22, 2015, Incident

7. In mid-July 2015, Dr. Sharf went on his first vacation by himself. He stayed with an uncle who lived in Newport Beach. He awoke at his uncle's home the morning of July 22, 2015, had breakfast, and drove to Pelican Hill, an upscale golf resort in Newport Beach, in his 2009 Jaguar.

Dr. Sharf, a novice golfer, did not have anyone to play golf with that afternoon; the starter assigned him to play with three other golfers he did not know. Dr. Sharf told the others about his personal situation as the round of golf progressed, and they bought him several rounds of drinks from the golf course beverage cart. Dr. Sharf testified he consumed more than two or three alcoholic beverages, but he could not remember what he drank or the number of cocktails he consumed. He had never engaged in that kind of behavior before. He became so intoxicated he "blacked out," resulting in a memory loss for the events taking place during and after the round of golf. He had never blacked out before.

Dr. Sharf became aware of his situation and surroundings immediately after a traffic collision occurring the evening of July 22, 2015. He found himself behind the wheel of his Jaguar, which had front-end damage. The BMW in front of his Jaguar was stopped in the roadway with rear-end damage. Debris was scattered about the roadway. Dr. Sharf correctly concluded he had just been involved in a traffic collision. He knew he had driven his Jaguar when he was under the influence; he believed he was responsible for causing the collision; and he experienced immediate feelings of guilt, shame, and remorse, as well as a great deal of concern for the wellbeing of the occupants of the BMW. He testified he was "deeply angry with myself" and "in anguish." He promised himself, "This will never happen again." Shortly thereafter, the police arrived.

8. The investigating officers' testimony and reports established the following.

On July 22, 2015, at approximately 9:06 p.m., a uniformed Newport Beach traffic officer observed vehicle debris in the roadway causing a traffic hazard near the area of East Coast Highway and Iris Avenue in Newport Beach. The officer activated his rear warning lights and removed several large pieces of vehicle debris, including a portion of a black bumper along the north curb. He observed two cars stopped along the north curb in front of him. Both cars had collision damage consistent with the debris left in the roadway. A black BMW had damage on the driver's side rear bumper. The BMW was stopped in front of a black Jaguar, which had damage on the passenger's side front bumper. The officer contacted two males standing on the sidewalk next to the damaged cars. The driver of BMW stated he was traveling westbound on East Coast Highway when he was struck from behind by the Jaguar. The officer contacted respondent, who said he was traveling

westbound on East Coast Highway when the BMW abruptly stopped in front of him; he said he was unable to stop and his Jaguar collided with the BMW; he admitted he was driving the Jaguar at the time.

During their contact with respondent, the first officer on the scene and an officer who arrived later observed that respondent displayed objective symptoms of intoxication, including slurred speech, bloodshot and watery eyes, and an odor of alcoholic beverage. The officers observed that respondent had an unsteady gait and was unbalanced while standing at a stationary position. Respondent told one of the officers he had consumed two glasses of white wine earlier that evening at the Pelican Hill Grill.

The first officer on the scene administered a series of field sobriety tests. Respondent performed poorly. Respondent provided two breath samples that were analyzed by a preliminary alcohol screening device that revealed a 0.17% breath alcohol content (BAC) and a 0.17% BAC, at approximately 9:42 p.m. and 9:45 p.m., respectively. Respondent provided two evidentiary breath samples that were analyzed thereafter, and the results of that testing revealed 0.16% BAC and 0.16% BAC, at approximately 10:12 p.m. and 10:15 p.m.

The first officer on the scene arrested respondent for driving under the influence of alcohol at approximately 10:15 p.m., and transported respondent to the Newport Beach jail for processing.

9. The officers' testimony in this matter also established the following. The airbags in the BMW and Jaguar were not activated as a result of the collision. There was minor damage to the rear end of the BMV, which was driven from the scene. There was moderate damage to the front of the Jaguar, which was towed from the scene. Emergency medical attention was not requested by, or provided to, any occupant of any vehicle involved in the collision, although the occupants complained of minor head, neck and back pains. Respondent was cooperative throughout the investigation. He attempted to complete all of the testing that was administered. According to the arresting officer, respondent was remorseful and distraught, and he asked about the health and welfare of the occupants of the BMW. According to the second officer who arrived at the scene, respondent was upset by the collision, very cooperative during the investigation, concerned about others, and mentioned "a lot of stuff was going on in his life," including "family issues at home."

10. In an interview with a Department of Consumer Affairs investigator taking place on March 30, 2016, Dr. Sharf admitted he consumed five or six drinks of "hard liquor" before driving his car; he believed he "blacked out" and said he could not remember "what happened" after "all those drinks"; he said he did not remember getting into his car after drinking; he recalled there was collision damage to his Jaguar that resulted in repairs that cost approximately $10,000; he admitted he was publicly intoxicated and he had endangered his own life and the lives of others; and he stated he could have killed himself or somebody else. Dr. Sharf's statement to the investigator during the interview was consistent with the sworn testimony he provided in this proceeding.

In response to the investigator's question asking why he had decided to never drink alcohol again, respondent said:

> I think [it's] the worst thing I could possibly do in my life. I endangered by own life, other people's lives, uh, society. I let my kids down, my family down, um, my patients down, and my peers down, and I'm never gonna' be in that situation again. I'll do everything in my power to never drink alcohol again.

The Conviction

11. On November 13, 2015, in the Superior Court of California, County of Orange, in Case No. 15HM08348 MA, Dr. Sharf was convicted, on his plea of nolo contendere, of driving under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision (a), a misdemeanor, and driving with a blood alcohol content level of 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. He admitted his blood alcohol level was 0.15 percent or more by weight at the time of the offense, a factor the court was required to consider in accordance with Vehicle Code section 23578.[1]

12. On November 13, 2015, the court suspended imposition of sentence and placed respondent on three years informal probation. The court ordered respondent to violate no laws; obey all orders rules and regulations of the court; not drive a motor vehicle with a measurable amount of alcohol in his blood; submit to a chemical test on demand of any peace officer or probation officer; not drive without a valid driver's license and proof of insurance; pay fines and fees in the approximate total amount of $2,100; serve one day in custody (credit was given for time served); provide 40 hours of community service in lieu of being required to serve an additional five days in the county jail; and attend and complete a three month first offender drinking driver program.

13. Respondent complied with all terms and conditions of probation. He paid fines and fees on December 11, 2015. He provided 52 hours of community service at Paradise Valley Hospital, where he transported biological specimens and medications outside of his normal working hours. He completed a first offender drinking driver program, which required weekly group counseling sessions and five two-hour educational courses, and he attended AA meetings as required by the first offender program. Respondent has no further terms or conditions of probation to fulfill other than to complete his remaining period of probation. Probation is scheduled to terminate on November 12, 2018.

14. Before imposing sentence, the court advised respondent:

> Being under the influence of alcohol or drugs, or both, impairs the ability to safely operate a motor vehicle. Therefore, it is extremely

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[1] Vehicle Code section 23578 provides, in part: "[I]f a person is convicted of a violation of Section 23152 . . . the court shall consider a concentration of alcohol in the person's blood of 0.15 percent or more, by weight . . . as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation."

> dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving, someone is killed, you can be charged with murder.

Alcoholism, Alcoholics Anonymous, and Abstinence

Official notice is taken of the following matters:

15. Alcohol Intoxication: The DSM-5 states that alcohol intoxication is characterized by clinically significant behavioral or psychological changes that occur after drinking alcohol. Common symptoms include slurred speech, poor balance, dizziness, headache and nausea. In severe cases, alcohol intoxication requires emergency medical care. Assessing alcohol dependence is an important component of treating alcohol intoxication.

16. Alcohol Use Disorder/Alcoholism: According to the National Institute of Health on Alcoholic Abuse and Alcoholism:

> Problem drinking that becomes severe is given the medical diagnosis of "alcohol use disorder" or AUD. Approximately 7.2 percent or 17 million adults in the United States ages 18 and older had an AUD in 2012. This includes 11.2 million men and 5.7 million women. Adolescents can be diagnosed with an AUD as well, and in 2012, an estimated 855,000 adolescents ages 12-17 had an AUD.
> To be diagnosed with an AUD, individuals must meet certain criteria outlined in the Diagnostic and Statistical Manual of Mental Disorders (DSM). Under DSM-5, the current version of the DSM, anyone meeting any two of the 11 criteria during the same 12-month period receives a diagnosis of AUD. The severity of an AUD -mild, moderate, or severe -is based on the number of criteria met.
>
> - To assess whether you or loved one may have an AUD, here are some questions to ask. In the past year, have you:
> - Had times when you ended up drinking more, or longer than you intended?
> - More than once wanted to cut down or stop drinking, or tried to, but couldn't?
> - Spent a lot of time drinking? Or being sick or getting over the aftereffects?
> - Experienced craving -a strong need, or urge, to drink?
> - Found that drinking -or being sick from drinking -often interfered with taking care of your home or family? Or caused job troubles? Or school problems?

- Continued to drink even though it was causing trouble with your family or friends?
- Given up or cut back on activities that were important or interesting to you, or gave you pleasure, in order to drink?
- More than once gotten into situations while or after drinking that increased your chances of getting hurt (such as driving, swimming, using machinery, walking in a dangerous area, or having unsafe sex)?
- Continued to drink even though it was making you feel depressed or anxious or adding to another health problem? Or after having had a memory blackout?
- Had to drink much more than you once did to get the effect you want? Or found that your usual number of drinks had much less effect than before?
- Found that when the effects of alcohol were wearing off, you had withdrawal symptoms, such as trouble sleeping, shakiness, irritability, anxiety, depression, restlessness, nausea, or sweating? Or sensed things that were not there?

If you have any of these symptoms, your drinking may already be a cause for concern. The more symptoms you have, the more urgent the need for change. A health professional can conduct a formal assessment of your symptoms to see if an alcohol use disorder is present...

17. Although there is considerable overlap between the diagnostic criteria in DSM-5 and the previous edition of that diagnostic manual, known as the DSM-IV, that relate to problem drinking, several important differences exist.

First, the DSM-IV described two distinct disorders, alcohol abuse and alcohol dependence, with specific criteria for each. The DSM-5 integrates the two DSM-IV disorders, alcohol abuse and alcohol dependence, into a single disorder, which is called alcohol use disorder (AUD) with mild, moderate, and severe sub-classifications.

Second, under the DSM-IV, the diagnostic criteria for abuse and dependence were distinct: Anyone meeting one or more of the "abuse" criteria within a 12-month period would receive the "abuse" diagnosis. Anyone with three or more of the "dependence" criteria during the same 12-month period receives a "dependence" diagnosis. Under DSM-5, anyone meeting any two of the specified 11 criteria during the same 12-month period receives a diagnosis of AUD. The severity of an AUD -mild, moderate, or severe -is based on the number of criteria met.

Third, the DSM-5 eliminated "legal problems" as a criterion in making a diagnosis, but added "craving" as a criterion for reaching an AUD diagnosis, a criteria that was not included in DSM-IV.

18. A DSM-5 diagnosis is usually applied to an individual's current presentation. Previous diagnoses from which individual has recovered should clearly be noted as such e.g., specifiers indicating the course of the disorder should be provided, e.g., in partial remission, in full remission, after the diagnosis.

19. A severity description may be used when reaching a DSM-5 diagnosis involving substance abuse. The Severity of each Substance Use Disorder is based on:

- 0 criteria or 1 criterion: No diagnosis;
- 2-3 criteria: Mild Substance Use Disorder;
- 4-5 criteria: Moderate Substance Use Disorder; and,
- 6 or more criteria: Severe Substance Use Disorder.

20. Alcoholics Anonymous: The Alcoholics Anonymous preamble states:

> Alcoholics Anonymous is a fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to recover from alcoholism. The only requirement for AA membership is a desire to stop drinking.

21. Alcoholics Anonymous is an international mutual aid fellowship founded in 1935 by Bill Wilson and Dr. Bob Smith. AA's stated "primary purpose" is to help alcoholics "stay sober and help other alcoholics achieve sobriety." AA is based on abstinence and adherence to a 12-step program of spiritual and character development.

22. The AA program suggests a participant abstain from the use of alcohol and other mind-altering substances. Belief in a Higher Power is encouraged.

23. Primarily because of AA's tradition of anonymity, studies of AA's efficacy have produced inconsistent results. While some studies suggest an association between AA attendance and increased abstinence or other positive outcomes, other studies have not produced that result.

Many critics find fault with the AA program. For example, Gabrielle Glaser authored the following in the April 2015 issue the *Atlantic Monthly*:

> Alcoholics Anonymous has more than 2 million members worldwide, and the structure and support it offers have helped many people. But it is not enough for everyone. The history of AA is the story of how one approach to treatment took root before other options existed, inscribing itself on the national consciousness and crowding out dozens of newer methods that have since been shown to work better.

> A meticulous analysis of treatments, published more than a decade ago in *The Handbook of Alcoholism Treatment Approaches* but still considered one of the most comprehensive comparisons, ranks AA 38th out of 48 methods. At the top of the list are brief interventions by a medical professional; motivational enhancement, a form of counseling that aims to help people see the need to change; and acamprosate, a drug that eases cravings. (An oft-cited 1996 study found 12-step facilitation -a form of individual therapy that aims to get the patient to attend AA meeting -as effective as cognitive behavioral therapy and motivational interviewing. But that study, called Project Match, was widely criticized for scientific failings, including the lack of a control group.)

Dr. Sharf's Rehabilitation

24. Determining whether Dr. Sharf has undergone a meaningful and sustained period of rehabilitation requires weighing use of alcohol and unprofessional conduct against his efforts to attain abstinence and the success and/or failure of those efforts.

On July 22, 2015, Dr. Sharf drank alcohol to the point he blacked out, after which he drove a motor vehicle on busy public roadways for a considerable distance before causing a rear-end traffic collision that could have resulted in serious or fatal injuries. Without a doubt, his consumption of alcoholic beverages on July 22, 2015, was to the extent and in a manner dangerous to himself and others. The facts and circumstances giving rise to the traffic collision are found to be substantially related to the functions, qualifications, and duties of a physician. Dr. Sharf engaged in unprofessional conduct.

While Dr. Sharf was not a daily drinker, had not become intoxicated as a result of the consumption of alcoholic beverages more than a handful of times before the traffic collision, and had never blacked out before, his consumption of alcohol progressed in the ten years before the collision. His wife complained on occasion about his use of alcohol, after which he continued to drink. He attended 20 or 30 AA meetings, identified himself as an alcoholic at some meetings, yet continued to consume alcoholic beverages. He certainly ended up consuming more alcohol than he intended on the day of the collision.

Dr. Sharf had a moment of clarity following the collision and immediately accepted that he was, in fact, an "alcoholic." He resumed AA meetings the next day. He attended 90 AA meetings in the first 90 days, a level of attendance suggested for newcomers who wish to demonstrate a sincere commitment to the AA program. Within the first month, he obtained an experienced AA sponsor, Hank C., who met with Dr. Sharf once a week on Mondays, mentored Dr. Sharf, and assisted Dr. Sharf in completing the 12 steps of recovery. Dr. Sharf continues to meet with Hank C. once a week.

Dr. Sharf established a home group, which meets Sunday nights in Mira Mesa at 7:30 p.m., and he attends two or three other AA meetings a week, including a Beginner's Meeting in Mira

Mesa on Thursday nights, a Joe and Charlie Big Book Study in Mira Mesa on Monday nights, and a Men's Group Meeting in La Jolla on Saturday nights.

Dr. Sharf has taken several AA commitments. He currently sponsors three men. In that regard he testified: "I have been given the gift of sobriety, and in order to keep it, I must give it away."

To confirm his abstinence, Dr. Sharf purchased a SoberLink breathalyzer device in December 2015 and began testing twice daily, once before going to work and once at the end of the workday. Dr. Sharf blows directly into the device, which analyzes the amount of alcohol, if any, in Dr. Sharf's system. The device measures the presence of alcohol to 0.001 of a percent. The device takes a picture of Dr. Sharf blowing into the device each time he provides a sample to ensure the sample being tested is Dr. Sharf's. Test results are transmitted electronically to UCSD's Department of Psychiatry, where Ann Glassmaker, a social worker with the UCSD Professional Program, maintains testing records. Dr. Sharf pays about $150 per month for SoberLink testing services. He has provided more than 775 samples within the last year. No sample tested positive for the presence of alcohol.

Dr. Sharf decided it would be helpful to speak with a psychiatrist who could provide an expert opinion regarding his fitness for duty. Dr. Sharf first met with Don Houts, M.D., a psychiatrist, on October 20, 2015. He has met with Dr. Houts four times since then. Dr. Sharf pays attention to what Dr. Houts recommends and follows his advice.

Dr. Sharf testified he was never physically dependent upon alcohol, did not have withdrawal symptoms after he stopped drinking on July 22, 2015, and no longer ruminates about drinking as he did in the first month after he stopped drinking. He no longer believes his consumption of alcohol would be helpful in reducing stress; he firmly believes his consumption of alcohol would, at this point in his life, cause nothing but stress.

To the extent he can, Dr. Sharf avoids situations and places where alcohol is served. He is extremely cautious about what he drinks when he finds himself in situations where alcohol is being served. He has not inadvertently consumed alcohol since July 22, 2015. When asked what he would do if he accidently consumed part of a beverage containing alcohol, he said, "I'd call my sponsor."

Dr. Sharf has come to accept Step 1 of the 12 steps of recovery – that he is powerless over alcohol, that his life was unmanageable when he was consumed alcohol, and that his life will become unmanageable again if he were to consume alcohol. He believes this is the fact because of his own personal experience and what he has learned in the AA program. He accepts the validity of AA's first drink concept: "It's the first drink that gets you drunk."

Dr. Sharf testified he wants to be a good example to his children, staff, and others who know of his situation by remaining sober. He receives support from family, his sponsor, the men he sponsors, others in the AA program, his colleagues, and a higher power. He testified he tries to be of service to others.

25. Assessing the credibility of an alcoholic is an extremely difficult task. Alcoholism is a patient disease that is often characterized by denial and relapse. Despite their best efforts to remain abstinent, many alcoholics are unable to maintain long term sobriety. These persons, during periods of abstinence, convince themselves and others that they have embraced the principles of the AA program and will never consume alcohol again. Their stories concerning their recovery sound similar to the accounts of those who have never relapsed and have enjoyed long term sobriety. Is it reasonable to rely solely on the account of an alcoholic who claims to be abstinent and in recovery?

When reaching a determination concerning the prospects of an alcoholic's long term sobriety, the credible testimony of others and an assessment of other objective evidence that corroborates or contradicts the recovering alcoholic's testimony should be considered and given weight.

26. Don Houts, M.D., obtained a bachelor's degree from Indiana University, Bloomington, in 1972, and a medical degree from the Indianapolis University School of Medicine in 1976. He participated a residency in Psychiatry at UCLA's School of Medicine from 1976 to 1979. He was a senior resident in Psychiatry at UCSD's School of Medicine, where he completed his residency in Psychiatry in 1980. He received additional formal training at the San Diego Psychoanalytic Institute from 1983 through 1990.

Dr. Houts became board certified by the American Board of Neurology and Psychiatry in 1980. He holds Distinguished Life Fellow status in the American Psychiatric Association. He is a member of the American Academy of Addiction Psychiatry. He serves as an Associate Clinical Profession of Psychiatry at UCSD's School of Medicine.

Dr. Houts is, himself, a recovering alcoholic who actively participates in the AA program. His home group meets at the Belly Up Tavern in Solana Beach. He attends five to six AA meetings each week. The treatment of patients with alcoholism and other substance abuse problems constitutes a large part of Dr. Houts's medical practice.

On October 20, 2015, Dr. Houts met Dr. Sharf for the first time. He did not know Dr. Sharf before that visit. Dr. Sharf obtained a history of the presenting problem, a personal history, a family history, an educational history, and a history of Dr. Sharf's use of alcohol and involvement in the AA program. Dr. Houts and Dr. Sharf have since met on four other occasions. Dr. Sharf has been a compliant patient.

During psychiatric treatment, Dr. Sharf told Dr. Houts about his use of alcohol, which was consistent with Dr. Sharf's testimony in this matter and statement to the Department of Consumer Affairs investigator. Dr. Sharf told Dr. Houts about his first experience in the AA program, before the July 2015 traffic collision, his relapse, and his failure to attain long term sobriety. Dr. Sharf admitted taking a "dirty token" during his first involvement in AA, and he was embarrassed about that. Dr. Sharf told Dr. Houts his negative experiences with drinking alcohol were put into extremely sharp perspective following the July 2015 traffic collision, an extraordinarily disturbing, life-changing experience. Dr. Houts explored other issues with Dr. Sharf, including his medical practice, marriage and separation, children, and personal relationships with others. According to

Dr. Houts, he and Dr. Sharf have engaged in meaningful therapeutic conversations concerning the several issues in Dr. Sharf's life, including his alcoholism.

Dr. Houts diagnosed Dr. Sharf under DSM-5 with an alcohol use disorder, mild, in sustained remission. Dr. Houts testified Dr. Sharf's use and experience with alcohol before the July 2015 traffic collision "barely scratched" the criteria necessary to reach the diagnosis of alcohol use disorder, but was sufficient to reach that diagnosis. He testified Dr. Sharf was in "an existential crisis and kind of lost" at the time of the traffic collision. He believed "a kind of perfect storm" was responsible for Dr. Sharf's excessive consumption of alcohol and blackout on July 20, 2015.

Dr. Houts testified, based on his contact with Dr. Sharf, that Dr. Sharf was actively engaged in the AA program and strongly committed to sobriety. He believed it highly significant that Dr. Sharf sponsors other men in the AA program.

Dr. Houts did not conduct psychological testing and did not obtain collateral information, such as a police report, to corroborate Dr. Sharf's representations; he found no need to do so. The SoberLink data was important to Dr. Houts in reaching his final opinions in this matter because it confirmed that Dr. Sharf no longer consumes alcohol.

Dr. Houts testified that for many persons, alcoholism is a disease of relapse; even active participation in the AA program does not ensure abstinence, although that seems to be the most important contributing factor in accurately predicting long term sobriety. While Dr. Houts was unable to make any guarantees, he believed there was "an extremely high likelihood that Dr. Sharf will be sober forever." He believed Dr. Sharf's chances of remaining abstinent were as good as those of any recovering alcoholic he has treated or had contact with in his own program. Dr. Houts believed Dr. Sharf "was capable of continuing his practice as a cardiologist despite [the diagnosis of] alcoholism."

Dr. Houts's testimony was thoughtful and reasonable. There was no reason to disbelieve it. No expert testimony to the contrary was provided.

27. Hank C. testified. He was a Navy Seal, became involved in national security assignments, and then became self-employed in the field of fiber optics. He is a recovering alcoholic who has maintained continuous sobriety and has been a member of AA since March 8, 1987. He has attended more than 10,000 AA meetings. He and other AA colleagues founded the Mira Mesa Alano Club.

Hank C. first knew of Dr. Sharf about five years ago, when another member of AA, "a fabulous sponsor," was sponsoring Dr. Sharf. Hank C.'s opinion of Dr. Sharf's sobriety and participation in the AA program at that time "was not very good – he was not committed to the program." According to Hank C., Dr. Sharf "was around the program, but not in the program." Hank C. was aware that Dr. Sharf stopped attending AA meetings.

In late July 2015, Hank C. attended an AA Beginners Meeting at the Mira Mesa Alano Club with the goal of meeting newcomers. Dr. Sharf attended that meeting. After the meeting, Dr. Sharf

asked Hank C. to be his sponsor. Hank C. refused because he believed Dr. Sharf was not serious about the AA program, based on his prior observations. Hank C. continued to see Dr. Sharf at AA meetings after that, and Dr. Sharf continued to ask Hank C. to become his sponsor. Hank C. realized Dr. Sharf "was desperate, was done, and believed he could no longer drink safely." Hank C. agreed to sponsor Dr. Sharf.

Hank C. testified that since mid-July 2015, Dr. Sharf has been extremely active in Alcoholics Anonymous. The AA program of recovery requires complete abstinence. Dr. Sharf attends many AA meetings. He and Hank C. have worked the 12 steps of recovery. They meet every Monday and have done so for the past 18 months. Dr. Sharf provides support and assistance to other members of AA, very often newcomers who are employed in the health care field. Dr. Sharf currently sponsors three other men. Hank C. testified it is important for Dr. Sharf and other members of AA who are in recovery to meet and help newcomers to remind themselves "how bad it was." Long term sobriety requires that a member of AA remain very active and involved in the AA program, according to Hank C.

Hank C. estimated he has sponsored about 80 men. About half have relapsed and failed to maintain long term sobriety. When asked whether Dr. Sharf will remain abstinent, Hank C. testified, "It's a tough call . . . he has a great chance if he remains active."

Hank C.'s testimony was thoughtful and reasonable. There was no reason to disbelieve it.

28. Genaro Fernandez, M.D., obtained a medical degree from State University, San Luis Potosl, Mexico, in 1976. He completed a residency in Internal Medicine at Baylor College of Medicine, Houston, Texas, in 1980, and a fellowship in Cardiology at that institution in 1983. He holds board certifications in Internal Medicine and Cardiology. He is an interventional cardiologist. He has staff privileges at Sharp Chula Vista Medical Center, Scripps Mercy Hospital, and Paradise Valley Hospital. He is the Director of Interventional Cardiology at Sharp Chula Vista and Chief of Staff at Paradise Valley Hospital.

Dr. Fernandez has known Dr. Sharf since 1993. He believes Dr. Sharf is a highly competent cardiologist. He has had contact with Dr. Sharf several times a day since 1993. He was not aware of the circumstances surrounding Dr. Sharf's 2015 driving under the influence conviction. He has never had reason to question Dr. Sharf's medical judgment. He regularly refers patients to Dr. Sharf. He has never had any reason to believe Dr. Sharf has ever been impaired or under the influence of alcohol or any other substance at work.

Dr. Fernandez's testimony provided little information related to Dr. Sharf's participation in the AA program and rehabilitative efforts since July 2015, other than to confirm Dr. Sharf's testimony that has never shown up at work under the influence.

29. Donna M. Crowley, M.D., received a medical degree from The Chicago Medical School in 1983. She completed a residency in Physical Medicine and Rehabilitation at Northwestern University in 1986. She became board certified by the American Board of Physical

Medicine and Rehabilitation in 1987. She has been self-employed in California since 1990. She holds staff privileges at many San Diego County hospitals. She is the Medical Director of Rehabilitation Services at Paradise Valley Hospital. She serves on the Governing Board of Paradise Valley Hospital.

Dr. Crowley and Dr. Sharf have shared many patients over the past 17 years. According to Dr. Crowley, "Patients love Dr. Scharf." He is respectful of patients and their families. Dr. Sharf is highly respected by his colleagues. To Dr. Crowley's knowledge, Dr. Sharf has not engaged in any unprofessional conduct in connection with the care he has provided to patients. She has never had any reason to believe Dr. Sharf has ever been impaired or under the influence of alcohol or any other substance at work.

Dr. Crowley had regular contact with Dr. Sharf before and after the July 2015 traffic collision. Dr. Sharf voluntarily disclosed the fact of his arrest to Dr. Crowley after his arrest. He said he was going through a difficult time of his life. Dr. Crowley was not aware of the specific facts surrounding the traffic collision and did not know whether Dr. Sharf considered himself to be an alcoholic. She had no idea whether he attended AA meetings.

Dr. Crowley's testimony provided little information related to Dr. Sharf's participation in the AA program and rehabilitative efforts since July 2015, other than to confirm Dr. Sharf's testimony that has never shown up at work under the influence.

30. Dr. Sharf provided documentary evidence to confirm his payment of fines and fees, the 52 hours of volunteer services he provided, his completion of the mandated first offender drinking driver's program, his attendance at numerous AA meetings, and photocopies AA token he received.

31. Dr. Sharf provided certificates confirming his continuing education in the field of cardiology. He provided no certificate to establish any professional education related to alcoholism, substance abuse, or the treatment of those conditions.

32. Dr. Sharf has many contracts with insurance companies and other entities that pay for his professional services. He carefully reviewed those agreements before the hearing and determined that if the Medical Board were to place his certificate on probation, most of those insurance companies and entities would no longer pay for the medical services he provides. He thinks he would go out of business.

33. Dr. Sharf testified in a calm and thoughtful manner. He listened to the questions that were asked; his answers to those questions made sense and were consistent with what he previously told others. His testimony was not equivocal. He perceived, recalled and testified about matters from personal observation and experience. Although Dr. Sharf had a strong interest in obtaining a favorable outcome in this proceeding and in not having his certificate placed on probation, he readily admitted he was an alcoholic and had engaged in unprofessional conduct. He took full responsibility for his misconduct and did not attempt to minimize it. He did not blame others for his situation. Most of what he testified about was

corroborated by other credible evidence; no evidence was offered that contradicted his sworn testimony. Dr. Sharf understood the importance of providing truthful testimony, even when doing so might not be favorable to the outcome of his case. He also understood the reason the disciplinary proceeding was commenced, and he did not express or hold any grudge in that regard.

34. Dr. Sharf's testimony was believable. Complaint's counsel's assertion that Dr. Sharf was "less than forthcoming" is rejected.

Disciplinary Guidelines

35. The preface to the 11th edition of the Medical Board's Manual of Disciplinary Orders and Disciplinary Guidelines states in part:

> Business and Professions Code section 2229 mandates protection of the public shall be the highest priority for the Medical Board and for the Administrative Law Judges of the Medical Quality Hearing Panel. Section 2229 further specifies that, to the extent not inconsistent with public protection, disciplinary actions shall be calculated to aid in the rehabilitation of licensees. To implement the mandates of section 2229, the Board has adopted the Manual of Model Disciplinary Orders and Disciplinary Guidelines (guidelines), 11th Edition. Consistent with the mandates of section 2229, these guidelines set forth the discipline the Board finds appropriate and necessary for the identified violations. In addition to protecting the public and, where not inconsistent, rehabilitating the licensee, the Board finds that imposition of the discipline set forth in the guidelines will promote uniformity, certainty and fairness, and deterrence, and, in turn, further public protection.
>
> The Board expects that, absent mitigating or other appropriate circumstances such as early acceptance of responsibility and demonstrated willingness to undertake Board-ordered rehabilitation, Administrative Law Judges hearing cases on behalf of the Board and proposed settlements submitted to the Board will follow the guidelines, including those imposing suspensions. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure . . . .

36. For the use of alcohol to the extent or in a manner dangerous to the physician and/or others, the guidelines recommend a maximum penalty of revocation and a minimum penalty of stayed revocation with five years' probation. Terms and conditions of probation may

include a suspension of 60 days or more, abstaining from the use of alcohol, biological fluid testing, completion of an ethics course, a psychiatric evaluation, psychotherapy, a medical evaluation and treatment, and practice monitoring.

For the conviction of a crime substantially related to the qualifications, functions or duties of a physician not occurring during patient care, the guidelines recommend a maximum penalty of revocation and a minimum penalty of stayed revocation with five years' probation. Terms and condition of probation may include a community service requirement, completion of an ethics course, a psychiatric evaluation, psychotherapy, a medical evaluation and treatment, and victim restitution.

For general unprofessional conduct, the guidelines recommend a maximum penalty of revocation and a minimum penalty of stayed revocation with five years' probation. Terms and condition of probation include, when appropriate, completion of an education course, a prescribing practices course, a record keeping course, an ethics course, participation and completion of a clinical training program, practice monitoring, the prohibition from solo practice, and a prohibition from practicing in an area where incompetence or unprofessional conduct occurred.

37. If a physician is found to be a substance-abusing licensee and no facts or circumstances support a deviation in reaching such a finding, California Code of Regulations, title 16, section 1361, et seq., requires that probation be imposed that includes terms and conditions of probation set forth the Uniform Standards Related to Substance Abusing Licensee, including clinical diagnostic evaluations and the submission of reports by independent evaluators, notice to employers, biological fluid testing, mandatory attendance at group support meetings, and the use of worksite monitors.

Disciplinary Arguments

38. Counsel for complainant argued: Dr. Sharf's misuse of alcohol evinced "serious and entrenched alcoholism"; Dr. Sharf was in the very early stages of recovery; Dr. Sharf was "less than forthcoming"; and the negative financial impact that might result as a result of placing Dr. Sharf's certificate on probation was irrelevant to the issue of public protection. Counsel argued the facts in this matter mandated Dr. Sharf certificate be placed on probation; any other disciplinary result was unsupported and involved an abuse of discretion. Complainant sought a revocation, stayed, with five years' probation, with the application of the uniform standards applicable to substance abusing licensees.

Counsel for respondent argued: Dr. Sharf was a recovering alcoholic who was committed to sobriety; Dr. Sharf was no longer a substance abusing licensee: The uniform standards related to a substance abusing licensee should not be applied: A variety of mitigating circumstances surrounded the traffic collision, including Dr. Sharf being on vacation, his recent separation from his wife, and his relative inexperience with hard liquor. Counsel argued that Dr. Sharf was not, and had never been, a danger to patients by reason of his use of alcohol, and imposing any discipline would punish Dr. Sharf and not assist him in his rehabilitative efforts.

Factual Conclusions

39. The purpose of the Medical Practice Act is to assure the high quality of medical practice in California. The disciplinary process operates by eliminating immoral and incompetent practitioners from the roster of state-licensed professionals. The disciplinary order set forth below deviates from the Medical Board's disciplinary guidelines for the reasons stated hereafter.

40. Dr. Scharf, an educated, well-trained, experienced, highly respected cardiologist, has provided quality medical care to thousands of patients living in the National City area since 1992. He was erroneously sued once, but he has never been subjected to civil liability as a result of a malpractice claim. His staff privileges at local hospitals have never been revoked, suspended, or limited. There is no history of any administrative discipline having been imposed on his certificate. He has never been cited. Apart from the November 2015 misdemeanor driving under the influence conviction, he has no criminal record. Dr. Scharf is currently single. He is the father of nine children, some of whom are minors.

Despite complainant's counsel's claim that Dr. Scharf suffers from "serious and entrenched alcoholism," his problem with alcohol was nonexistent until very recently. He is 55 years of age. He did not consume alcohol on a regular basis until he was 35 years old; even then, he consumed no more than a glass or two of wine once or twice a month; he never consumed alcohol on a weekend when he was on call. Ten years later he increased his consumption to three or four glasses of wine on a weekend evening when he was not on call. The progression was related to his new hobby of wine tasting and wine collecting. He did not drink on weekdays, and he never drank before 5:00 p.m. He did not drink on any weekend when he was on call. This pattern of consumption continued for another five or six years without difficulties.

When Dr. Sharf was in his early fifties, his father died. Around the same time, he experienced increasing marital difficulties. He admits he became intoxicated on a handful of occasions. On three or four occasions, his wife told him he consumed too much wine. Dr. Sharf believed he might have a problem with alcohol, so he began attending AA meetings. He attended 20 or 30 meetings, enjoyed the AA fellowship, and attained an AA sponsor, but he did not devote himself to AA's 12-step program of recovery; he believed he could continue to control and enjoy his drinking. That turned out not to be the case.

On July 22, 2015, Dr. Sharf drank hard liquor to the point he blacked out, after which he drove a motor vehicle and caused a low-speed, rear-end traffic collision. The traffic collision was a transformative experience. He experienced immediate and profound shame, guilt, and remorse. He accepted that his situation was a direct result of his consumption of alcohol and that avoiding similar events in the future required total abstinence. He quickly threw himself in to the AA program. He has attended hundreds of meetings, works with an AA sponsor, completed the 12-steps of recovery, developed a belief in a higher power, and shares his experiences with newcomers. Dr. Sharf confirmed his abstinence for the past 24 months through the use of the SoberLink breathalyzer, a device and service he purchased on his own; it was not court-ordered. He participates in psychotherapy with Dr. Houts, a board certified psychiatrist. Credible evidence corroborated all aspects of Dr. Sharf's testimony concerning his abstinence and the rehabilitation

efforts that commenced well before disciplinary charges were filed. Dr. Sharf is motivated solely by an inner need to remain abstinent, sober, and in active recovery for the rest of his life.

Dr. Sharf's alcohol use disorder was mild, and it is currently in full remission. He provided compelling evidence that prevails over the presumption that he is a substance abusing licensee because of his previous abuse of alcohol. His recovery from alcoholism is found to be meaningful and sustained. He does not pose any danger to the public, as evidenced by his unblemished record of superb medical care provided before and after the traffic collision.

Well before disciplinary charges were filed, Dr. Sharf voluntarily imposed upon himself the fundamental components that would have been imposed had he been placed on probation -he abstained from the use of alcohol; he submitted to testing; he underwent a psychiatric evaluation; he participated in psychotherapy; and he constantly attends 12-step self-help meetings. There is no need for Dr. Sharf to undergo a medical evaluation, nor is there any need to monitor his medical practice or supervise his continuing rehabilitative efforts.

Taking into account Dr. Sharf's lack of prior disciplinary history, the nature of the violations established, his documented length of sobriety, the scope and pattern of his prior alcohol use, and the compelling evidence presented in extenuation, explanation, mitigation, and rehabilitation, it is concluded the public will be adequately protected by issuing a public reprimand to Dr. Sharf. While issuing a public reprimand is not a measure of discipline that falls squarely within the Medical Board's disciplinary guidelines, it is the most appropriate sanction under the circumstances.

A public reprimand is not a "free pass." It constitutes the Medical Board's formal criticism and censure of Dr. Sharf, who engaged in unprofessional conduct. It warns him that engaging in the same or similar conduct in the future will likely result in more serious consequences. A public reprimand gives notice to the public and others of the nature and extent of Dr. Sharf's misconduct. While a public reprimand may not be as drastic a sanction as other disciplinary measures, it is humbling experience in this matter because it represents the only stain on Dr. Sharf's otherwise unblemished professional record.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. The purpose of the Medical Practice Act is to assure the high quality of medical practice. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.) Conduct supporting the revocation or suspension of a medical license must demonstrate an unfitness to practice. The purpose of a disciplinary action is not to punish, but to protect the public. In an administrative disciplinary proceeding, the inquiry must be limited to the effect of the doctor's actions upon the quality of his service to his patients. (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1416.)

The Standard of Proof

2. The standard of proof in an administrative action seeking to suspend or revoke a physician's certificate is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Imposing Physician Discipline

3. Business and Professions Code section 2227 provides in part:

> (a) A licensee whose matter has been heard by an administrative law judge . . . and who is found guilty . . . 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 . . .
>
> (3) Be placed on probation . . .
>
> (4) Be publicly reprimanded . . .
>
> (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.

4. Business and Professions Code section 2229 provides in part:

> (a) Protection of the public shall be the highest priority for the Division of Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.
>
> (b) In exercising his or her disciplinary authority an administrative law judge . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence.
>
> (c) Where rehabilitation and protection are inconsistent, protection shall be paramount.

Applicable Disciplinary Statutes

5. Business and Professions Code section 2234 provides in part:

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

6. Business and Professions Code section 2236 provides in part:

> (a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. [¶] . . . [¶]
>
> (d) A . . . conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

7. Business and Professions Code section 2239 provides in part:

> (a) The . . . use . . . of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely . . . constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.
>
> (b) A . . . conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section . . . .

Regulatory Authority

8. California Code of Regulations, title 16, section 1361.5 provides in part:

> (a) If the licensee is to be disciplined for unprofessional conduct involving the use of illegal drugs, the abuse of drugs and/or alcohol, or the use of another prohibited substance as defined herein, the licensee shall be presumed to be a substance-abusing licensee for

purposes of section 315[2] of the Code . . . .

9. Under existing law, some presumptions are conclusive. Conclusive presumptions are specified in Evidence Code sections 620-624 or are declared conclusive by other law. Under existing law, all presumptions that are not conclusive are rebuttable presumptions. (Law Revision Comments to Evidence Code section 601.) Regulation 1361.5 is a rebuttable presumption.

Unprofessional Conduct

10. Unprofessional conduct must, among other things, indicate an unfitness to practice medicine. Unprofessional conduct involves conduct that breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

Substantial Relationship

11. In *Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, the Court of Appeal considered an order issued by the Medical Board that imposed discipline on a physician under Business and Professions Code section 2239, subdivision (a), which defined unprofessional conduct as "The use . . . or administering to himself or herself, . . . of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely . . . . " (*Id.* at pp. 1411–1414.) The physician had been arrested several times for driving under the influence, but was not convicted of any offense. The physician argued that Business and Professions Code section 2239 was unconstitutional to the extent it authorized "discipline for after-hours conduct without a showing of a nexus between the particular conduct in question and the ability to practice medicine." (*Id.* at p. 1418.) The Court of Appeal rejected the physician's claim. The court, after analyzing earlier appellate decisions, concluded: "[W]hile there must be a nexus or 'logical connection' between the type of misconduct that forms the basis for physician discipline and the ability of the physician to practice medicine, that nexus is established for constitutional purposes if the conduct enumerated, here the use of alcohol to the extent, or in such manner as to be dangerous or injurious to the licensee, or to any other person or to the public, is logically connected to a physician's fitness to practice medicine." (*Id.* at p. 1421.)

12. The same conclusion was reached in *Sulla v. Bd. of Registered Nursing* (2012) 205 Cal.App.4th 1195. The Court of Appeal in *Sulla* observed that an agency's authority to take disciplinary action against a licensee derives from the state's inherent power to regulate the use of property to preserve public health, morals, comfort, order and safety. It observed that administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. The court noted that while "It is undoubtedly true that not every conviction involving

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[2] Business and Professions Code section 315 requires the formulation of uniform and specific standards to be used by healing arts boards in dealing with substance-abusing licensees, whether or not the board chooses to have a formal diversion program.

alcohol warrants the suspension or revocation of a professional license; however, such a conviction may "reflect a personal problem involving alcohol consumption [citation], and it is not necessary to postpone the imposition of discipline until that personal problem affects the [professional] practice . . . We are not here concerned with the reasonableness of the discipline imposed by the Board, which Sulla did not challenge in the writ proceeding below. The question is whether the Legislature violated the Constitution by granting the Board the power to assert jurisdiction over one of its licensees based on an alcohol-related conviction or the use of alcohol in a dangerous manner. It did not." (*Sulla*, at pp. 1206–1207.)

13. The rationale for imposing discipline following alcohol-related convictions was explained in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757. Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment relevant to a physician's fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. Driving under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society. (*Id.*, at pp. 770-771.)

14. In determining whether a particular conviction reflects on an individual's fitness to practice a profession, a court may examine the facts and circumstances surrounding the conduct that gave rise to the conviction, and the inquiry into whether the conviction is substantially related to the profession is not restricted to examining the elements of the offense itself in making that determination. (*In re Higbie* (1972) 6 Cal.3d 562, 572.)

Rehabilitation

15. Rehabilitation requires a consideration of those offenses from which an individual has allegedly been rehabilitated. Rehabilitation is a state of mind, and the law looks with favor on rewarding one who has achieved reformation and regeneration with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented when an applicant demonstrates fitness by sustained good conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

16. According to a consensus of the medical community, alcoholism is a treatable disease. Through continued abstinence, an alcoholic may arrest the deleterious manifestations of the disease. Hundreds of thousands of Americans are recovering alcoholics, completely abstinent from alcohol or other mind-altering chemicals. An alcoholic's rehabilitation is almost universally predicated on a choice to confront his or her problem, followed by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous. As we have recognized, the requisite length of time to show "meaningful and sustained" rehabilitation will vary from case to case. (*In re Billings* (1990) 50 Cal.3d 358, 367-368.) Determining whether rehabilitation from alcoholism is "sustained" and "meaningful" requires consideration of the nature and extent of the individual's misconduct. (*Id.*, at p. 368.)

Cause Exists to Impose Discipline

17. First Cause for Discipline: Cause exists under Business and Professions Code section 2239, subdivision (a), to impose discipline. Clear and convincing evidence established Dr. Sharf engaged in unprofessional conduct by using alcoholic beverages to an extent and in a manner, dangerous to himself and others on July 22, 2015.

18. Second Cause for Discipline: Cause exists under Business and Professions Code section 2236, subdivision (a), to impose discipline. Clear and convincing evidence established Dr. Sharf was convicted on November 13, 2015, of driving under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision (a), a misdemeanor, and driving with a blood alcohol content level of 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. He admitted his blood alcohol level was 0.15 percent or more by weight at the time of the offense. The facts and circumstances surrounding the offense established the conviction was substantially related to the qualifications, functions, and duties of a physician.

19. Third Cause for Discipline: Cause exists under Business and Professions Code section 2234, subdivision (a), to impose discipline. Clear and convincing evidence established Dr. Sharf's misconduct on July 22, 2015, violated the Medical Practice Act because Dr. Sharf consumed alcohol to the extent he was a danger to himself and others.

20. Fourth Cause for Discipline: Cause exists under Business and Professions Code section 2234 to impose discipline. Clear and convincing evidence established Dr. Sharf engaged in general unprofessional conduct on July 22, 2015, by conducting himself in a manner that was unbecoming a member in good standing of the medical profession.

The Most Appropriate Measure of Discipline

21. The Panel recognizes the substantial rehabilitative efforts the Respondent has undertaken as well as his commitment to continued sobriety. Respondent would be served well to continue these remedial efforts. The Panel is cognizant of its public protection obligations. (See Bus. & Prof. Code, §§ 2001.1 2229.) Issuing a public reprimand is a deviation from the specific recommendations set forth in the Medical Board's disciplinary guidelines; however, given Dr. Sharf's history related to his use of alcohol, the nature and extent of Dr. Sharf's misconduct giving rise to this disciplinary action, and the effective and significant remedial steps Dr. Sharf has taken to ensure similar events will not reoccur, such a deviation is warranted. A public reprimand ensures that Dr. Sharf's misconduct will be matter of public record and it will serve as a continuing

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reminder of his responsibility as a recovering alcoholic to remain abstinent. Public protection does not require Dr. Sharf be placed on probation or that any conditions be placed on the public reprimand.

ORDER

The Decision in this matter constitutes the Public Reprimand of Albert Sharf, M.D.

This decision shall become effective at 5 p.m. on June 23, 2017.

IT IS SO ORDERED this 24th day of May, 2017

Michelle Anne Bholat, M.D., Chair
Panel B
Medical Board of California

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

In the Matter of Accusation Against:	)	
	)	
ALBERT J. SHARF, M.D.	)	
	)	Case No.: 800-2015-016082
Physician's & Surgeon's	)	
Certificate No: G72122	)	OAH No.: 2016060489
	)	
Respondent	)	
	)	
	)	

ORDER OF NON-ADOPTION OF PROPOSED DECISION

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted.** A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit directed to the question of whether the proposed penalty should be modified. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Diamond Court Reporters, 1107 2nd Street, Suite 210, Sacramento, California 95814. The telephone number is (916) 498-9288. To order a copy of the exhibits, please submit a written request to this Board.

In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
(916) 576-3216
Attention: Robyn Fitzwater

Date: February 7, 2017

Michelle Bholat, M.D. , Chair
Panel B

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

In the Matter of the Accusation Against ALBERT J. SHARF, M.D., Physician's and Surgeon's Certificate No. G72122, Respondent.	Case No. 800-2015-016082 OAH No. 2016060489

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 5, and 6, 2016, in San Diego, California.

Jason J. Ahn, Deputy Attorney General, Department of Justice, State of California, represented complainant, the Executive Director of the Medical Board of California, Department of Consumer Affairs, State of California.

David Rosenberg, Attorney at Law, and Chad Edwards, Attorney at Law, represented respondent, Albert J. Sharf, M.D.

The matter was submitted on December 6, 2016.

SUMMARY

On July 22, 2015, Dr. Sharf consumed alcoholic beverages to excess, drove a motor vehicle while under the influence, and caused a rear-end traffic collision in Newport Beach. On November 13, 2015, he was convicted of driving under the influence. Grounds exist to discipline Dr. Sharf's medical certificate: He used alcoholic beverages in a manner and to the extent dangerous to himself and others; he violated provisions of the Medical Practice Act; he conducted himself in an unprofessional manner; and, he was convicted of a crime substantially related to the qualifications, functions and duties of a physician.

Dr. Sharf is a recovering alcoholic who is confident he will not consume alcohol again. He asserts the events taking place on July 22, 2015, were unique and out of character,

and his involvement in the traffic collision was a life-changing experience. He claims he immediately embarked on a program of abstinence and recovery following the traffic collision, and has not consumed alcoholic beverages since then. His testimony, the testimony of others, and documentary evidence support these claims.

Public protection does not require Dr. Sharf's medical certificate be placed on probation. He has undergone a meaningful and sustained period of rehabilitation. He is not a substance-abusing physician, and the likelihood of his use of alcohol in the future is negligible. The public will be protected by the issuance of a public reprimand.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 19, 2016, complainant signed Accusation Case No. 800-2015-016082. The accusation alleges respondent, Albert J. Sharf, M.D., used alcohol in a manner or to the extent dangerous to himself or others (first cause for discipline); was convicted of a crime substantially related to the qualifications, functions or duties of a physician (second cause for discipline); violated provisions of the Medical Practice Act (third cause for discipline); and engaged in general unprofessional conduct (fourth cause for discipline).

The accusation and other documents were served on Dr. Sharf, whose attorney timely filed a notice of defense.

On December 5, 2016, the administrative record was opened; jurisdictional documents were presented; opening statements were given. On December 5 and 6, 2016, official notice was taken; sworn testimony was received; and documentary evidence was produced. On December 6, 2016, closing arguments were given; the record was closed; and the matter was submitted.

Dr. Sharf's License History

2. On July 30, 1991, the Medical Board issued Physician's and Surgeon's Certificate No. G72122 to Dr. Sharf. There is no history of any disciplinary action having been imposed against Dr. Sharf's certificate.

Dr. Sharf's Background, Education, Training, and Experience

3. Dr. Sharf was born in April 1961. He graduated with a bachelor's degree from New York University in 1982. He graduated from New Jersey Medical School, the medical school of Rutgers University, with a medical degree in 1986. He completed an internship at the Long Island Jewish Medical Center in 1986, a residency in Internal Medicine at that institution in 1989, and a fellowship in Cardiology at that institution in 1992.

Dr. Sharf became licensed in California in 1991, moved with his family to California in 1992, and established a medical practice in National City. He has practiced medicine in National City since 1992.

The American Board of Internal Medicine certified Dr. Sharf in Internal Medicine in 1989 and in Cardiovascular Disease in 1991. He successfully underwent recertification. He is a member of the American Society of Nuclear Cardiology, American Heart Association, San Diego County Medical Society, American College of Cardiology Affiliates, and American College of Physicians Diplomate.

Dr. Sharf holds staff privileges at Paradise Valley Hospital in National City and at Sharp Medical Center in Chula Vista. His privileges at those institutions have been in effect since 1992. His privileges have never been revoked, suspended, or limited.

Dr. Sharf has served as Medical Director of the Department of Cardiology at Paradise Valley Hospital since 1994, and was Paradise Valley Hospital's Chief of Staff in 1994. He is currently a member of Paradise Valley Hospital's Governing Board.

4. Dr. Sharf practices noninvasive cardiology. Most of his patients live in the National City area, an underprivileged part of San Diego County. His patients range in age between 16 and 100. Most patients have insurance or are Medicare or Medi-Cal qualified.

Dr. Sharf evaluates and treats patients who present with a cardiovascular diseases, including high blood pressure, congestive heart failure, coronary artery disease, chest pain, atrial fibrillation, ventricular arrhythmia, and cardiomyopathy. Dr. Sharf has approximately 130 to 140 patient contacts per week, and he estimated he has treated more than 20,000 patients over the course of his career.

Dr. Sharf described his role as a gatekeeper and caregiver. He consults with other physicians to determine the nature and extent of a patient's cardiovascular status; he refers patients who need aggressive intervention to cardiologists, surgeons, and other specialists; he evaluates patients to determine their fitness to undergo surgery; he recommends what precautions, if any, should be taken during invasive procedures and surgeries; and he cares for patients following surgeries and other procedures.

Dr. Sharf was mistakenly sued on one occasion for medical negligence many years ago, but the case was dismissed shortly after it was filed when it was determined Dr. Sharf was not negligent and should not have been named as a defendant. Neither Dr. Sharf nor his insurance carriers have ever paid anything to any individual to settle a malpractice claim. Other than the lawsuit occurring many years ago, Dr. Sharf was not aware of any patient complaints having been filed against him with any insurance carrier, hospital, health care facility, governmental agency, or other entity.

5. Dr. Sharf married while he was in medical school. He and his wife have nine children, ranging from thirty years of age to eight years of age. After more than 30 years of marriage, Dr. Sharf and his wife separated in September 2014.

Dr. Sharf's Use of Alcoholic Beverages

6. Dr. Sharf testified he first consumed an alcoholic beverage when he was 17 or 18 years old. He didn't like the taste and decided drinking alcohol was not something he wanted to do. He did not consume alcoholic beverages in college, during medical school, or during his formal medical training.

Dr. Sharf testified he began drinking a "rare glass of wine" after moving to San Diego County. He did not purchase the wine he consumed. He testified he had a glass of wine every three months or so.

At age 35, Dr. Sharf's consumption of wine progressed to two or three glasses of wine on a Friday or Saturday evening. He did not consume wine to the point of intoxication. He controlled and enjoyed his consumption of wine without thought or effort. He never consumed beer or hard liquor.

Around age 45, Dr. Sharf decided to become a connoisseur and began collecting wine. His consumption of wine increased to the extent he drank three or four glasses of wine on a weekend evening when he was not on call. He did not drink on weekdays, and he never drank before 5:00 p.m. On three or four occasions, his wife became very unhappy and warned him he had consumed too much.

To appease his wife, Dr. Sharf began attending Alcoholic Anonymous meetings at the Miramar Alano Club. He very much enjoyed the fellowship there and obtained an AA sponsor. He did not work AA's 12 steps of recovery. During this period of his life, he thought he did not have a significant problem with alcohol and he could easily control his consumption of wine. He continued drinking an occasional glass of wine even though he attended AA meetings, had a sponsor, and identified himself as an alcoholic at AA meetings. On at least one occasion, he "took a dirty token," meaning he accepted a chip to celebrate a period of abstinence when, in fact, he had consumed an alcoholic beverage. He admitted during this hearing that he was not fully committed to AA's program of recovery, which he finally abandoned. No personal or professional consequences immediately attended his continuing consumption of wine and withdrawal from the AA program.

Dr. Sharf's life significantly changed when he was in his early fifties. His father died a painful death after battling cancer for many years. His marriage became increasingly difficult, ultimately resulting in his separation from his wife. He found that heavy exercise was no longer effective in relieving stress. He was lonely much of the time. He worried about his family, marriage, children, and finances. His consumption of wine increased, although he continued his practice of not drinking on weekdays, not drinking on weekends when he was on call, and never drinking before 5:00 p.m. In retrospect, Dr. Sharf believes it

highly significant that he began "obsessing about relief from stress" and thought the consumption of alcohol might help in that regard.

All of these factors, in combination, created what respondent's psychiatrist, Dr. Houts, described as "a perfect storm" that gave rise to the events occurring on July 22, 2015.

The July 22, 2015, Incident

7. In mid-July 2015, Dr. Sharf went on his first vacation by himself. He stayed with an uncle who lived in Newport Beach. He awoke at his uncle's home the morning of July 22, 2015, had breakfast, and drove to Pelican Hill, an upscale golf resort in Newport Beach, in his 2009 Jaguar.

Dr. Sharf, a novice golfer, did not have anyone to play golf with that afternoon; the starter assigned him to play with three other golfers he did not know. Dr. Sharf told the others about his personal situation as the round of golf progressed, and they bought him several rounds of drinks from the golf course beverage cart. Dr. Sharf testified he consumed more than two or three alcoholic beverages, but he could not remember what he drank or the number of cocktails he consumed. He had never engaged in that kind of behavior before. He became so intoxicated he "blacked out," resulting in a memory loss for the events taking place during and after the round of golf. He had never blacked out before.

Dr. Sharf became aware of his situation and surroundings immediately after a traffic collision occurring the evening of July 22, 2015. He found himself behind the wheel of his Jaguar, which had front-end damage. The BMW in front of his Jaguar was stopped in the roadway with rear-end damage. Debris was scattered about the roadway. Dr. Sharf correctly concluded he had just been involved in a traffic collision. He knew he had driven his Jaguar when he was under the influence; he believed he was responsible for causing the collision; and he experienced immediate feelings of guilt, shame, and remorse, as well as a great deal of concern for the wellbeing of the occupants of the BMW. He testified he was "deeply angry with myself" and "in anguish." He promised himself, "This will never happen again." Shortly thereafter, the police arrived.

8. The investigating officers' testimony and reports established the following.

On July 22, 2015, at approximately 9:06 p.m., a uniformed Newport Beach traffic officer observed vehicle debris in the roadway causing a traffic hazard near the area of East Coast Highway and Iris Avenue in Newport Beach. The officer activated his rear warning lights and removed several large pieces of vehicle debris, including a portion of a black bumper along the north curb. He observed two cars stopped along the north curb in front of him. Both cars had collision damage consistent with the debris left in the roadway. A black BMW had damage on the driver's side rear bumper. The BMW was stopped in front of a black Jaguar, which had damage on the passenger's side front bumper. The officer contacted two males standing on the sidewalk next to the damaged cars. The driver of BMW stated he was traveling westbound on East Coast Highway when he was struck from behind by the

Jaguar. The officer contacted respondent, who said he was traveling westbound on East Coast Highway when the BMW abruptly stopped in front of him; he said he was unable to stop and his Jaguar collided with the BMW; he admitted he was driving the Jaguar at the time.

During their contact with respondent, the first officer on the scene and an officer who arrived later observed that respondent displayed objective symptoms of intoxication, including slurred speech, bloodshot and watery eyes, and an odor of alcoholic beverage. The officers observed that respondent had an unsteady gait and was unbalanced while standing at a stationary position. Respondent told one of the officers he had consumed two glasses of white wine earlier that evening at the Pelican Hill Grill.

The first officer on the scene administered a series of field sobriety tests. Respondent performed poorly. Respondent provided two breath samples that were analyzed by a preliminary alcohol screening device that revealed a 0.17% breath alcohol content (BAC) and a 0.17% BAC, at approximately 9:42 p.m. and 9:45 p.m., respectively. Respondent provided two evidentiary breath samples that were analyzed thereafter, and the results of that testing revealed 0.16% BAC and 0.16% BAC, at approximately 10:12 p.m. and 10:15 p.m.

The first officer on the scene arrested respondent for driving under the influence of alcohol at approximately 10:15 p.m., and transported respondent to the Newport Beach jail for processing.

9. The officers' testimony in this matter also established the following. The airbags in the BMW and Jaguar were not activated as a result of the collision. There was minor damage to the rear end of the BMV, which was driven from the scene. There was moderate damage to the front of the Jaguar, which was towed from the scene. Emergency medical attention was not requested by, or provided to, any occupant of any vehicle involved in the collision, although the occupants complained of minor head, neck and back pains.

Respondent was cooperative throughout the investigation. He attempted to complete all of the testing that was administered. According to the arresting officer, respondent was remorseful and distraught, and he asked about the health and welfare of the occupants of the BMW. According to the second officer who arrived at the scene, respondent was upset by the collision, very cooperative during the investigation, concerned about others, and mentioned "a lot of stuff was going on in his life," including "family issues at home."

10. In an interview with a Department of Consumer Affairs investigator taking place on March 30, 2016, Dr. Sharf admitted he consumed five or six drinks of "hard liquor" before driving his car; he believed he "blacked out" and said he could not remember "what happened" after "all those drinks"; he said he did not remember getting into his car after drinking; he recalled there was collision damage to his Jaguar that resulted in repairs that cost approximately $10,000; he admitted he was publicly intoxicated and he had endangered his own life and the lives of others; and he stated he could have killed himself or somebody

else. Dr. Sharf's statement to the investigator during the interview was consistent with the sworn testimony he provided in this proceeding.

In response to the investigator's question asking why he had decided to never drink alcohol again, respondent said:

> I think [it's] the worst thing I could possibly do in my life. I endangered by own life, other people's lives, uh, society. I let my kids down, my family down, um, my patients down, and my peers down, and I'm never gonna' be in that situation again. I'll do everything in my power to never drink alcohol again.

The Conviction

11. On November 13, 2015, in the Superior Court of California, County of Orange, in Case No. 15HM08348 MA, Dr. Sharf was convicted, on his plea of nolo contendere, of driving under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision (a), a misdemeanor, and driving with a blood alcohol content level of 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. He admitted his blood alcohol level was 0.15 percent or more by weight at the time of the offense, a factor the court was required to consider in accordance with Vehicle Code section 23578.[1]

12. On November 13, 2015, the court suspended imposition of sentence and placed respondent on three years informal probation. The court ordered respondent to violate no laws; obey all orders rules and regulations of the court; not drive a motor vehicle with a measurable amount of alcohol in his blood; submit to a chemical test on demand of any peace officer or probation officer; not drive without a valid driver's license and proof of insurance; pay fines and fees in the approximate total amount of $2,100; serve one day in custody (credit was given for time served); provide 40 hours of community service in lieu of being required to serve an additional five days in the county jail; and attend and complete a three month first offender drinking driver program.

13. Respondent complied with all terms and conditions of probation. He paid fines and fees on December 11, 2015. He provided 52 hours of community service at Paradise Valley Hospital, where he transported biological specimens and medications outside of his normal working hours. He completed a first offender drinking driver program, which required weekly group counseling sessions and five two-hour educational courses, and he

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[1] Vehicle Code section 23578 provides, in part: "[I]f a person is convicted of a violation of Section 23152 . . . the court shall consider a concentration of alcohol in the person's blood of 0.15 percent or more, by weight . . . as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation."

attended AA meetings as required by the first offender program. Respondent has no further terms or conditions of probation to fulfill other than to complete his remaining period of probation. Probation is scheduled to terminate on November 12, 2018.

14. Before imposing sentence, the court advised respondent:

> Being under the influence of alcohol or drugs, or both, impairs the ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving, someone is killed, you can be charged with murder.

Alcoholism, Alcoholics Anonymous, and Abstinence

Official notice is taken of the following matters:

15. Alcohol Intoxication: The DSM-5 states that alcohol intoxication is characterized by clinically significant behavioral or psychological changes that occur after drinking alcohol. Common symptoms include slurred speech, poor balance, dizziness, headache and nausea. In severe cases, alcohol intoxication requires emergency medical care. Assessing alcohol dependence is an important component of treating alcohol intoxication.

16. Alcohol Use Disorder/Alcoholism: According to the National Institute of Health on Alcoholic Abuse and Alcoholism:

> Problem drinking that becomes severe is given the medical diagnosis of "alcohol use disorder" or AUD. Approximately 7.2 percent or 17 million adults in the United States ages 18 and older had an AUD in 2012. This includes 11.2 million men and 5.7 million women. Adolescents can be diagnosed with an AUD as well, and in 2012, an estimated 855,000 adolescents ages 12-17 had an AUD.
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> To be diagnosed with an AUD, individuals must meet certain criteria outlined in the Diagnostic and Statistical Manual of Mental Disorders (DSM). Under DSM-5, the current version of the DSM, anyone meeting any two of the 11 criteria during the same 12-month period receives a diagnosis of AUD. The severity of an AUD - mild, moderate, or severe - is based on the number of criteria met.
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> To assess whether you or loved one may have an AUD, here are some questions to ask. In the past year, have you:

- Had times when you ended up drinking more, or longer than you intended?

- More than once wanted to cut down or stop drinking, or tried to, but couldn't?

- Spent a lot of time drinking? Or being sick or getting over the aftereffects?

- Experienced craving - a strong need, or urge, to drink?

- Found that drinking - or being sick from drinking - often interfered with taking care of your home or family? Or caused job troubles? Or school problems?

- Continued to drink even though it was causing trouble with your family or friends?

- Given up or cut back on activities that were important or interesting to you, or gave you pleasure, in order to drink?

- More than once gotten into situations while or after drinking that increased your chances of getting hurt (such as driving, swimming, using machinery, walking in a dangerous area, or having unsafe sex)?

- Continued to drink even though it was making you feel depressed or anxious or adding to another health problem? Or after having had a memory blackout?

- Had to drink much more than you once did to get the effect you want? Or found that your usual number of drinks had much less effect than before?

- Found that when the effects of alcohol were wearing off, you had withdrawal symptoms, such as trouble sleeping, shakiness, irritability, anxiety, depression, restlessness, nausea, or sweating? Or sensed things that were not there?

If you have any of these symptoms, your drinking may already be a cause for concern. The more symptoms you have, the more urgent the need for change. A health professional can conduct a

> formal assessment of your symptoms to see if an alcohol use disorder is present . . . .

17. Although there is considerable overlap between the diagnostic criteria in DSM-5 and the previous edition of that diagnostic manual, known as the DSM-IV, that relate to problem drinking, several important differences exist.

First, the DSM-IV described two distinct disorders, alcohol abuse and alcohol dependence, with specific criteria for each. The DSM-5 integrates the two DSM-IV disorders, alcohol abuse and alcohol dependence, into a single disorder, which is called alcohol use disorder (AUD) with mild, moderate, and severe sub-classifications.

Second, under the DSM-IV, the diagnostic criteria for abuse and dependence were distinct: Anyone meeting one or more of the "abuse" criteria within a 12-month period would receive the "abuse" diagnosis. Anyone with three or more of the "dependence" criteria during the same 12-month period receives a "dependence" diagnosis. Under DSM-5, anyone meeting any two of the specified 11 criteria during the same 12-month period receives a diagnosis of AUD. The severity of an AUD - mild, moderate, or severe - is based on the number of criteria met.

Third, the DSM-5 eliminated "legal problems" as a criterion in making a diagnosis, but added "craving" as a criterion for reaching an AUD diagnosis, a criteria that was not included in DSM-IV.

18. A DSM-5 diagnosis is usually applied to an individual's current presentation. Previous diagnoses from which individual has recovered should clearly be noted as such e.g., specifiers indicating the course of the disorder should be provided, e.g., in partial remission, in full remission, after the diagnosis.

19. A severity description may be used when reaching a DSM-5 diagnosis involving substance abuse. The Severity of each Substance Use Disorder is based on:

- 0 criteria or 1 criterion: No diagnosis;
- 2-3 criteria: Mild Substance Use Disorder;
- 4-5 criteria: Moderate Substance Use Disorder; and,
- 6 or more criteria: Severe Substance Use Disorder.

20. Alcoholics Anonymous: The Alcoholics Anonymous preamble states:

> Alcoholics Anonymous is a fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to

> recover from alcoholism. The only requirement for AA membership is a desire to stop drinking.

21. Alcoholics Anonymous is an international mutual aid fellowship founded in 1935 by Bill Wilson and Dr. Bob Smith. AA's stated "primary purpose" is to help alcoholics "stay sober and help other alcoholics achieve sobriety." AA is based on abstinence and adherence to a 12-step program of spiritual and character development.

22. The AA program suggests a participant abstain from the use of alcohol and other mind-altering substances. Belief in a Higher Power is encouraged.

23. Primarily because of AA's tradition of anonymity, studies of AA's efficacy have produced inconsistent results. While some studies suggest an association between AA attendance and increased abstinence or other positive outcomes, other studies have not produced that result.

Many critics find fault with the AA program. For example, Gabrielle Glaser authored the following in the April 2015 issue the *Atlantic Monthly*:

> Alcoholics Anonymous has more than 2 million members worldwide, and the structure and support it offers have helped many people. But it is not enough for everyone. The history of AA is the story of how one approach to treatment took root before other options existed, inscribing itself on the national consciousness and crowding out dozens of newer methods that have since been shown to work better.
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> A meticulous analysis of treatments, published more than a decade ago in *The Handbook of Alcoholism Treatment Approaches* but still considered one of the most comprehensive comparisons, ranks AA 38th out of 48 methods. At the top of the list are brief interventions by a medical professional; motivational enhancement, a form of counseling that aims to help people see the need to change; and acamprosate, a drug that eases cravings. (An oft-cited 1996 study found 12-step facilitation - a form of individual therapy that aims to get the patient to attend AA meeting - as effective as cognitive behavioral therapy and motivational interviewing. But that study, called Project Match, was widely criticized for scientific failings, including the lack of a control group.)

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Dr. Sharf's Rehabilitation

24. Determining whether Dr. Sharf has undergone a meaningful and sustained period of rehabilitation requires weighing use of alcohol and unprofessional conduct against his efforts to attain abstinence and the success and/or failure of those efforts.

On July 22, 2015, Dr. Sharf drank alcohol to the point he blacked out, after which he drove a motor vehicle on busy public roadways for a considerable distance before causing a rear-end traffic collision that could have resulted in serious or fatal injuries. Without a doubt, his consumption of alcoholic beverages on July 22, 2015, was to the extent and in a manner dangerous to himself and others. The facts and circumstances giving rise to the traffic collision are found to be substantially related to the functions, qualifications, and duties of a physician. Dr. Sharf engaged in unprofessional conduct.

While Dr. Sharf was not a daily drinker, had not become intoxicated as a result of the consumption of alcoholic beverages more than a handful of times before the traffic collision, and had never blacked out before, his consumption of alcohol progressed in the ten years before the collision. His wife complained on occasion about his use of alcohol, after which he continued to drink. He attended 20 or 30 AA meetings, identified himself as an alcoholic at some meetings, yet continued to consume alcoholic beverages. He certainly ended up consuming more alcohol than he intended on the day of the collision.

Dr. Sharf had a moment of clarity following the collision and immediately accepted that he was, in fact, an "alcoholic." He resumed AA meetings the next day. He attended 90 AA meetings in the first 90 days, a level of attendance suggested for newcomers who wish to demonstrate a sincere commitment to the AA program. Within the first month, he obtained an experienced AA sponsor, Hank C., who met with Dr. Sharf once a week on Mondays, mentored Dr. Sharf, and assisted Dr. Sharf in completing the 12 steps of recovery. Dr. Sharf continues to meet with Hank C. once a week.

Dr. Sharf established a home group, which meets Sunday nights in Mira Mesa at 7:30 p.m., and he attends two or three other AA meetings a week, including a Beginner's Meeting in Mira Mesa on Thursday nights, a Joe and Charlie Big Book Study in Mira Mesa on Monday nights, and a Men's Group Meeting in La Jolla on Saturday nights.

Dr. Sharf has taken several AA commitments. He currently sponsors three men. In that regard he testified: "I have been given the gift of sobriety, and in order to keep it, I must give it away."

To confirm his abstinence, Dr. Sharf purchased a SoberLink breathalyzer device in December 2015 and began testing twice daily, once before going to work and once at the end of the workday. Dr. Sharf blows directly into the device, which analyzes the amount of alcohol, if any, in Dr. Sharf's system. The device measures the presence of alcohol to 0.001 of a percent. The device takes a picture of Dr. Sharf blowing into the device each time he provides a sample to ensure the sample being tested is Dr. Sharf's. Test results are

transmitted electronically to UCSD's Department of Psychiatry, where Ann Glassmaker, a social worker with the UCSD Professional Program, maintains testing records. Dr. Sharf pays about $150 per month for SoberLink testing services. He has provided more than 775 samples within the last year. No sample tested positive for the presence of alcohol.

Dr. Sharf decided it would be helpful to speak with a psychiatrist who could provide an expert opinion regarding his fitness for duty. Dr. Sharf first met with Don Houts, M.D., a psychiatrist, on October 20, 2015. He has met with Dr. Houts four times since then. Dr. Sharf pays attention to what Dr. Houts recommends and follows his advice.

Dr. Sharf testified he was never physically dependent upon alcohol, did not have withdrawal symptoms after he stopped drinking on July 22, 2015, and no longer ruminates about drinking as he did in the first month after he stopped drinking. He no longer believes his consumption of alcohol would be helpful in reducing stress; he firmly believes his consumption of alcohol would, at this point in his life, cause nothing but stress.

To the extent he can, Dr. Sharf avoids situations and places where alcohol is served. He is extremely cautious about what he drinks when he finds himself in situations where alcohol is being served. He has not inadvertently consumed alcohol since July 22, 2015. When asked what he would do if he accidently consumed part of a beverage containing alcohol, he said, "I'd call my sponsor."

Dr. Sharf has come to accept Step 1 of the 12 steps of recovery – that he is powerless over alcohol, that his life was unmanageable when he was consumed alcohol, and that his life will become unmanageable again if he were to consume alcohol. He believes this is the fact because of his own personal experience and what he has learned in the AA program. He accepts the validity of AA's first drink concept: "It's the first drink that gets you drunk."

Dr. Sharf testified he wants to be a good example to his children, staff, and others who know of his situation by remaining sober. He receives support from family, his sponsor, the men he sponsors, others in the AA program, his colleagues, and a higher power. He testified he tries to be of service to others.

25. Assessing the credibility of an alcoholic is an extremely difficult task. Alcoholism is a patient disease that is often characterized by denial and relapse. Despite their best efforts to remain abstinent, many alcoholics are unable to maintain long term sobriety. These persons, during periods of abstinence, convince themselves and others that they have embraced the principles of the AA program and will never consume alcohol again. Their stories concerning their recovery sound similar to the accounts of those who have never relapsed and have enjoyed long term sobriety. Is it reasonable to rely solely on the account of an alcoholic who claims to be abstinent and in recovery?

When reaching a determination concerning the prospects of an alcoholic's long term sobriety, the credible testimony of others and an assessment of other objective evidence that

corroborates or contradicts the recovering alcoholic's testimony should be considered and given weight.

26. Don Houts, M.D., obtained a bachelor's degree from Indiana University, Bloomington, in 1972, and a medical degree from the Indianapolis University School of Medicine in 1976. He participated a residency in Psychiatry at UCLA's School of Medicine from 1976 to 1979. He was a senior resident in Psychiatry at UCSD's School of Medicine, where he completed his residency in Psychiatry in 1980. He received additional formal training at the San Diego Psychoanalytic Institute from 1983 through 1990.

Dr. Houts became board certified by the American Board of Neurology and Psychiatry in 1980. He holds Distinguished Life Fellow status in the American Psychiatric Association. He is a member of the American Academy of Addiction Psychiatry. He serves as an Associate Clinical Profession of Psychiatry at UCSD's School of Medicine.

Dr. Houts is, himself, a recovering alcoholic who actively participates in the AA program. His home group meets at the Belly Up Tavern in Solana Beach. He attends five to six AA meetings each week. The treatment of patients with alcoholism and other substance abuse problems constitutes a large part of Dr. Houts's medical practice.

On October 20, 2015, Dr. Houts met Dr. Sharf for the first time. He did not know Dr. Sharf before that visit. Dr. Sharf obtained a history of the presenting problem, a personal history, a family history, an educational history, and a history of Dr. Sharf's use of alcohol and involvement in the AA program. Dr. Houts and Dr. Sharf have since met on four other occasions. Dr. Sharf has been a compliant patient.

During psychiatric treatment, Dr. Sharf told Dr. Houts about his use of alcohol, which was consistent with Dr. Sharf's testimony in this matter and statement to the Department of Consumer Affairs investigator. Dr. Sharf told Dr. Houts about his first experience in the AA program, before the July 2015 traffic collision, his relapse, and his failure to attain long term sobriety. Dr. Sharf admitted taking a "dirty token" during his first involvement in AA, and he was embarrassed about that. Dr. Sharf told Dr. Houts his negative experiences with drinking alcohol were put into extremely sharp perspective following the July 2015 traffic collision, an extraordinarily disturbing, life-changing experience. Dr. Houts explored other issues with Dr. Sharf, including his medical practice, marriage and separation, children, and personal relationships with others. According to Dr. Houts, he and Dr. Sharf have engaged in meaningful therapeutic conversations concerning the several issues in Dr. Sharf's life, including his alcoholism.

Dr. Houts diagnosed Dr. Sharf under DSM-5 with an alcohol use disorder, mild, in sustained remission. Dr. Houts testified Dr. Sharf's use and experience with alcohol before the July 2015 traffic collision "barely scratched" the criteria necessary to reach the diagnosis of alcohol use disorder, but was sufficient to reach that diagnosis. He testified Dr. Sharf was in "an existential crisis and kind of lost" at the time of the traffic collision. He believed "a

kind of perfect storm" was responsible for Dr. Sharf's excessive consumption of alcohol and blackout on July 20, 2015.

Dr. Houts testified, based on his contact with Dr. Sharf, that Dr. Sharf was actively engaged in the AA program and strongly committed to sobriety. He believed it highly significant that Dr. Sharf sponsors other men in the AA program.

Dr. Houts did not conduct psychological testing and did not obtain collateral information, such as a police report, to corroborate Dr. Sharf's representations; he found no need to do so. The SoberLink data was important to Dr. Houts in reaching his final opinions in this matter because it confirmed that Dr. Sharf no longer consumes alcohol.

Dr. Houts testified that for many persons, alcoholism is a disease of relapse; even active participation in the AA program does not ensure abstinence, although that seems to be the most important contributing factor in accurately predicting long term sobriety. While Dr. Houts was unable to make any guarantees, he believed there was "an extremely high likelihood that Dr. Sharf will be sober forever." He believed Dr. Sharf's chances of remaining abstinent were as good as those of any recovering alcoholic he has treated or had contact with in his own program. Dr. Houts believed Dr. Sharf "was capable of continuing his practice as a cardiologist despite [the diagnosis of] alcoholism."

Dr. Houts's testimony was thoughtful and reasonable. There was no reason to disbelieve it. No expert testimony to the contrary was provided.

27. Hank C. testified. He was a Navy Seal, became involved in national security assignments, and then became self-employed in the field of fiber optics. He is a recovering alcoholic who has maintained continuous sobriety and has been a member of AA since March 8, 1987. He has attended more than 10,000 AA meetings. He and other AA colleagues founded the Mira Mesa Alano Club.

Hank C. first knew of Dr. Sharf about five years ago, when another member of AA, "a fabulous sponsor," was sponsoring Dr. Sharf. Hank C.'s opinion of Dr. Sharf's sobriety and participation in the AA program at that time "was not very good – he was not committed to the program." According to Hank C., Dr. Sharf "was around the program, but not in the program." Hank C. was aware that Dr. Sharf stopped attending AA meetings.

In late July 2015, Hank C. attended an AA Beginners Meeting at the Mira Mesa Alano Club with the goal of meeting newcomers. Dr. Sharf attended that meeting. After the meeting, Dr. Sharf asked Hank C. to be his sponsor. Hank C. refused because he believed Dr. Sharf was not serious about the AA program, based on his prior observations. Hank C. continued to see Dr. Sharf at AA meetings after that, and Dr. Sharf continued to ask Hank C. to become his sponsor. Hank C. realized Dr. Sharf "was desperate, was done, and believed he could no longer drink safely." Hank C. agreed to sponsor Dr. Sharf.

Hank C. testified that since mid-July 2015, Dr. Sharf has been extremely active in Alcoholics Anonymous. The AA program of recovery requires complete abstinence. Dr. Sharf attends many AA meetings. He and Hank C. have worked the 12 steps of recovery. They meet every Monday and have done so for the past 18 months. Dr. Sharf provides support and assistance to other members of AA, very often newcomers who are employed in the health care field. Dr. Sharf currently sponsors three other men. Hank C. testified it is important for Dr. Sharf and other members of AA who are in recovery to meet and help newcomers to remind themselves "how bad it was." Long term sobriety requires that a member of AA remain very active and involved in the AA program, according to Hank C.

Hank C. estimated he has sponsored about 80 men. About half have relapsed and failed to maintain long term sobriety. When asked whether Dr. Sharf will remain abstinent, Hank C. testified, "It's a tough call . . . he has a great chance if he remains active."

Hank C.'s testimony was thoughtful and reasonable. There was no reason to disbelieve it.

28. Genaro Fernandez, M.D., obtained a medical degree from State University, San Luis Potosl, Mexico, in 1976. He completed a residency in Internal Medicine at Baylor College of Medicine, Houston, Texas, in 1980, and a fellowship in Cardiology at that institution in 1983. He holds board certifications in Internal Medicine and Cardiology. He is an interventional cardiologist. He has staff privileges at Sharp Chula Vista Medical Center, Scripps Mercy Hospital, and Paradise Valley Hospital. He is the Director of Interventional Cardiology at Sharp Chula Vista and Chief of Staff at Paradise Valley Hospital.

Dr. Fernandez has known Dr. Sharf since 1993. He believes Dr. Sharf is a highly competent cardiologist. He has had contact with Dr. Sharf several times a day since 1993. He was not aware of the circumstances surrounding Dr. Sharf's 2015 driving under the influence conviction. He has never had reason to question Dr. Sharf's medical judgment. He regularly refers patients to Dr. Sharf. He has never had any reason to believe Dr. Sharf has ever been impaired or under the influence of alcohol or any other substance at work.

Dr. Fernandez's testimony provided little information related to Dr. Sharf's participation in the AA program and rehabilitative efforts since July 2015, other than to confirm Dr. Sharf's testimony that has never shown up at work under the influence.

29. Donna M. Crowley, M.D., received a medical degree from The Chicago Medical School in 1983. She completed a residency in Physical Medicine and Rehabilitation at Northwestern University in 1986. She became board certified by the American Board of Physical Medicine and Rehabilitation in 1987. She has been self-employed in California since 1990. She holds staff privileges at many San Diego County hospitals. She is the Medical Director of Rehabilitation Services at Paradise Valley Hospital. She serves on the Governing Board of Paradise Valley Hospital.

Dr. Crowley and Dr. Sharf have shared many patients over the past 17 years. According to Dr. Crowley, "Patients love Dr. Scharf." He is respectful of patients and their families. Dr. Sharf is highly respected by his colleagues. To Dr. Crowley's knowledge, Dr. Sharf has not engaged in any unprofessional conduct in connection with the care he has provided to patients. She has never had any reason to believe Dr. Sharf has ever been impaired or under the influence of alcohol or any other substance at work.

Dr. Crowley had regular contact with Dr. Sharf before and after the July 2015 traffic collision. Dr. Sharf voluntarily disclosed the fact of his arrest to Dr. Crowley after his arrest. He said he was going through a difficult time of his life. Dr. Crowley was not aware of the specific facts surrounding the traffic collision and did not know whether Dr. Sharf considered himself to be an alcoholic. She had no idea whether he attended AA meetings.

Dr. Crowley's testimony provided little information related to Dr. Sharf's participation in the AA program and rehabilitative efforts since July 2015, other than to confirm Dr. Sharf's testimony that has never shown up at work under the influence.

30. Dr. Sharf provided documentary evidence to confirm his payment of fines and fees, the 52 hours of volunteer services he provided, his completion of the mandated first offender drinking driver's program, his attendance at numerous AA meetings, and photocopies AA token he received.

31. Dr. Sharf provided certificates confirming his continuing education in the field of cardiology. He provided no certificate to establish any professional education related to alcoholism, substance abuse, or the treatment of those conditions.

32. Dr. Sharf has many contracts with insurance companies and other entities that pay for his professional services. He carefully reviewed those agreements before the hearing and determined that if the Medical Board were to place his certificate on probation, most of those insurance companies and entities would no longer pay for the medical services he provides. He thinks he would go out of business.

33. Dr. Sharf testified in a calm and thoughtful manner. He listened to the questions that were asked; his answers to those questions made sense and were consistent with what he previously told others. His testimony was not equivocal. He perceived, recalled and testified about matters from personal observation and experience. Although Dr. Sharf had a strong interest in obtaining a favorable outcome in this proceeding and in not having his certificate placed on probation, he readily admitted he was an alcoholic and had engaged in unprofessional conduct. He took full responsibility for his misconduct and did not attempt to minimize it. He did not blame others for his situation. Most of what he testified about was corroborated by other credible evidence; no evidence was offered that contradicted his sworn testimony. Dr. Sharf understood the importance of providing truthful testimony, even when doing so might not be favorable to the outcome of his case. He also understood the reason the disciplinary proceeding was commenced, and he did not express or hold any grudge in that regard.

34. Dr. Sharf's testimony was believable. Complaint's counsel's assertion that Dr. Sharf was "less than forthcoming" is rejected.

Disciplinary Guidelines

35. The preface to the 11th edition of the Medical Board's Manual of Disciplinary Orders and Disciplinary Guidelines states in part:

> Business and Professions Code section 2229 mandates protection of the public shall be the highest priority for the Medical Board and for the Administrative Law Judges of the Medical Quality Hearing Panel. Section 2229 further specifies that, to the extent not inconsistent with public protection, disciplinary actions shall be calculated to aid in the rehabilitation of licensees. To implement the mandates of section 2229, the Board has adopted the Manual of Model Disciplinary Orders and Disciplinary Guidelines (guidelines), 11th Edition. Consistent with the mandates of section 2229, these guidelines set forth the discipline the Board finds appropriate and necessary for the identified violations. In addition to protecting the public and, where not inconsistent, rehabilitating the licensee, the Board finds that imposition of the discipline set forth in the guidelines will promote uniformity, certainty and fairness, and deterrence, and, in turn, further public protection.
>
> The Board expects that, absent mitigating or other appropriate circumstances such as early acceptance of responsibility and demonstrated willingness to undertake Board-ordered rehabilitation, Administrative Law Judges hearing cases on behalf of the Board and proposed settlements submitted to the Board will follow the guidelines, including those imposing suspensions. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure . . . .

36. For the use of alcohol to the extent or in a manner dangerous to the physician and/or others, the guidelines recommend a maximum penalty of revocation and a minimum penalty of stayed revocation with five years probation. Terms and conditions of probation may include a suspension of 60 days or more, abstaining from the use of alcohol, biological fluid testing, completion of an ethics course, a psychiatric evaluation, psychotherapy, a medical evaluation and treatment, and practice monitoring.

For the conviction of a crime substantially related to the qualifications, functions or duties of a physician not occurring during patient care, the guidelines recommend a maximum penalty of revocation and a minimum penalty of stayed revocation with five years probation. Terms and condition of probation may include a community service requirement, completion of an ethics course, a psychiatric evaluation, psychotherapy, a medical evaluation and treatment, and victim restitution.

For general unprofessional conduct, the guidelines recommend a maximum penalty of revocation and a minimum penalty of stayed revocation with five years probation. Terms and condition of probation include, when appropriate, completion of an education course, a prescribing practices course, a record keeping course, an ethics course, participation and completion of a clinical training program, practice monitoring, the prohibition from solo practice, and a prohibition from practicing in an area where incompetence or unprofessional conduct occurred.

37. If a physician is found to be a substance-abusing licensee and no facts or circumstances support a deviation in reaching such a finding, California Code of Regulations, title 16, section 1361, et seq., requires that probation be imposed that includes terms and conditions of probation set forth the Uniform Standards Related to Substance Abusing Licensee, including clinical diagnostic evaluations and the submission of reports by independent evaluators, notice to employers, biological fluid testing, mandatory attendance at group support meetings, and the use of worksite monitors.

Disciplinary Arguments

38. Counsel for complainant argued: Dr. Sharf's misuse of alcohol evinced "serious and entrenched alcoholism"; Dr. Sharf was in the very early stages of recovery; Dr. Sharf was "less than forthcoming"; and the negative financial impact that might result as a result of placing Dr. Sharf's certificate on probation was irrelevant to the issue of public protection. Counsel argued the facts in this matter mandated Dr. Sharf certificate be placed on probation; any other disciplinary result was unsupported and involved an abuse of discretion. Complainant sought a revocation, stayed, with five years probation, with the application of the uniform standards applicable to substance abusing licensees.

Counsel for respondent argued: Dr. Sharf was a recovering alcoholic who was committed to sobriety; Dr. Sharf was no longer a substance abusing licensee: The uniform standards related to a substance abusing licensee should not be applied: A variety of mitigating circumstances surrounded the traffic collision, including Dr. Sharf being on vacation, his recent separation from his wife, and his relative inexperience with hard liquor. Counsel argued that Dr. Sharf was not, and had never been, a danger to patients by reason of his use of alcohol, and imposing any discipline would punish Dr. Sharf and not assist him in his rehabilitative efforts.

Factual Conclusions

39. The purpose of the Medical Practice Act is to assure the high quality of medical practice in California. The disciplinary process operates by eliminating immoral and incompetent practitioners from the roster of state-licensed professionals. The disciplinary order set forth below deviates from the Medical Board's disciplinary guidelines for the reasons stated hereafter.

40. Dr. Scharf, an educated, well-trained, experienced, highly respected cardiologist, has provided quality medical care to thousands of patients living in the National City area since 1992. He was erroneously sued once, but he has never been subjected to civil liability as a result of a malpractice claim. His staff privileges at local hospitals have never been revoked, suspended, or limited. There is no history of any administrative discipline having been imposed on his certificate. He has never been cited. Apart from the November 2015 misdemeanor driving under the influence conviction, he has no criminal record. Dr. Scharf is currently single. He is the father of nine children, some of whom are minors.

Despite complainant's counsel's claim that Dr. Scharf suffers from "serious and entrenched alcoholism," his problem with alcohol was nonexistent until very recently. He is 55 years of age. He did not consume alcohol on a regular basis until he was 35 years old; even then, he consumed no more than a glass or two of wine once or twice a month; he never consumed alcohol on a weekend when he was on call. Ten years later he increased his consumption to three or four glasses of wine on a weekend evening when he was not on call. The progression was related to his new hobby of wine tasting and wine collecting. He did not drink on weekdays, and he never drank before 5:00 p.m. He did not drink on any weekend when he was on call. This pattern of consumption continued for another five or six years without difficulties.

When Dr. Sharf was in his early fifties, his father died. Around the same time, he experienced increasing marital difficulties. He admits he became intoxicated on a handful of occasions. On three or four occasions, his wife told him he consumed too much wine. Dr. Sharf believed he might have a problem with alcohol, so he began attending AA meetings. He attended 20 or 30 meetings, enjoyed the AA fellowship, and attained an AA sponsor, but he did not devote himself to AA's 12-step program of recovery; he believed he could continue to control and enjoy his drinking. That turned out not to be the case.

On July 22, 2015, Dr. Sharf drank hard liquor to the point he blacked out, after which he drove a motor vehicle and caused a low-speed, rear-end traffic collision. The traffic collision was a transformative experience. He experienced immediate and profound shame, guilt, and remorse. He accepted that his situation was a direct result of his consumption of alcohol and that avoiding similar events in the future required total abstinence. He quickly threw himself in to the AA program. He has attended hundreds of meetings, works with an AA sponsor, completed the 12-steps of recovery, developed a belief in a higher power, and shares his experiences with newcomers. Dr. Sharf confirmed his abstinence for the past 24 months through the use of the SoberLink breathalyzer, a device and service he purchased on

his own; it was not court-ordered. He participates in psychotherapy with Dr. Houts, a board certified psychiatrist. Credible evidence corroborated all aspects of Dr. Sharf's testimony concerning his abstinence and the rehabilitation efforts that commenced well before disciplinary charges were filed. Dr. Sharf is motivated solely by an inner need to remain abstinent, sober, and in active recovery for the rest of his life.

Dr. Sharf's alcohol use disorder was mild, and it is currently in full remission. He provided compelling evidence that prevails over the presumption that he is a substance abusing licensee because of his previous abuse of alcohol. His recovery from alcoholism is found to be meaningful and sustained. He does not pose any danger to the public, as evidenced by his unblemished record of superb medical care provided before and after the traffic collision.

Well before disciplinary charges were filed, Dr. Sharf voluntarily imposed upon himself the fundamental components that would have been imposed had he been placed on probation - he abstained from the use of alcohol; he submitted to testing; he underwent a psychiatric evaluation; he participated in psychotherapy; and he constantly attends 12-step self-help meetings. There is no need for Dr. Sharf to undergo a medical evaluation, nor is there any need to monitor his medical practice or supervise his continuing rehabilitative efforts.

Taking into account Dr. Sharf's lack of prior disciplinary history, the nature of the violations established, his documented length of sobriety, the scope and pattern of his prior alcohol use, and the compelling evidence presented in extenuation, explanation, mitigation, and rehabilitation, it is concluded the public will be adequately protected by issuing a public reprimand to Dr. Sharf. While issuing a public reprimand is not a measure of discipline that falls squarely within the Medical Board's disciplinary guidelines, it is the most appropriate sanction under the circumstances.

A public reprimand is not a "free pass." It constitutes the Medical Board's formal criticism and censure of Dr. Sharf, who engaged in unprofessional conduct. It warns him that engaging in the same or similar conduct in the future will likely result in more serious consequences. A public reprimand gives notice to the public and others of the nature and extent of Dr. Sharf's misconduct. While a public reprimand may not be as drastic a sanction as other disciplinary measures, it is humbling experience in this matter because it represents the only stain on Dr. Sharf's otherwise unblemished professional record.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. The purpose of the Medical Practice Act is to assure the high quality of medical practice. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.) Conduct supporting the revocation or suspension of a medical license must demonstrate an

unfitness to practice. The purpose of a disciplinary action is not to punish, but to protect the public. In an administrative disciplinary proceeding, the inquiry must be limited to the effect of the doctor's actions upon the quality of his service to his patients. (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1416.)

The Standard of Proof

2. The standard of proof in an administrative action seeking to suspend or revoke a physician's certificate is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Imposing Physician Discipline

3. Business and Professions Code section 2227 provides in part:

> (a) A licensee whose matter has been heard by an administrative law judge . . . and who is found guilty . . . 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 . . .
>
> (3) Be placed on probation . . .
>
> (4) Be publicly reprimanded . . .
>
> (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.

4. Business and Professions Code section 2229 provides in part:

> (a) Protection of the public shall be the highest priority for the Division of Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.
>
> (b) In exercising his or her disciplinary authority an administrative law judge . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the

licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence.

(c) Where rehabilitation and protection are inconsistent, protection shall be paramount.

Applicable Disciplinary Statutes

5. Business and Professions Code section 2234 provides in part:

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

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, . . . any provision of this chapter . . . .

6. Business and Professions Code section 2236 provides in part:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

[¶] . . . [¶]

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

7. Business and Professions Code section 2239 provides in part:

(a) The . . . use . . . of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely

. . . constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

(b) A . . . conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section . . . .

Regulatory Authority

8. California Code of Regulations, title 16, section 1361.5 provides in part:

(a) If the licensee is to be disciplined for unprofessional conduct involving the use of illegal drugs, the abuse of drugs and/or alcohol, or the use of another prohibited substance as defined herein, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315[2] of the Code . . . .

9. Under existing law, some presumptions are conclusive. Conclusive presumptions are specified in Evidence Code sections 620-624 or are declared conclusive by other law. Under existing law, all presumptions that are not conclusive are rebuttable presumptions. (Law Revision Comments to Evidence Code section 601.) Regulation 1361.5 is a rebuttable presumption.

Unprofessional Conduct

10. Unprofessional conduct must, among other things, indicate an unfitness to practice medicine. Unprofessional conduct involves conduct that breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

Substantial Relationship

11. In *Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, the Court of Appeal considered an order issued by the Medical Board that imposed discipline on a physician under Business and Professions Code section 2239, subdivision (a), which defined unprofessional conduct as "The use . . . or administering to himself or herself, . . . of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely . . . . " (*Id.* at pp. 1411–1414.) The physician had been arrested several times for driving under the influence, but was not

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[2] Business and Professions Code section 315 requires the formulation of uniform and specific standards to be used by healing arts boards in dealing with substance-abusing licensees, whether or not the board chooses to have a formal diversion program.

convicted of any offense. The physician argued that Business and Professions Code section 2239 was unconstitutional to the extent it authorized "discipline for after-hours conduct without a showing of a nexus between the particular conduct in question and the ability to practice medicine." (*Id.* at p. 1418.) The Court of Appeal rejected the physician's claim. The court, after analyzing earlier appellate decisions, concluded: "[W]hile there must be a nexus or 'logical connection' between the type of misconduct that forms the basis for physician discipline and the ability of the physician to practice medicine, that nexus is established for constitutional purposes if the conduct enumerated, here the use of alcohol to the extent, or in such manner as to be dangerous or injurious to the licensee, or to any other person or to the public, is logically connected to a physician's fitness to practice medicine." (*Id.* at p. 1421

12. The same conclusion was reached in *Sulla v. Bd. of Registered Nursing* (2012) 205 Cal.App.4th 1195. The Court of Appeal in *Sulla* observed that an agency's authority to take disciplinary action against a licensee derives from the state's inherent power to regulate the use of property to preserve public health, morals, comfort, order and safety. It observed that administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. The court noted that while "It is undoubtedly true that not every conviction involving alcohol warrants the suspension or revocation of a professional license; however, such a conviction may "reflect a personal problem involving alcohol consumption [citation], and it is not necessary to postpone the imposition of discipline until that personal problem affects the [professional] practice . . . We are not here concerned with the reasonableness of the discipline imposed by the Board, which Sulla did not challenge in the writ proceeding below. The question is whether the Legislature violated the Constitution by granting the Board the power to assert jurisdiction over one of its licensees based on an alcohol-related conviction or the use of alcohol in a dangerous manner. It did not." (*Sulla*, at pp. 1206–1207.)

13. The rationale for imposing discipline following alcohol-related convictions was explained in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757. Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment relevant to a physician's fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. Driving under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society. (*Id.*, at pp. 770-771.)

14. In determining whether a particular conviction reflects on an individual's fitness to practice a profession, a court may examine the facts and circumstances surrounding the conduct that gave rise to the conviction, and the inquiry into whether the conviction is

substantially related to the profession is not restricted to examining the elements of the offense itself in making that determination. (*In re Higbie* (1972) 6 Cal.3d 562, 572.)

Rehabilitation

15. Rehabilitation requires a consideration of those offenses from which an individual has allegedly been rehabilitated. Rehabilitation is a state of mind, and the law looks with favor on rewarding one who has achieved reformation and regeneration with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented when an applicant demonstrates fitness by sustained good conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

16. According to a consensus of the medical community, alcoholism is a treatable disease. Through continued abstinence, an alcoholic may arrest the deleterious manifestations of the disease. Hundreds of thousands of Americans are recovering alcoholics, completely abstinent from alcohol or other mind-altering chemicals. An alcoholic's rehabilitation is almost universally predicated on a choice to confront his or her problem, followed by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous. As we have recognized, the requisite length of time to show "meaningful and sustained" rehabilitation will vary from case to case. (*In re Billings* (1990) 50 Cal.3d 358, 367-368.) Determining whether rehabilitation from alcoholism is "sustained" and "meaningful" requires consideration of the nature and extent of the individual's misconduct. (*Id.*, at p. 368.)

Cause Exists to Impose Discipline

17. First Cause for Discipline: Cause exists under Business and Professions Code section 2239, subdivision (a), to impose discipline. Clear and convincing evidence established Dr. Sharf engaged in unprofessional conduct by using alcoholic beverages to an extent and in a manner, dangerous to himself and others on July 22, 2015.

18. Second Cause for Discipline: Cause exists under Business and Professions Code section 2236, subdivision (a), to impose discipline. Clear and convincing evidence established Dr. Sharf was convicted on November 13, 2015, of driving under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision (a), a misdemeanor, and driving with a blood alcohol content level of 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. He admitted his blood alcohol level was 0.15 percent or more by weight at the time of the offense. The facts and circumstances surrounding the offense established the conviction was substantially related to the qualifications, functions, and duties of a physician.

19. Third Cause for Discipline: Cause exists under Business and Professions Code section 2234, subdivision (a), to impose discipline. Clear and convincing evidence

established Dr. Sharf's misconduct on July 22, 2015, violated the Medical Practice Act because Dr. Sharf consumed alcohol to the extent he was a danger to himself and others.

20. Fourth Cause for Discipline: Cause exists under Business and Professions Code section 2234 to impose discipline. Clear and convincing evidence established Dr. Sharf engaged in general unprofessional conduct on July 22, 2015, by conducting himself in a manner that was unbecoming a member in good standing of the medical profession.

The Most Appropriate Measure of Discipline

21. Issuing a public reprimand is inconsistent with specific recommendations set forth in the Medical Board's disciplinary guidelines; however, issuing a public reprimand is the most appropriate sanction given Dr. Sharf's history related to his use of alcohol, the nature and extent of Dr. Sharf's misconduct giving rise to this disciplinary action, and the effective remedial steps Dr. Sharf has taken to ensure similar events will not reoccur. A public reprimand ensures that Dr. Sharf's misconduct will be matter of public record and it will serve as a continuing reminder of his responsibility as a recovering alcoholic to remain abstinent. Public protection does not require Dr. Sharf be placed on probation or that any conditions be placed on the public reprimand.

ORDER

The Decision in this matter constitutes the Public Reprimand of Albert Sharf, M.D.,

DATED: December 27, 2016

DocuSigned by:
James Ahler
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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ALBERT J. SHARF, M.D.** **655 Euclid Avenue, Ste. 304** **National City, CA 91950** **Physician's and Surgeon's Certificate No. G72122** Respondent.	Case No. 800-2015-016082 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about July 30, 1991, the Medical Board of California issued Physician's and Surgeon's Certificate No. G72122 to Albert J. Sharf, M.D. (respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2017, unless renewed.

JURISDICTION

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

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

5. Section 2234 of the Code states, in pertinent part:

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

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

"..."

6. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the

defendant holds a license as a physician and surgeon.

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

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

7. Section 2239 of the Code states:

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

8. California Code of Regulations, title 16, section 1360, states:

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

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

FIRST CAUSE FOR DISCIPLINE

(Use of Drugs or Alcoholic Beverages in a Manner, or to an Extent, as to be Dangerous to Himself, to Another Person, or to the Public)

9. Respondent has subjected his Physician's and Surgeon's Certificate No. G72122 to disciplinary action under sections 2227 and 2234, as defined by section 2239, of the Code, in that he used or prescribed, or administered to himself, drugs or alcoholic beverages to the extent, or in such a manner, as to be dangerous or injurious to himself, to another person, or to the public, as more particularly alleged hereinafter:

(a) On or about July 22, 2015, at approximately 09:06 p.m, a Newport Beach Police Officer (officer) observed vehicle debris lying in the roadway, causing a traffic hazard near the area of E. Coast Highway and Iris Avenue in Newport Beach, California. Officer activated his rear warning lights and removed several large pieces of vehicle debris, including a portion of a black bumper along the north curb. While doing so, officer observed two cars stopped along the north curb in front of him. Both cars had collision damage consistent with debris left in the roadway. A black BMW, California License No. 6XKL715 (BMW) with damage to the driver's side rear bumper was stopped in front of a black Jaguar, California License No. 6BSV537 (Jaguar) which had damage on passenger's side front bumper. Officer contacted two males standing on the sidewalk next to the damaged cars. Driver of BMW, identified by his California Driver's License (CDL) as A.P., stated that he was traveling westbound on E. Coast Highway when he was struck from behind by the Jaguar. A.P. identified respondent as the driver of the Jaguar. Officer identified respondent by his CDL. Respondent told officer that he was traveling westbound on E. Coast Highway when the BMW abruptly stopped in front of him; respondent was unable to stop and collided with BMW. Respondent admitted that he was the driver of the

Jaguar at the time of the collision.

(b) During officer's contact with respondent, officer observed that respondent displayed objective symptoms of intoxication, including slurred speech, bloodshot and watery eyes, and an odor of alcoholic beverage emanating from respondent's person and breath. Officer also observed that respondent had unsteady gait and was unbalanced while standing at a stationary position.

(c) Officer administered a series of field sobriety tests (FSTs) on respondent, who performed poorly. Respondent provided two breath samples to a Preliminary Alcohol Screen device (PAS), which showed respondent to have a 0.17% breath alcohol content (BAC) and a 0.17% BAC, at approximately 9:42 p.m. and 9:45 p.m., respectively. Respondent provided two evidentiary breath samples and the results were 0.16% BAC and 0.16% BAC, at approximately 10:12 p.m. and 10:15 p.m., respectively. Respondent was arrested for Driving Under the Influence of Alcohol on July 22, 2015, at approximately 10:15 p.m., and transported to Newport Beach Police Department jail for processing.

(d) On or about August 18, 2015, the Orange County District Attorney filed a Criminal Complaint against respondent in the matter of *The People of the State of California v. Albert J. Sharf*, Superior Court Case No. 15HM08348. Count One charged respondent with driving under the influence of drugs and/or alcohol, in violation of Vehicle Code section 23152, subdivision (a), a misdemeanor. Count Two charged respondent with driving with a blood alcohol content level of 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. As to both counts, a special allegation was charged alleging that respondent had 0.15% or higher BAC at the time of the crime, in violation of Vehicle Code section 23578.

(e) On or about November 13, 2015, respondent was convicted upon his *nolo contendere* plea to all counts. After his plea, respondent was given a three-year, informal probation, which included the following terms and conditions of probation, among others: 5 days of jail, stayed, pending completion of 40 hours of community service in lieu of jail, 3 month DUI program, and various fines and fees.

(f) On or about March 30, 2016, respondent participated in a subject interview at Department of Consumer Affairs, Investigation Enforcement Unit, 4995 Murphy Canyon Road, Suite 207, San Diego, CA 92123. During this interview, respondent described the circumstances surrounding his DUI incident, among other things. Respondent admitted that 1) he consumed 5 or 6 drinks of "hard liquor" before driving his car, 2) he "blacked out" and is unable to remember "what happened" once he had "all those drinks," and does not remember getting into his car after drinking, 3) there was significant damage to his own car necessitating a repair of approximately $10,000, 4) he publicly became intoxicated and endangered his own life and the lives of others, and 5) he could have killed himself or somebody else.

SECOND CAUSE FOR DISCIPLINE

(Conviction of a Crime Substantially related to the Qualifications, Functions, or Duties of a Physician and Surgeon)

10. Respondent has further subjected his Physician's and Surgeon's Certificate No. G72122 to disciplinary action under sections 2227 and 2234, as defined by section 2236, of the Code, in that he has been convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon, as more particularly alleged hereinafter:

(a) Paragraph 9, above, is hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Medical Practice Act)

11. Respondent has further subjected his Physician's and Surgeon's Certificate No. G72122 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), of the Code, in that he has violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate a provision of the Medical Practices Act, as more particularly alleged hereinafter:

(a) Paragraphs 9 and 10, above, are hereby incorporated by reference and realleged as if fully set forth herein.

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FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

12. Respondent has further subjected his Physician's and Surgeon's Certificate No. G72122 to disciplinary action under sections 2227 and 2234, as defined by section 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession and which demonstrates an unfitness to practice medicine, as more particularly alleged hereinafter:

(a) Paragraphs 9 through 11, above, are hereby incorporated by reference and realleged as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. G72122, issued to respondent Albert J. Sharf, M.D.;

2. Revoking, suspending or denying approval of respondent Albert J. Sharf, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering respondent Albert J. Sharf, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: May 19, 2016

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant