

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

In the Matter of the Accusation Against:

BRIAN MARCEL CABLE, M.D.

Physician's and Surgeon's Certificate
Number G80508,

Respondent.

Case No. 12-2013-234005

OAH No. 2015090144

STIPULATED DECISION AFTER RECONSIDERATION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on January 25, 26, 28, and February 2, 2016, in Oakland, California.

Joshua M. Templet, Deputy Attorney General, represented Complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

Mitchell J. Green, Attorney at Law, and Morgan A. Muir, Attorney at Law, Nossaman LLP, represented Respondent Brian Marcel Cable, M.D., who was present.

The record closed on February 2, 2016, and the Proposed Decision was issued on March 2, 2016. Panel A of the Board adopted the Proposed Decision on March 25, 2016, and it was to become effective on April 22, 2016.

On March 29, 2016, Complainant filed a petition for reconsideration for the narrow purpose of adding two standard terms and conditions, which were inadvertently omitted from the decision: Standard Condition 36 (License Surrender), and Standard Condition 37 (Probation Monitoring Costs). The petition for reconsideration was granted on April 21, 2016.

On June 28, 2016, the parties entered into a stipulation to waive oral and written argument on the petition for reconsideration, provided Panel A agreed to limit the modification of the decision to adding the omitted terms described above. The Panel so agreed, and hereby adopts this Stipulated Decision After Reconsideration.

FACTUAL FINDINGS

1. Complainant Kimberly Kirchmeyer issued the Accusation in her official capacity as Executive Director of the Medical Board of California (Board).
2. On January 11, 1995, the Board issued Physician's and Surgeon's Certificate No. G80508 to Brian Marcel Cable, M.D. (Respondent). Respondent's certificate will expire on May 31, 2016, unless renewed.
3. The standard of proof applied in making the Factual Findings is clear and convincing evidence to a reasonable certainty.

Background

4. In an Accusation signed June 18, 2015, Complainant alleges that Respondent committed unprofessional conduct by virtue of sustaining a criminal conviction substantially related to the practice of medicine and committing acts of gross negligence and repeated negligent acts. He is also accused of engaging in dishonest or corrupt conduct, unlawful prescribing, creating false documentation, inadequate record keeping, and violating statutes regulating controlled substances. The allegations are grounded in Respondent's addiction to narcotics and related conduct underlying Respondent's criminal conviction for six felony violations of illegal prescribing. Respondent filed a Notice of Defense and this hearing followed.

5. Respondent admits that his conduct violated the Medical Practice Act and that his certificate is subject to discipline. He is currently in recovery from an addiction to narcotics. His evidentiary presentation centered on the appropriate level of discipline to impose; specifically, which probation conditions and related orders are necessary to ensure Respondent's continued rehabilitation and recovery and to protect the public.

Respondent's education and background

6. Respondent received his medical degree from the University of California at Los Angeles Medical School in 1993. He completed an orthopaedic surgery residency at Texas Tech University Health Sciences Center in 1998 and a hand surgery fellowship at University of Miami/Jackson Memorial Hospital in 1999. He is board certified in orthopaedic surgery.

7. In 1999, Respondent established a solo practice in general orthopaedics in Ukiah. From 2004 until 2008, he practiced with a group in Marin County. In 2008, Respondent returned to Ukiah to practice, until his arrest in 2013.

Respondent is currently employed as an on-line consultant, reviewing orthopaedic cases. He is divorced and lives in San Jose, and has joint custody of his children with his former wife.

Criminal conviction

8. On April 13, 2015, in the Mendocino County Superior Court, Respondent was convicted by his plea of nolo contendere of six felony violations related to illegal prescribing. He admitted two violations of Health and Safety Code section 11153, subdivision (a) (prescribing a controlled substance without a legitimate medical purpose), and four violations of Health and Safety Code section 11154, subdivision (a) (prescribing a controlled substance to a non-patient). The violations occurred between January 1, 2012, and July 25, 2013. Respondent was referred to the Probation Department for a report prior to sentencing.

On June 5, 2015, Respondent's motion to reduce the violations from felonies to misdemeanors was granted. He was sentenced to serve 36 months of summary probation and ordered to pay various fines and fees. No custody time was ordered. The court records in evidence do not reveal any additional or special conditions of probation.

9. There are references in the administrative record to an order under Penal Code 23¹ that affects Respondent's current ability to practice medicine, but the record does not contain an order. There is also a reference to a stipulation in connection with his criminal case, whereby he agreed not to practice medicine until certain conditions were met, but the conditions are not identified and there is no stipulation in evidence.

10. Respondent's convictions followed his arrest on July 25, 2013. Ukiah Valley Medical Center (UVMC) personnel had received an anonymous letter stating that Respondent, then an orthopaedic surgeon at UVMC, was fraudulently obtaining controlled substances and performing surgery while under the influence of controlled substances. An investigation ensued that included searches of Respondent's residence and office, and interviews of TS, a licensed vocational nurse (LVN) who had worked with Respondent, and Respondent's then-girlfriend, KB. Respondent admitted criminal conduct to the investigating officer. He also described in detail his addiction to narcotics and his behavior in acquiring the drugs to the probation officer who interviewed him prior to sentencing.

Allegations of additional unprofessional conduct and other statutory violations

11. In 2003, while living and working as a physician in Ukiah, Respondent began taking narcotics, primarily Norco,² and became addicted. Except for approximately a four-

¹ Penal Code section 23 provides in pertinent part: "In any criminal proceeding against a person who has been issued a license to engage in a business or profession . . . the state agency which issued the license may voluntarily appear to furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance . . . if the crime charged is substantially related to the qualifications, functions, or duties of a licensee."

² Norco is a trade name for hydrocodone bitartrate with acetaminophen. Hydrocodone bitartrate is a semi-synthetic narcotic analgesic. It is now a Schedule II controlled substance (it was

year period (2004 to 2008) when he was living and working in Marin County, he habitually used Norco, and occasionally Percocet,³ until his 2013 arrest. He took between one and 16 pills per day, although not, he has maintained, prior to or during surgical procedures. Respondent estimates that he used four to six pills per day until his 2011 divorce, after which this increased to eight to ten. At the most excessive, he used 12 to 16 pills per day, two or four at a time spaced between four and six hours.

12. Respondent employed a variety of means to attain Norco. TS was working as an LVN at UVMC and was originally Respondent's patient. She suggested, and Respondent agreed to, an arrangement whereby he would prescribe the drug for her and they would share the prescription. He continued to prescribe for TS when she was no longer his patient. On some occasions, Respondent paid TS for the drugs. In 2013 alone, Respondent prescribed 120 pills to TS. He describes her as an addict.

13. Respondent also prescribed pain medication to TS's daughter SS, which he diverted to his own use. SS was not a patient and had no need for pain medication.

14. Between January 1, 2012, and July 15, 2013, Respondent prescribed pain medication to his mother, MH, and his stepfather TH, who lived in Southern California. He picked up the medications himself; they were not Respondent's patients and did not know about the prescriptions.

During this same time, Respondent prescribed pain medication for his friend, JT, who also lived in southern California, and was not his patient. Respondent knew that JT had suffered from substance abuse. Respondent obtained some of the pills from JT's prescription for his own use.

15. Respondent also prescribed pain medication for his friend KB, including 500 pills from January 2013 to February 2013. KB was not his patient, and had no need or indication for the medication. Respondent diverted the pills for his own use.

16. Respondent did not maintain medical records for TS, KB, MH, TH, JT or SS.

recently re-classified from a Schedule III) as defined by section 11056, subdivision (e), of the Health and Safety Code and 21 C.F.R. § 1308.13 (e), and a dangerous drug as defined in Business and Professions Code section 4022.

³ Percocet is a trade name for a combination of oxycodone hydrochloride and acetaminophen. It is a semi-synthetic narcotic analgesic. Percocet is a Schedule II controlled substance as defined by section 11055, subdivision (b)(1)(N), of the Health and Safety Code, and 21 C.F.R. § 1308.12 (b)(1), and a dangerous drug as defined in Business and Professions Code section 4022.

17. The evidence established that Respondent issued fraudulent prescriptions for narcotics and diverted the drugs for his own use from at least January 2012 until July 14, 2013.

Expert opinion evidence: unprofessional conduct

- *Kanwaljit Gill, M.D.*

18. Kanwaljit Gill, M.D., is an orthopaedic surgeon with the Kaiser Permanente Medical Group in Richmond and a consultant orthopaedist with the San Francisco Orthopaedic Residency Program at St. Mary's Hospital. He has held these positions since 1991.

Dr. Gill graduated from Nottingham University Medical School in England. He completed his internship and a residency in orthopaedic surgery at the University of California, San Francisco, in 1991. Dr. Gill is board certified in orthopaedics.

19. Dr. Gill's practice includes "everything from trauma to sports medicine." Sports medicine includes arthroscopies of shoulders, knees and elbows. Following a sports medicine procedure, the patient is in the recovery room for one or two hours. They are then seen in the office in a few days or weeks, depending on the case. Dr. Gill writes a prescription for an appropriate amount of narcotic medication to help the patient going forward.

20. According to Dr. Gill's experience, physician assistants (PA's) often assist in total joint replacement procedures; for sports injury procedures a PA is typically not needed. When they do assist, they help ready the patient and help in surgery if an extra pair of hands is needed. In the post-op period they help with positioning and bandaging and can issue prescriptions, although the prescriptions are still linked to the physician.

21. Dr. Gill is not a pain specialist, but is knowledgeable about managing patient pain in the context of his practice as an orthopaedic surgeon. Non-medical modalities are first employed, then non-narcotics or non-steroidal anti-inflammatory medications. If these are ineffective, narcotics such as Norco or other combinations of hydrocodone and acetaminophen can be used. Norco may have adverse effects. It can relieve pain, but can also impair judgment, create cloudiness of thought and unclear thinking, or cause euphoria.

22. Dr. Gill expressed the following opinions as to whether the standard of care for physicians practicing orthopaedic surgery in California was violated, and to what degree, by Respondent's addiction and conduct as set forth above (Findings 8 through 17).

a. It is an extreme departure from the standard of care for prescribing controlled substances for a physician to prescribe narcotic pain medication to a person without conducting a prior examination and without a medical indication for the medication prescribed. This conduct constitutes prescribing without an appropriate examination and

medical indication.

b. It is an extreme departure from the standard of care for prescribing controlled substances for a physician to prescribe narcotic pain medication to a person who at one point had a medical indication for the medication prescribed, but no longer has such indication. This conduct constitutes prescribing without an appropriate examination and medical indication.

c. It is an extreme departure from the standard of care for a physician to knowingly prescribe a controlled substance to a person not under the care of the physician.

d. It is an extreme departure from the standard of care for a physician to prescribe narcotics to persons known to be addicted to and/or habitual users of narcotic pain medication, where the person has no current medical condition requiring narcotic pain medications. The side effects, including cloudy judgment and drowsiness, could result in danger to the person using the narcotics and to the public.

e. It is a violation of the standard of care for a physician to fail to maintain medical records for a person for whom a physician prescribes narcotic pain medication. Such failure could rise to the level of an extreme departure depending upon the number of times it occurs.

f. Completing and signing a prescription for narcotic pain medication constitutes the practice of medicine. It is an extreme departure from the standard of care for a physician to knowingly include false information in the prescription, including incorrect addresses and representing that there is a physician-patient relationship when there is not. It is also an extreme departure to include false information with the intent to obtain the medication for the physician's own use, and this is also a dishonest or corrupt act.

g. It is an extreme departure from the standard of care for a physician to issue a prescription for narcotic pain medication using the identifying information of an individual who is not aware of the prescription and has no knowledge of the use of his or her identifying information.

h. It is an extreme departure from the standard of care for a physician to pick up a prescription from a pharmacy that he wrote for an individual without their knowledge and use it himself.

i. It is an extreme departure from the standard of care for a physician to enter into an agreement with an individual to whom he prescribed narcotic pain medication that they would share or divide the medication amongst themselves.

23. Dr. Gill's opinions regarding the standard of care as set forth above were uncontradicted and persuasive.

24. Dr. Gill was asked to render an opinion regarding violations of the standard care and whether Respondent's activities endangered his patients or the public after assuming the following facts: Respondent was addicted to and a habitual user of narcotic pain medication for a number of years; Respondent regularly ingested Norco without medical indication for a number of years; Respondent obtained at least some of this medication from medication that he had prescribed to other people; while Respondent was addicted to narcotic pain medication, over a period of several years, on some occasions he would take up to 12 pills of Norco in a single day; while Respondent was addicted to and a habitual user of narcotic pain medication, he continued to practice medicine full-time, including by seeing patients and performing surgeries; and when Respondent performed surgery, he took care to ensure that he was not at that particular time under the influence of narcotic pain medication.

Dr. Gill noted that surgery is a highly technical activity, and to be under the influence of narcotics while conducting surgery would be dangerous. When asked whether Respondent's practice while addicted constituted a departure from the standard of care, Dr. Gill's answer was not clear. In this regard, it is noted that Dr. Gill stated early in his testimony that he is not a specialist in pain management, and his background reveals no special education or training on the effects of narcotics. He did not clearly render an opinion on the above-described conduct.

Findings on allegations of unprofessional conduct and other statutory violations

25. The evidence established that Respondent committed unprofessional conduct in that he was grossly negligent and repeatedly negligent in his treatment of and/or prescribing to TS, KB, MH, TH and SS.

26. The evidence established that Respondent committed unprofessional conduct by fraudulently prescribing and/or diverting controlled substances from TS, KB, MH, TH, JT and SS.

27. The evidence established that Respondent prescribed dangerous drugs to TS, KB, MH, TH, JT and SS without an appropriate prior examination or medical indication.

28. The evidence established that Respondent failed to maintain adequate records for patients TS, KB, MH, TH, JT and SS.

29. The evidence established that Respondent made false representations in documents related to the practice of medicine.

30. The evidence established that Respondent self-prescribed and self-administered controlled substances.

Respondent's evidence

31. Respondent described the time period that he began using Norco as stressful.

As he was the most junior orthopaedist in the Ukiah area, he was required to cover the Emergency Room every third night. He was also experiencing stress due to his family situation. His wife was expecting their third child, she was unhappy living in Ukiah, he had financial pressures and he was depressed.

32. Respondent met TS when she was a patient, they worked together, and they became friends. She also served as a nanny to his children. In 2003, TS asked if Respondent could write her a prescription for pain medication and at the same time asked him if he was interested in trying some.

33. Respondent's use of Norco started slowly, but he gradually began to take it regularly on weekends and during off-duty hours, although he was also sober for periods of time. Respondent asserts that he "took great pains not to" take Norco while on duty and seeing patients, because it "impairs judgment like any other drug." He nonetheless acknowledged that his "addiction impaired [his] ability to practice medicine."

34. In 2004, Respondent moved with his family to Marin County. His wife was happier and he enjoyed the group practice. Respondent was sober for four years; he described this as "geographic AA." In 2008, he moved back to Ukiah, in part because some of the rules were changed for covering call, and the pay was better. This was a mistake. Respondent went "back to old habits." He obtained Norco through TS again, and then through his girlfriend KB. Finally, he obtained the drug by writing prescriptions for his parents, who had no idea he was doing it; he would pick up the prescriptions himself.

35. In 2011, Respondent's wife filed for divorce. He sought help for both his marriage and his substance abuse. Respondent met Kathleen Anderson, a therapist, and she was helpful. Respondent attended an outpatient program. He wanted to stop using to help his marriage, but was not able to do so.

36. At the time of his arrest in 2013, Respondent knew he needed help but was reluctant to seek it. Respondent attributes some of this reluctance to his training as a surgeon; he describes surgeons generally as reluctant to ask others for help. He believes he was self-medicating for depression, using Norco as an anti-depression medication. Respondent acknowledges that it would have been better to seek treatment for the depression, and offers no excuse for not pursuing a legitimate avenue.

37. Following the arrest, Respondent sought Anderson's assistance, as he wanted to attend an inpatient program. She recommended that he enter Olympia House, where she was on staff. Olympia House is a highly structured and serious program on the grounds of a former dairy farm. The emphasis is on cognitive behavioral therapy. There are many group sessions, but also physical labor. Respondent completed the 30-day program.

38. Respondent acknowledged that he was clearly an addict, and following the inpatient program enrolled in the Pacific Assistance Group (PAG). It is an outpatient program designed for health professionals. Respondent signed a monitoring agreement

requiring drug testing on a random basis. He has had no positive tests, and on the one occasion he missed calling in, he went in to test.

The agreement also requires attendance at 12-step meetings, and he has attended 20 meetings each month since beginning his recovery program. Respondent also attends a health support group one or two times each week. The group includes pharmacists, medical doctors, dentists, and others who are participating in PAG or the dental diversion program. The group does not follow the 12-step formula and covers different subjects, including specific problems that health professionals encounter.

Once each month Respondent sees psychiatrist Van Arthur Pena, M.D., for depression. Dr. Pena prescribes Wellbutrin for Respondent. Once each week, Respondent sees or talks on the telephone with therapist Anderson. Respondent's current schedule therefore includes four ongoing meetings or sessions to assist his recovery and continued sobriety.

39. Respondent acknowledged that previous attempts to remain sober have failed and that he relapsed several times, including after attending the outpatient program. Respondent explained that previously, his motivation was primarily external, that is, to save his marriage and see his children. He has since learned that there has to be an internal desire to change; that external reasons are insufficient to promote a lasting recovery.

40. Respondent believes that he now has in place a solid plan based on an internal motivation to remain sober. It has been two and one-half years, and he is feeling in very good physical and mental condition. In addition to his formal program, Respondent eats a healthy diet and engages in regular exercise. He is involved with his children, and happy and grateful for his relationship with them. This is something that would be in jeopardy should he relapse, and is an additional motivating factor.

41. It has taken a while, but Respondent now recognizes a silver lining. He opines that there are advantages to having a physician in recovery practicing where the physician is appropriately monitored. He asserts that he has attained "an extra measure of compassion, maturity, and understanding from going through something like this."

42. Respondent requests a probationary term, with conditions that would allow him to practice as an orthopaedic surgeon. If this occurs, he plans to practice sports medicine, performing primarily arthroscopic procedures in a surgery center or hospital setting. He asserts this would require his ability to supervise physician assistants and prescribe short courses of controlled substances for pain management.

43. Respondent gave testimony in a matter-of-fact manner that was credible in every respect. His demeanor was observed to be appropriate for the circumstances and he took full responsibility for his actions. Minor mistakes, including regarding dates, were insufficient to undermine his overall credibility.

44. Mark Lawler, M.D., is an orthopaedic surgeon practicing in Novato. He specializes in sports medicine, primarily procedures involving shoulders, hips, and knees. His practice group employs 15 staff members, including three physician assistants. Respondent practiced with Dr. Lawler from 2004 until 2008. They originally met 15 years ago at the University of Miami, where they were both engaged in post-graduate programs.

Dr. Lawler was not aware of Respondent's substance abuse until Respondent was arrested. The news spread quickly. Respondent telephoned Dr. Lawler and told him that he had been abusing medications, but that he had accepted responsibility, was "in rehab," and had "legal issues, but was going through the process." There have been several telephone conversations. Respondent did not minimize his conduct; he was very remorseful, embarrassed, and ashamed.

Dr. Lawler witnessed no problems with Respondent's performance or evidence of abuse when they practiced together. He has discussed with his partners and with Respondent the possibility of Respondent returning to Dr. Lawler's practice. His partners only wanted to know that Respondent was "squared away," and had his license back. Dr. Lawler also commented that he sees many patients that he and Respondent had in common. The patients ask how Respondent is doing and express concern.

Expert opinion evidence: recovery and rehabilitation

45. Kathleen Anderson, MFT, received a master's degree in counseling psychology in 2008. Her clinical focus is chemical dependency. Anderson's current practice combines work as a clinician at Olympia House in Petaluma and a small private practice in Windsor.

46. Anderson first met Respondent when he she was working at Campobello, an intensive outpatient program in Santa Rosa. Respondent drove down from Ukiah and asked to be admitted. He was using opioids and "the big thing in his mind was that his wife was threatening divorce." Respondent was motivated by this, and participated in the evening program.

Following the outpatient program, Anderson saw Respondent in private sessions once or twice a month. He was drug testing at the time, and able to remain abstinent while the divorce and custody issues were proceeding. But Anderson describes Respondent as not having sufficient coping skills to help him deal with his wife and family. He was suffering from depression and anxiety. He went to a meeting "here and there," but was unsure what to do. Respondent relapsed. Anderson opined that this was due to his disease being stronger than his efforts and his failure to surrender to a power outside of himself. He had not moved from the external motivation of his family life to a real desire within himself to change.

47. Following his arrest, Anderson saw a changed person; he was "shocked and broken." Respondent asked her for help and she referred him to Olympia House. Following the inpatient program, Respondent continued to see Anderson for individual therapy. The visits were weekly at first, then twice each month.

48. Anderson also characterizes Respondent's arrest as having a silver lining, as it led him to his current place. Now, Respondent checks in regularly with Anderson. When he is angry, he practices the third AA step, which involves spirituality and acceptance. She notes that he attends regular and frequent meetings, goes to the gym, and is taking care of himself. His depression symptoms have lessened. His support system is strong.

Respondent expressed remorse to Anderson, and she never felt he was deceitful. He has told her that he is not interested in drugs and would rather die than take them.

49. Anderson opined that Respondent could work as a physician with no risk to the public.

50. Van Arthur Pena, M.D., is a psychiatrist. He has practiced for 37 years, including eight years in Petaluma.

Dr. Pena first met Respondent in Olympia House in late 2013. Initially, Dr. Pena prescribed sleep and depression medications that were not habit forming. The next treatment phase was focused on addressing his anxiety, fear and associated depression, and feelings of hopelessness and worthlessness. After discharge, the plan became a two-pronged approach of medication and supportive psychotherapy. Dr. Pena has seen Respondent for 26 visits, lasting between one and two hours. He currently sees him monthly.

51. Dr. Pena opined that Respondent has improved, but remains depressed. He is extremely cooperative and wants to recover. The intrusive thoughts and nightmares he has suffered from are not as severe or as frequent.

52. Dr. Pena describes Respondent as honest and consistent; "what he says hangs together." He is impressed with Respondent's sincerity also: Respondent is "utterly sincere and honest." Further, his good "character shines right through." Respondent has suffered enormously, and Dr. Pena describes Respondent's addiction as "a bump in the road." Dr. Pena opined that Respondent will not relapse.

53. Francine Farrell, LMFT, is a level two certified alcohol and drug counselor. She received a master's of science in counseling in 1986, and has been the Area Administrator of PAG in the Sacramento area since 2008. Her specialty is service to individuals and health care professionals at all stages of recovery from substance abuse.

54. From 1988 to 2008, Farrell was a group facilitator with Maximus, the Board's Physician Diversion Program. When the Board terminated its program, there remained about 100 physicians in the state who could not complete the program through no fault of their own. Farrell joined with seven other professionals from the Board's program to form PAG. The Board allowed PAG to help by providing the remaining physicians administration and case management.

At first, PAG was modeled after the Board program, but it has evolved. It now consists of a health professionals support group twice weekly, 90 minutes each; a community based self-help program such as AA or NA; if working, a worksite monitor who reports to PAG if there is a concern; regular contact with Farrell and a case manager; and 48 to 52 observed urine tests per year.

55. Farrell is extremely knowledgeable about addiction and recovery in health professionals. Particularly in the beginning, people may be primarily externally motivated and not totally honest. This is one reason for the drug screening, although “testing alone will not tell us if they are in recovery.” Recovery happens when the problem is recognized and work is done; abstinence is only part of the solution.

Farrell described the first year as the most stressful and difficult, and the most likely time for relapse; the rate is much lower after two years. If an addict makes it to two years, that is a fairly good indication that “they are working a program that is supporting their recovery.”

56. Farrell’s initial impression of Respondent was that he was incredibly frightened, anxious, and ashamed. She was not sure if he was self-motivated. He “had a lot of problems.”

Self or internal motivation is a criterion for successful completion of a program. Farrell believes that Respondent “has achieved internal motivation.” He therefore “can’t believe I used to be that guy and I never want to be that guy again and these are the things I need to do not to be that guy again.” Respondent “has weathered some significant storms, including, divorce, custody problems, and criminal charges.” Farrell has “watched him transition to being confident that it would be all right so long as he stayed sober.” He understands that being sober is crucial to a good life.

57. Based on her experience, training, and research reviewed, Farrell opined that physicians who are monitored by biological fluid testing and other devices are less likely to relapse or use drugs than the general physician population. These physicians have learned humility, to ask for help, and to be very honest in their dealings with others.

Farrell believes that Respondent has learned these lessons. She is aware he relapsed previously after four years of abstinence, but opined that based on everything she knows, he is unlikely to relapse now and is capable of returning to a medical practice.

58. Christopher Mulligan, LCSW, is in private practice in Culver City. He earned a master’s degree in social work in 1992. Mulligan is an adjunct lecturer in the Graduate School of Social Work at the University of Southern California, the founder and clinical director of Cyber Addiction Recovery Center, and the founder and clinical director of Groupworks West, Inc., which focusses on autism spectrum disorder. He also conducts forensic evaluations, and evaluated Respondent in connection with his criminal case. Mulligan authored a comprehensive report of his evaluation dated May 22, 2015, and testified

at hearing.

59. Mulligan has met Respondent twice. He traveled to Ukiah, where he interviewed Respondent and family members. He then saw Respondent for a follow-up interview in approximately mid-January 2016. Mulligan read all of the criminal court documents and reports by Anderson and Farrell. After years of interviews, Mulligan believes he is “astute at listening to people’s reaction to the negative consequences of their behavior and their ability to see opportunities.” He is interested to determine whether his impressions coincide with the impressions of other professionals.

Respondent presented to Mulligan as sober, very thoughtful, coherent, and insightful about himself and his children, and what led to his circumstances. It was clear to Mulligan that Respondent had given a lot of thought to his recovery and that he wanted very badly to rehabilitate his life, continue being an effective parent and resume his career. Mulligan observed no effort to minimize or rationalize his behavior or to evade personal responsibility. To the contrary; Respondent accepted responsibility for his actions.

60. Mulligan’s opinions concerning Respondent were interwoven and supported by information he provided about the neuroscience of addiction and Norco specifically, and research studies concerning addiction in physicians. Mulligan reported that research has established that the “vast majority of physicians who become addicted to prescription medications do so as a way of coping with stress related to their medical practice.” He noted that Respondent evidenced few self-help or management skills to support him as a doctor with a very busy practice. Therefore, Respondent’s ability to discover coping skills that work for him is an essential part of his recovery.

61. Mulligan opined that Respondent’s actions in recovery have “considerably strengthened his resilience and ability to cope.” Based on his “treatment track record following his arrest, he has clearly demonstrated that he is fully capable of maintaining his sobriety and is serious about deepening his recovery.” Further, “he has learned the self-help and stress management skills that he did not have when he became addicted to Norco. In short, it is my professional opinion that [Respondent] is at minimal risk for relapse and is quite capable of leading a productive and law abiding life.”

Although biological testing is a useful tool, and can be helpful in assessing credibility, Mulligan opined that Respondent would remain sober without testing. He also opined that the ability to prescribe pain medications would not jeopardize his recovery, and would not pose a risk to patients.

62. George Salinger, MFT, is certified as a drug counselor. He has been facilitating groups for chemically dependent physicians and other medical professionals for 17 years. Salinger gave a brief description of his lengthy history of alcohol abuse. He became sober in 1957, but in ten months started drinking again. He was in and out of AA, and used street drugs, Valium and smoked hash. In 1976 Salinger was found in a motel room with 14 half-gallon empty bottles of vodka. He weighed 118 pounds. He then began a

recovery program and as of June 17, 2015, has had 40 years of sobriety.

Salinger is clearly attuned to signs of relapse in his group members. He notes that “people say things they think you want to hear.” He recognizes this phenomenon because he experienced it himself.

Salinger describes Respondent as “one of the top people I have ever had. He understood recovery better than anyone I have known.” When Respondent began the group approximately two and one-half years ago, Salinger was impressed, and has watched him grow in his recovery. Respondent helps others in the group. He is not afraid to challenge others when they say something that does not make sense. Respondent evidences understanding of the importance of the 12 steps and what it means to start growing emotionally. Respondent telephones Salinger if he has a question, which is unusual for group members. Salinger explained that the sixth and seventh AA steps are about character, and this is where work needs to continue.

Salinger concluded that “we are all susceptible to relapse.” But he believes that as long as people do the three things he believes are essential, live a spiritual life and watch oneself emotionally and physically, the potential is minimized. Respondent believes that Respondent is sincere, remorseful, and engaged in a strong program.

63. Allan Pont, M.D., was the Vice President of Medical Affairs and Chief Medical Officer of California Pacific Medical Center (CPMC) from 2006 to 2013. From 1995 to 2008, he was the Medical Director of CPMC. Along with many other positions and medical-related activities, he has been the Team Physician for the Oakland Athletics since 1984. Dr. Pont is board certified in internal medicine and endocrinology.

By virtue of his training and experience, Dr. Pont’s areas of expertise include credentialing of medical staff and handling “difficult doctors.” He is familiar with the administration of medications in hospital settings, and with the protocols for providing pain relief for sports medicine procedure patients.

64. Dr. Pont opined that the diversion of narcotics in a hospital setting by physicians is very difficult, unless the physician is an anesthesiologist. Other physicians prescribe, but do not “touch the drugs.” The prescriptions are issued through a computer, and checked by the pharmacy, before a nurse pulls the drug and administers it to the patient. In addition, it would be “impossible for a physician to create a patient and prescribe” medication to a fictitious patient in a hospital setting.

Dr. Pont also opined that it would be impossible for an orthopaedist performing sports medicine procedures not to be able to prescribe narcotics for patients. It would be inappropriate for another physician to prescribe the narcotics.

65. Dr. Pont authored a paper outlining a monitoring program designed to assist surgeons with substance abuse issues to return to practice. The program utilizes the CURES

database in the process, and is principally addressed to inpatient settings such as hospitals and surgery centers.

66. The opinions expressed by experts witnesses Anderson, Pena, Farrell, Mulligan, Salinger and Pont were based upon solid training, experience and personal knowledge of Respondent and his circumstances. They were persuasive.

Additional character evidence

67. Joan Kobrine, M.D., met Respondent when they attended UCLA, and described him as a close friend and colleague for over 30 years. Dr. Kobrine practiced as an anesthesiologist from 1999 to 2006. In 2008, she left clinical medicine and now works as a consultant for NetChemistry, and for a non-profit that provides free surgeries and specialty medical care for uninsured patients in Orange County.

68. Dr. Kobrine is aware of Respondent's history of substance abuse and has read the Accusation. After the arrest, Respondent talked about his situation in detail. They have discussed his recovery, the steps he has taken, his enrollment in PAG, the drug screening, and other matters.

Dr. Kobrine testified, and also wrote a letter of support. She wrote that Respondent "is committed to his health, his family, and his career. With the current challenges he is facing, he is completely focused on being truthful and accountable. His continued courage, dedication, and strength in these efforts are impressive."

69. Respondent submitted 33 additional letters of reference, all of which appear to have been submitted to the superior court prior to sentencing. Five are from physicians and 17 from patients. The authors uniformly and sincerely praise Respondent for his surgical skills and good qualities. Many express surprise about his addiction and criminal activity in support of the addiction.

LEGAL CONCLUSIONS

Causes for discipline

1. Unprofessional conduct is grounds for discipline of a physician's certificate pursuant to Business and Professions Code section 2234. Unprofessional conduct includes violating provisions of the Medical Practice Act (Bus. & Prof. Code, § 2234, subd. (a)), gross negligence (Bus. & Prof. Code, § 2234, subd. (b)), repeated negligent acts (Bus. & Prof. Code, § 2234, subd. (c)), dishonesty or corruption (Bus. & Prof. Code, § 2234, subd. (e)), prescribing dangerous drugs without an appropriate prior examination and a medical indication (Bus. & Prof. Code, § 2242, subd. (a)), conviction of a substantially related crime (Bus. & Prof. Code, § 2236), conviction of statutes regulating dangerous drugs or controlled substances (Bus. & Prof. Code, § 2237), failing to maintain adequate records (Bus. & Prof.

Code, § 2266), false representation in a document (Bus. & Prof. Code, § 2261), violations of federal or state statutes regulating controlled substances (Bus. & Prof. Code, § 2238) and dangerous use of controlled substances (Bus. & Prof. Code, § 2239).

Criminal conviction

2. Respondent was convicted of crimes substantially related to the practice of medicine and of statutes regulating dangerous drugs or controlled substances. Cause for license discipline exists under Business and Professions Code sections 2236 and 2237 by reason of the matters set forth in Findings 8 through 10.

Gross negligence

3. Respondent committed gross negligence. Cause for license discipline exists for unprofessional conduct pursuant to Business and Professions Code section 2234, subdivision (b), by reason of the matters set forth in Findings 11 through 17, 22 and 23.

Repeated negligent acts

4. Respondent committed repeated negligent acts. Cause for license discipline exists for unprofessional conduct pursuant to Business and Professions Code section 2234, subdivision (c), by reason of the matters set forth in Finding 11 through 17, 22 and 23.

Dishonest or corrupt acts

5. Respondent's fraudulent prescribing was dishonest. Cause for license discipline exists for unprofessional conduct pursuant to Business and Professions Code section 2234, subdivision (e), by reason of the matters set forth in Findings 11 through 17, 22 and 23.

Unlawful prescribing

6. Respondent prescribed dangerous drugs without an appropriate prior examination and/or medical indication. Cause for license discipline for unprofessional conduct exists pursuant to Business and Professions Code section 2242, subdivision (a), by reason of the matters set forth in Findings 11 through 17, 22 and 23.

False statement in a document

7. Respondent made false statements in documents related to the practice of medicine. Cause for license discipline for unprofessional conduct exists pursuant to Business and Professions Code section 2261, by reason of the matters set forth in Findings 11 through 17, 22 and 23.

Inadequate record keeping

8. Respondent failed to maintain adequate and accurate records. Cause for license discipline for unprofessional conduct exists pursuant to Business and Professions Code section 2266, by reason of the matters set forth in Findings 11 through 17, 22 and 23.

Violations of statutes regulating controlled substances

9. Health and Safety Code section 11153 provides that prescriptions for controlled substances shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of practice. Health and Safety Code section 11154 prohibits prescribing a controlled substance to a person not under the physician's treatment. Health and Safety Code section 11157 prohibits the issuance of a false or fictitious prescription. Health and Safety Code section 11173 prohibits, in pertinent part, obtaining or attempting to obtain controlled substances by fraud and making false statements in prescriptions. The evidence established that Respondent violated Health and Safety Code sections 11153, 11154, 11157 and 11173. Cause for license discipline for unprofessional conduct exists pursuant to Business and Professions Code section 2238, by reason of the matters set forth in Findings 11 through 17, 22 and 23.

Other matters

10. Business and Professions Code section 3527, subdivision (c), provides that the Board may deny, suspend, or revoke the authority of a physician to supervise physician assistants where the physician has committed unprofessional conduct. Cause for such action exists by reason of the above-described violations.

Analysis and disciplinary considerations

11. Cause for discipline having been established, it remains to determine the appropriate measure of discipline to impose. In this regard, it is noted that the purpose of these proceedings is protection of the public, not punishment of the licensee. When possible, certificates should be placed on probation with conditions designed to enable rehabilitation and eventual reinstatement. Such a result is often appropriate the first time cause to discipline a physician is found, and is so here.

The Board has adopted the Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th ed., 2011), and "Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees" (Cal. Code Regs., tit. 16, § 1361). Under the Disciplinary Guidelines, the minimum recommended discipline is five years' probation, with partial or total restrictions on prescribing controlled substances. In addition, the Uniform Standards contain probationary terms and conditions that "shall be used without deviation in the case of a substance-abusing licensee." (Cal. Code Regs., tit. 16, § 1361, subd. (b).) The Guidelines contain both standard and optional conditions; the optional conditions are properly analyzed and applied depending upon the circumstances. Although

there are many conditions that all respondents similarly situated should receive, it is also important to treat each person as an individual.

Complainant and Respondent differ as to which probation conditions and restrictions should be imposed on Respondent should he be granted a probationary license. Complainant strongly asserts that Respondent should receive a lengthy term with stringent conditions and not conditions tailor-made for his situation. Respondent argues that he will not be able to work as an orthopaedic surgeon should he not be able to prescribe narcotics and supervise physician assistants, which are common probation conditions. The relevant issue is not whether Respondent is entitled to "special" conditions of probation, or whether Respondent will be able to obtain employment or work as he wishes, but what conditions are necessary for public protection.

Addiction is a brain disease that is never cured, but it can be managed and lived with successfully. Respondent presented extraordinary evidence of recovery and rehabilitation. Respondent's own testimony was impressive, and it was corroborated by persuasive expert testimony. Two and one-half years is a significant period of sobriety, especially where a recovery program is comprehensive and wholeheartedly embraced. If Respondent seeks drugs, there are various routes he can take, whether or not he has the ability to prescribe narcotics for his patients. Preventing him from prescribing controlled substances would not prevent a relapse, and it would prevent the Board from learning if he will be able to do so safely while he is under Board scrutiny.

The heart of Respondent's discipline is his addiction, not competency. There is no real risk that Respondent, in supervising a physician assistant, will instruct that assistant incorrectly. And there is no reason that a physician assistant will be more likely to assist Respondent to divert drugs than any other health professional working with him.

The evidence justifies a departure from the Guidelines. It is not necessary to prevent Respondent from supervising physician assistants or from prescribing. The public interest will be sufficiently protected by the following order, which is very comprehensive. It requires an extensive clinical evaluation, abstention from drugs and alcohol, no solo practice, completion of courses in ethics and prescribing, workplace monitoring, and the maintenance of special records regarding controlled substances, among other conditions.

ORDER

Physician's and Surgeon's Certificate No. G80508, issued to Respondent Brian Marcel Cable, M.D., is revoked; however, the revocation is stayed and the certificate placed on probation for five years under the following terms and conditions.

1. Clinical Diagnostic Evaluations and Reports

Within 30 calendar days of the effective date of this Decision, and on whatever

periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with Respondent within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a threat to himself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to Respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that Respondent is a threat to himself or others, the evaluator shall notify the Board within 24 hours of such a determination.

In formulating his or her opinion as to whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: Respondent's license type; Respondent's history; Respondent's documented length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use); Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical history and current medical condition; the nature, duration and severity of Respondent's substance abuse problem or problems; and whether Respondent is a threat to himself or the public. For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed 30 days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five business days of receipt to determine whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on Respondent based on the recommendations made by the

evaluator. Respondent shall not be returned to practice until he has at least 30 days of negative biological fluid tests or biological fluid tests indicating that he has not used, consumed, ingested, or administered to himself a prohibited substance, as defined in section 1361.51, subdivision (e), of title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that he is fit to practice medicine safely. The period of time that Respondent is not practicing medicine shall not be counted toward completion of the term of probation. Respondent shall undergo biological fluid testing as required in this Decision at least two times per week while awaiting the notification from the Board if he is fit to practice medicine safely.

Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within 15 calendar days after being notified by the Board or its designee.

2. Notice of Employer or Supervisor Information

Within seven days of the effective date of this Decision, Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's worksite monitor, and Respondent's employers and supervisors to communicate regarding Respondent's work status, performance, and monitoring.

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

3. Controlled Substances - Abstain From Use

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

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

If Respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide Respondent with a hearing within 30 days of the request, unless Respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

4. Alcohol - Abstain From Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide Respondent with a hearing within 30 days of the request, unless Respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of such a request, the notification of

cease practice shall be dissolved.

5. Biological Fluid Testing

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

During the first year of probation, Respondent shall be subject to 52 to 104 random tests.

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

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

- (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
- (b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.
- (c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.
- (d) Its specimen collectors observe the collection of testing specimens.

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

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

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

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

(i) It maintains testing sites located throughout California.

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

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

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

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

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

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one business day and negative test results within seven business days of the results becoming available.

results within seven business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

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

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

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

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

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

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

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

6. Substance Abuse Support Group Meetings

Within 30 days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with Respondent within the last five years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

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

7. Solo Practice Prohibition

Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, Respondent's practice setting changes and Respondent is no longer practicing in a setting in compliance with this Decision, Respondent shall notify the Board or its designee within five calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate

practice setting within 60 calendar days of the practice setting change, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

8. Worksite Monitor for Substance-Abusing Licensee

Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring Respondent at work.

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

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

Respondent shall pay all worksite monitoring costs.

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

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

shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following:

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

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

9. Controlled Substances – Maintain Records and Access to Records and Inventories

Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or a patient's primary caregiver to possess or cultivate marijuana for personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

10. Prescribing Practices Course

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

11. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

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

designee had the program been taken after the effective date of this Decision.

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

12. Violation of Probation Condition for Substance-Abusing Licensees

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

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

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

(2) Increase the frequency of biological fluid testing.

(3) Refer Respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

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

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

(7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed.

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

13. Notification

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

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

14. Obey All Laws

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

15. Quarterly Declarations

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

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

16. Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

17. Address Changes

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

18. Place of Practice

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

19. License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's certificate.

20. Travel or Residence Outside California

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

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

21. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

22. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

Periods of non-practice will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws and General Probation Requirements.

23. Completion of Probation

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

24. License Surrender

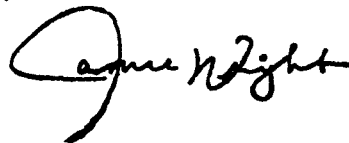
Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request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

25. Probation Monitoring Costs

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

This decision shall become effective at 5:00 p.m. on August 19, 2016.

IT IS SO ORDERED this 22nd day of July, 2016.



Jamie Wright, J.D.
Chair, Panel A
Medical Board of California

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

In the Matter of the Accusation)	
Against:)	
)	MBC File No. 12-2013-234005
BRIAN MARCEL CABLE, M.D.)	
)	OAH No. 2015090144
Physician's and Surgeon's)	
Certificate No. G80508)	
)	
_____ Respondent.)	

ORDER GRANTING RECONSIDERATION

The proposed decision of the administrative law judge in the above captioned matter was adopted by the Board on March 25, 2016, and was to become effective on April 22, 2016. A Petition for Reconsideration under Government Code Section 11521 was filed in a timely manner by Complainant.

The petition for reconsideration having been read and considered, the Board hereby orders reconsideration. The Board itself will reconsider the case based upon the entire record of the proceeding, including the transcript. Both complainant and respondent will be afforded the opportunity to present written argument to the Board. You will be notified of the time for submitting written argument. **In addition to written argument, oral argument may be scheduled if any party files with the Board, a written request for oral argument 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 of oral arguments. 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.

Your right to argue any matter is not limited, however, no new evidence will be heard. The Board is particularly interested in the reconsideration of the penalty order.

The decision with an effective date of April 22, 2016 is stayed. This stay shall remain in effect until the Board issues its decision after reconsideration. For its own use, the Board has ordered a copy of the hearing transcript and exhibits. At your own expense, you may order a copy of the transcript by contacting: Diamond Court Reporters, 1107 2nd Street, Suite 210, Sacramento, CA 95814, (916) 498-9288.

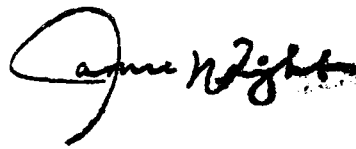
To order a copy of the exhibits, please submit a written request to this Board.

The address for serving written argument on the Board is:

Michelle Solario, Discipline Coordination Unit
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831

Please submit an original and 1 copy.

IT IS SO ORDERED: April 21, 2016

A handwritten signature in black ink, appearing to read "Jamie Wright". The signature is written in a cursive style with a large, looping initial "J".

Jamie Wright, J.D.
Chair, Panel A
Medical Board of California

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

In the Matter of the Accusation)	
Against:)	
)	
)	
BRIAN MARCEL CABLE, M.D.)	Case No. 12-2013-234005
)	
Physician's and Surgeon's)	
Certificate No. G80508)	
)	
Respondent)	
_____)	

DECISION

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

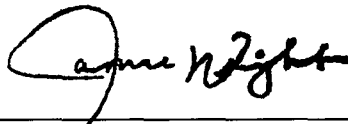
1. Page 1, paragraph 1: "Second Amended Accusation" will be corrected to read "Accusation."
2. Page 2, paragraph 4: "June 23, 2015" will be corrected to read "June 18, 2015."

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

This Decision shall become effective at 5:00 p.m. on April 22, 2016.

IT IS SO ORDERED: March 25, 2016.

MEDICAL BOARD OF CALIFORNIA



Jamie Wright, J.D.
Chair, Panel A

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

In the Matter of the Accusation Against:

BRIAN MARCEL CABLE, M.D.

Physician's and Surgeon's Certificate
No. G80508

Respondent.

Case No. 12-2013-234005

OAH No. 2015090144

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on January 25, 26, 28, and February 2, 2016, in Oakland, California.

Joshua M. Templet, Deputy Attorney General, represented Complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

Mitchell J. Green, Attorney at Law, and Morgan A. Muir, Attorney at Law, Nossaman LLP, represented Respondent Brian Marcel Cable, M.D., who was present.

The record closed on February 2, 2016.

FACTUAL FINDINGS

1. Complainant Kimberly Kirchmeyer issued the Second Amended Accusation in her official capacity as Executive Director of the Medical Board of California (Board).

2. On January 11, 1995, the Board issued Physician's and Surgeon's Certificate No. G80508 to Brian Marcel Cable, M.D. (Respondent). Respondent's certificate will expire on May 31, 2016, unless renewed.

3. The standard of proof applied in making the Factual Findings is clear and convincing evidence to a reasonable certainty.

Background

4. In an Accusation signed June 23, 2015, Complainant alleges that Respondent committed unprofessional conduct by virtue of sustaining a criminal conviction substantially related to the practice of medicine and committing acts of gross negligence and repeated negligent acts. He is also accused of engaging in dishonest or corrupt conduct, unlawful prescribing, creating false documentation, inadequate record keeping, and violating statutes regulating controlled substances. The allegations are grounded in Respondent's addiction to narcotics and related conduct underlying Respondent's criminal conviction for six felony violations of illegal prescribing. Respondent filed a Notice of Defense and this hearing followed.

5. Respondent admits that his conduct violated the Medical Practice Act and that his certificate is subject to discipline. He is currently in recovery from an addiction to narcotics. His evidentiary presentation centered on the appropriate level of discipline to impose; specifically, which probation conditions and related orders are necessary to ensure Respondent's continued rehabilitation and recovery and to protect the public.

Respondent's education and background

6. Respondent received his medical degree from the University of California at Los Angeles Medical School in 1993. He completed an orthopaedic surgery residency at Texas Tech University Health Sciences Center in 1998 and a hand surgery fellowship at University of Miami/Jackson Memorial Hospital in 1999. He is board certified in orthopaedic surgery.

7. In 1999, Respondent established a solo practice in general orthopaedics in Ukiah. From 2004 until 2008, he practiced with a group in Marin County. In 2008, Respondent returned to Ukiah to practice, until his arrest in 2013.

Respondent is currently employed as an on-line consultant, reviewing orthopaedic cases. He is divorced and lives in San Jose, and has joint custody of his children with his former wife.

Criminal conviction

8. On April 13, 2015, in the Mendocino County Superior Court, Respondent was convicted by his plea of nolo contendere of six felony violations related to illegal prescribing. He admitted two violations of Health and Safety Code section 11153, subdivision (a) (prescribing a controlled substance without a legitimate medical purpose), and four violations of Health and Safety Code section 11154, subdivision (a) (prescribing a controlled substance to a non-patient). The violations occurred between January 1, 2012, and July 25, 2013. Respondent was referred to the Probation Department for a report prior to sentencing.

On June 5, 2015, Respondent's motion to reduce the violations from felonies to misdemeanors was granted. He was sentenced to serve 36 months of summary probation and

ordered to pay various fines and fees. No custody time was ordered. The court records in evidence do not reveal any additional or special conditions of probation.

9. There are references in the administrative record to an order under Penal Code 23¹ that affects Respondent's current ability to practice medicine, but the record does not contain an order. There is also a reference to a stipulation in connection with his criminal case, whereby he agreed not to practice medicine until certain conditions were met, but the conditions are not identified and there is no stipulation in evidence.

10. Respondent's convictions followed his arrest on July 25, 2013. Ukiah Valley Medical Center (UVMC) personnel had received an anonymous letter stating that Respondent, then an orthopaedic surgeon at UVMC, was fraudulently obtaining controlled substances and performing surgery while under the influence of controlled substances. An investigation ensued that included searches of Respondent's residence and office, and interviews of TS, a licensed vocational nurse (LVN) who had worked with Respondent, and Respondent's then-girlfriend, KB. Respondent admitted criminal conduct to the investigating officer. He also described in detail his addiction to narcotics and his behavior in acquiring the drugs to the probation officer who interviewed him prior to sentencing.

Allegations of additional unprofessional conduct and other statutory violations

11. In 2003, while living and working as a physician in Ukiah, Respondent began taking narcotics, primarily Norco,² and became addicted. Except for approximately a four-year period (2004 to 2008) when he was living and working in Marin County, he habitually used Norco, and occasionally Percocet,³ until his 2013 arrest. He took between one and 16 pills per day, although not, he has maintained, prior to or during surgical procedures. Respondent

¹ Penal Code section 23 provides in pertinent part: "In any criminal proceeding against a person who has been issued a license to engage in a business or profession . . . the state agency which issued the license may voluntarily appear to furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance . . . if the crime charged is substantially related to the qualifications, functions, or duties of a licensee."

² Norco is a trade name for hydrocodone bitartrate with acetaminophen. Hydrocodone bitartrate is a semi-synthetic narcotic analgesic. It is now a Schedule II controlled substance (it was recently re-classified from a Schedule III) as defined by section 11056, subdivision (e), of the Health and Safety Code and 21 C.F.R. § 1308.13 (e), and a dangerous drug as defined in Business and Professions Code section 4022.

³ Percocet is a trade name for a combination of oxycodone hydrochloride and acetaminophen. It is a semi-synthetic narcotic analgesic. Percocet is a Schedule II controlled substance as defined by section 11055, subdivision (b)(1)(N), of the Health and Safety Code, and 21 C.F.R. § 1308.12 (b)(1), and a dangerous drug as defined in Business and Professions Code section 4022.

estimates that he used four to six pills per day until his 2011 divorce, after which this increased to eight to ten. At the most excessive, he used 12 to 16 pills per day, two or four at a time spaced between four and six hours.

12. Respondent employed a variety of means to attain Norco. TS was working as an LVN at UVMC and was originally Respondent's patient. She suggested, and Respondent agreed to, an arrangement whereby he would prescribe the drug for her and they would share the prescription. He continued to prescribe for TS when she was no longer his patient. On some occasions, Respondent paid TS for the drugs. In 2013 alone, Respondent prescribed 120 pills to TS. He describes her as an addict.

13. Respondent also prescribed pain medication to TS's daughter SS, which he diverted to his own use. SS was not a patient and had no need for pain medication.

14. Between January 1, 2012, and July 15, 2013, Respondent prescribed pain medication to his mother, MH, and his stepfather TH, who lived in Southern California. He picked up the medications himself; they were not Respondent's patients and did not know about the prescriptions.

During this same time, Respondent prescribed pain medication for his friend, JT, who also lived in southern California, and was not his patient. Respondent knew that JT had suffered from substance abuse. Respondent obtained some of the pills from JT's prescription for his own use.

15. Respondent also prescribed pain medication for his friend KB, including 500 pills from January 2013 to February 2013. KB was not his patient, and had no need or indication for the medication. Respondent diverted the pills for his own use.

16. Respondent did not maintain medical records for TS, KB, MH, TH, JT or SS.

17. The evidence established that Respondent issued fraudulent prescriptions for narcotics and diverted the drugs for his own use from at least January 2012 until July 14, 2013.

Expert opinion evidence: unprofessional conduct

- Kanwaljit Gill, M.D.

18. Kanwaljit Gill, M.D., is an orthopaedic surgeon with the Kaiser Permanente Medical Group in Richmond and a consultant orthopaedist with the San Francisco Orthopaedic Residency Program at St. Mary's Hospital. He has held these positions since 1991.

Dr. Gill graduated from Nottingham University Medical School in England. He completed his internship and a residency in orthopaedic surgery at the University of California, San Francisco, in 1991. Dr. Gill is board certified in orthopaedics.

19. Dr. Gill's practice includes "everything from trauma to sports medicine." Sports medicine includes arthroscopies of shoulders, knees and elbows. Following a sports medicine procedure, the patient is in the recovery room for one or two hours. They are then seen in the office in a few days or weeks, depending on the case. Dr. Gill writes a prescription for an appropriate amount of narcotic medication to help the patient going forward.

20. According to Dr. Gill's experience, physician assistants (PA's) often assist in total joint replacement procedures; for sports injury procedures a PA is typically not needed. When they do assist, they help ready the patient and help in surgery if an extra pair of hands is needed. In the post-op period they help with positioning and bandaging and can issue prescriptions, although the prescriptions are still linked to the physician.

21. Dr. Gill is not a pain specialist, but is knowledgeable about managing patient pain in the context of his practice as an orthopaedic surgeon. Non-medical modalities are first employed, then non-narcotics or non-steroidal anti-inflammatory medications. If these are ineffective, narcotics such as Norco or other combinations of hydrocodone and acetaminophen can be used. Norco may have adverse effects. It can relieve pain, but can also impair judgment, create cloudiness of thought and unclear thinking, or cause euphoria.

22. Dr. Gill expressed the following opinions as to whether the standard of care for physicians practicing orthopaedic surgery in California was violated, and to what degree, by Respondent's addiction and conduct as set forth above (Findings 8 through 17).

a. It is an extreme departure from the standard of care for prescribing controlled substances for a physician to prescribe narcotic pain medication to a person without conducting a prior examination and without a medical indication for the medication prescribed. This conduct constitutes prescribing without an appropriate examination and medical indication.

b. It is an extreme departure from the standard of care for prescribing controlled substances for a physician to prescribe narcotic pain medication to a person who at one point had a medical indication for the medication prescribed, but no longer has such indication. This conduct constitutes prescribing without an appropriate examination and medical indication.

c. It is an extreme departure from the standard of care for a physician to knowingly prescribe a controlled substance to a person not under the care of the physician.

d. It is an extreme departure from the standard of care for a physician to prescribe narcotics to persons known to be addicted to and/or habitual users of narcotic pain medication, where the person has no current medical condition requiring narcotic pain medications. The side effects, including cloudy judgment and drowsiness, could result in danger to the person using the narcotics and to the public.

e. It is a violation of the standard of care for a physician to fail to maintain medical records for a person for whom a physician prescribes narcotic pain medication. Such failure could rise to the level of an extreme departure depending upon the number of times it occurs.

f. Completing and signing a prescription for narcotic pain medication constitutes the practice of medicine. It is an extreme departure from the standard of care for a physician to knowingly include false information in the prescription, including incorrect addresses and representing that there is a physician-patient relationship when there is not. It is also an extreme departure to include false information with the intent to obtain the medication for the physician's own use, and this is also a dishonest or corrupt act.

g. It is an extreme departure from the standard of care for a physician to issue a prescription for narcotic pain medication using the identifying information of an individual who is not aware of the prescription and has no knowledge of the use of his or her identifying information.

h. It is an extreme departure from the standard of care for a physician to pick up a prescription from a pharmacy that he wrote for an individual without their knowledge and use it himself.

i. It is an extreme departure from the standard of care for a physician to enter into an agreement with an individual to whom he prescribed narcotic pain medication that they would share or divide the medication amongst themselves.

23. Dr. Gill's opinions regarding the standard of care as set forth above were uncontradicted and persuasive.

24. Dr. Gill was asked to render an opinion regarding violations of the standard care and whether Respondent's activities endangered his patients or the public after assuming the following facts: Respondent was addicted to and a habitual user of narcotic pain medication for a number of years; Respondent regularly ingested Norco without medical indication for a number of years; Respondent obtained at least some of this medication from medication that he had prescribed to other people; while Respondent was addicted to narcotic pain medication, over a period of several years, on some occasions he would take up to 12 pills of Norco in a single day; while Respondent was addicted to and a habitual user of narcotic pain medication, he continued to practice medicine full-time, including by seeing patients and performing surgeries; and when Respondent performed surgery, he took care to ensure that he was not at that particular time under the influence of narcotic pain medication.

Dr. Gill noted that surgery is a highly technical activity, and to be under the influence of narcotics while conducting surgery would be dangerous. When asked whether Respondent's practice while addicted constituted a departure from the standard of care, Dr. Gill's answer was not clear. In this regard, it is noted that Dr. Gill stated early in his testimony that he is not a specialist in pain management, and his background reveals no special education or training on the effects of narcotics. He did not clearly render an opinion on the above-described conduct.

Findings on allegations of unprofessional conduct and other statutory violations

25. The evidence established that Respondent committed unprofessional conduct in that he was grossly negligent and repeatedly negligent in his treatment of and/or prescribing to TS, KB, MH, TH and SS.

26. The evidence established that Respondent committed unprofessional conduct by fraudulently prescribing and/or diverting controlled substances from TS, KB, MH, TH, JT and SS.

27. The evidence established that Respondent prescribed dangerous drugs to TS, KB, MH, TH, JT and SS without an appropriate prior examination or medical indication.

28. The evidence established that Respondent failed to maintain adequate records for patients TS, KB, MH, TH, JT and SS.

29. The evidence established that Respondent made false representations in documents related to the practice of medicine.

30. The evidence established that Respondent self-prescribed and self-administered controlled substances.

Respondent's evidence

31. Respondent described the time period that he began using Norco as stressful. As he was the most junior orthopaedist in the Ukiah area, he was required to cover the Emergency Room every third night. He was also experiencing stress due to his family situation. His wife was expecting their third child, she was unhappy living in Ukiah, he had financial pressures and he was depressed.

32. Respondent met TS when she was a patient, they worked together, and they became friends. She also served as a nanny to his children. In 2003, TS asked if Respondent could write her a prescription for pain medication and at the same time asked him if he was interested in trying some.

33. Respondent's use of Norco started slowly, but he gradually began to take it regularly on weekends and during off-duty hours, although he was also sober for periods of time. Respondent asserts that he "took great pains not to" take Norco while on duty and seeing patients, because it "impairs judgment like any other drug." He nonetheless acknowledged that his "addiction impaired [his] ability to practice medicine."

34. In 2004, Respondent moved with his family to Marin County. His wife was happier and he enjoyed the group practice. Respondent was sober for four years; he described this as "geographic AA." In 2008, he moved back to Ukiah, in part because some of the rules were changed for covering call, and the pay was better. This was a mistake. Respondent went

“back to old habits.” He obtained Norco through TS again, and then through his girlfriend KB. Finally, he obtained the drug by writing prescriptions for his parents, who had no idea he was doing it; he would pick up the prescriptions himself.

35. In 2011, Respondent’s wife filed for divorce. He sought help for both his marriage and his substance abuse. Respondent met Kathleen Anderson, a therapist, and she was helpful. Respondent attended an outpatient program. He wanted to stop using to help his marriage, but was not able to do so.

36. At the time of his arrest in 2013, Respondent knew he needed help but was reluctant to seek it. Respondent attributes some of this reluctance to his training as a surgeon; he describes surgeons generally as reluctant to ask others for help. He believes he was self-medicating for depression, using Norco as an anti-depression medication. Respondent acknowledges that it would have been better to seek treatment for the depression, and offers no excuse for not pursuing a legitimate avenue.

37. Following the arrest, Respondent sought Anderson’s assistance, as he wanted to attend an inpatient program. She recommended that he enter Olympia House, where she was on staff. Olympia House is a highly structured and serious program on the grounds of a former dairy farm. The emphasis is on cognitive behavioral therapy. There are many group sessions, but also physical labor. Respondent completed the 30-day program.

38. Respondent acknowledged that he was clearly an addict, and following the inpatient program enrolled in the Pacific Assistance Group (PAG). It is an outpatient program designed for health professionals. Respondent signed a monitoring agreement requiring drug testing on a random basis. He has had no positive tests, and on the one occasion he missed calling in, he went in to test.

The agreement also requires attendance at 12-step meetings, and he has attended 20 meetings each month since beginning his recovery program. Respondent also attends a health support group one or two times each week. The group includes pharmacists, medical doctors, dentists, and others who are participating in PAG or the dental diversion program. The group does not follow the 12-step formula and covers different subjects, including specific problems that health professionals encounter.

Once each month Respondent sees psychiatrist Van Arthur Pena, M.D., for depression. Dr. Pena prescribes Wellbutrin for Respondent. Once each week, Respondent sees or talks on the telephone with therapist Anderson. Respondent’s current schedule therefore includes four ongoing meetings or sessions to assist his recovery and continued sobriety.

39. Respondent acknowledged that previous attempts to remain sober have failed and that he relapsed several times, including after attending the outpatient program. Respondent explained that previously, his motivation was primarily external, that is, to save his marriage and see his children. He has since learned that there has to be an internal desire to change; that external reasons are insufficient to promote a lasting recovery.

40. Respondent believes that he now has in place a solid plan based on an internal motivation to remain sober. It has been two and one-half years, and he is feeling in very good physical and mental condition. In addition to his formal program, Respondent eats a healthy diet and engages in regular exercise. He is involved with his children, and happy and grateful for his relationship with them. This is something that would be in jeopardy should he relapse, and is an additional motivating factor.

41. It has taken a while, but Respondent now recognizes a silver lining. He opines that there are advantages to having a physician in recovery practicing where the physician is appropriately monitored. He asserts that he has attained “an extra measure of compassion, maturity, and understanding from going through something like this.”

42. Respondent requests a probationary term, with conditions that would allow him to practice as an orthopaedic surgeon. If this occurs, he plans to practice sports medicine, performing primarily arthroscopic procedures in a surgery center or hospital setting. He asserts this would require his ability to supervise physician assistants and prescribe short courses of controlled substances for pain management.

43. Respondent gave testimony in a matter-of-fact manner that was credible in every respect. His demeanor was observed to be appropriate for the circumstances and he took full responsibility for his actions. Minor mistakes, including regarding dates, were insufficient to undermine his overall credibility.

44. Mark Lawler, M.D., is an orthopaedic surgeon practicing in Novato. He specializes in sports medicine, primarily procedures involving shoulders, hips, and knees. His practice group employs 15 staff members, including three physician assistants. Respondent practiced with Dr. Lawler from 2004 until 2008. They originally met 15 years ago at the University of Miami, where they were both engaged in post-graduate programs.

Dr. Lawler was not aware of Respondent’s substance abuse until Respondent was arrested. The news spread quickly. Respondent telephoned Dr. Lawler and told him that he had been abusing medications, but that he had accepted responsibility, was “in rehab,” and had “legal issues, but was going through the process.” There have been several telephone conversations. Respondent did not minimize his conduct; he was very remorseful, embarrassed, and ashamed.

Dr. Lawler witnessed no problems with Respondent’s performance or evidence of abuse when they practiced together. He has discussed with his partners and with Respondent the possibility of Respondent returning to Dr. Lawler’s practice. His partners only wanted to know that Respondent was “squared away,” and had his license back. Dr. Lawler also commented that he sees many patients that he and Respondent had in common. The patients ask how Respondent is doing and express concern.

Expert opinion evidence: recovery and rehabilitation

45. Kathleen Anderson, MFT, received a master's degree in counseling psychology in 2008. Her clinical focus is chemical dependency. Anderson's current practice combines work as a clinician at Olympia House in Petaluma and a small private practice in Windsor.

46. Anderson first met Respondent when he she was working at Campobello, an intensive outpatient program in Santa Rosa. Respondent drove down from Ukiah and asked to be admitted. He was using opioids and "the big thing in his mind was that his wife was threatening divorce." Respondent was motivated by this, and participated in the evening program.

Following the outpatient program, Anderson saw Respondent in private sessions once or twice a month. He was drug testing at the time, and able to remain abstinent while the divorce and custody issues were proceeding. But Anderson describes Respondent as not having sufficient coping skills to help him deal with his wife and family. He was suffering from depression and anxiety. He went to a meeting "here and there," but was unsure what to do. Respondent relapsed. Anderson opined that this was due to his disease being stronger than his efforts and his failure to surrender to a power outside of himself. He had not moved from the external motivation of his family life to a real desire within himself to change.

47. Following his arrest, Anderson saw a changed person; he was "shocked and broken." Respondent asked her for help and she referred him to Olympia House. Following the inpatient program, Respondent continued to see Anderson for individual therapy. The visits were weekly at first, then twice each month.

48. Anderson also characterizes Respondent's arrest as having a silver lining, as it led him to his current place. Now, Respondent checks in regularly with Anderson. When he is angry, he practices the third AA step, which involves spirituality and acceptance. She notes that he attends regular and frequent meetings, goes to the gym, and is taking care of himself. His depression symptoms have lessened. His support system is strong.

Respondent expressed remorse to Anderson, and she never felt he was deceitful. He has told her that he is not interested in drugs and would rather die than take them.

49. Anderson opined that Respondent could work as a physician with no risk to the public.

50. Van Arthur Pena, M.D., is a psychiatrist. He has practiced for 37 years, including eight years in Petaluma.

Dr. Pena first met Respondent in Olympia House in late 2013. Initially, Dr. Pena prescribed sleep and depression medications that were not habit forming. The next treatment phase was focused on addressing his anxiety, fear and associated depression, and feelings of hopelessness and worthlessness. After discharge, the plan became a two-pronged approach of

medication and supportive psychotherapy. Dr. Pena has seen Respondent for 26 visits, lasting between one and two hours. He currently sees him monthly.

51. Dr. Pena opined that Respondent has improved, but remains depressed. He is extremely cooperative and wants to recover. The intrusive thoughts and nightmares he has suffered from are not as severe or as frequent.

52. Dr. Pena describes Respondent as honest and consistent; “what he says hangs together.” He is impressed with Respondent’s sincerity also: Respondent is “utterly sincere and honest.” Further, his good “character shines right through.” Respondent has suffered enormously, and Dr. Pena describes Respondent’s addiction as “a bump in the road.” Dr. Pena opined that Respondent will not relapse.

53. Francine Farrell, LMFT, is a level two certified alcohol and drug counselor. She received a master’s of science in counseling in 1986, and has been the Area Administrator of PAG in the Sacramento area since 2008. Her specialty is service to individuals and health care professionals at all stages of recovery from substance abuse.

54. From 1988 to 2008, Farrell was a group facilitator with Maximus, the Board’s Physician Diversion Program. When the Board terminated its program, there remained about 100 physicians in the state who could not complete the program through no fault of their own. Farrell joined with seven other professionals from the Board’s program to form PAG. The Board allowed PAG to help by providing the remaining physicians administration and case management.

At first, PAG was modeled after the Board program, but it has evolved. It now consists of a health professionals support group twice weekly, 90 minutes each; a community based self-help program such as AA or NA; if working, a worksite monitor who reports to PAG if there is a concern; regular contact with Farrell and a case manager; and 48 to 52 observed urine tests per year.

55. Farrell is extremely knowledgeable about addiction and recovery in health professionals. Particularly in the beginning, people may be primarily externally motivated and not totally honest. This is one reason for the drug screening, although “testing alone will not tell us if they are in recovery.” Recovery happens when the problem is recognized and work is done; abstinence is only part of the solution.

Farrell described the first year as the most stressful and difficult, and the most likely time for relapse; the rate is much lower after two years. If an addict makes it to two years, that is a fairly good indication that “they are working a program that is supporting their recovery.”

56. Farrell’s initial impression of Respondent was that he was incredibly frightened, anxious, and ashamed. She was not sure if he was self-motivated. He “had a lot of problems.”

Self or internal motivation is a criterion for successful completion of a program. Farrell believes that Respondent “has achieved internal motivation.” He therefore “can’t believe I used to be that guy and I never want to be that guy again and these are the things I need to do not to be that guy again.” Respondent “has weathered some significant storms, including, divorce, custody problems, and criminal charges.” Farrell has “watched him transition to being confident that it would be all right so long as he stayed sober.” He understands that being sober is crucial to a good life.

57. Based on her experience, training, and research reviewed, Farrell opined that physicians who are monitored by biological fluid testing and other devices are less likely to relapse or use drugs than the general physician population. These physicians have learned humility, to ask for help, and to be very honest in their dealings with others.

Farrell believes that Respondent has learned these lessons. She is aware he relapsed previously after four years of abstinence, but opined that based on everything she knows, he is unlikely to relapse now and is capable of returning to a medical practice.

58. Christopher Mulligan, LCSW, is in private practice in Culver City. He earned a master’s degree in social work in 1992. Mulligan is an adjunct lecturer in the Graduate School of Social Work at the University of Southern California, the founder and clinical director of Cyber Addiction Recovery Center, and the founder and clinical director of Groupworks West, Inc., which focusses on autism spectrum disorder. He also conducts forensic evaluations, and evaluated Respondent in connection with his criminal case. Mulligan authored a comprehensive report of his evaluation dated May 22, 2015, and testified at hearing.

59. Mulligan has met Respondent twice. He traveled to Ukiah, where he interviewed Respondent and family members. He then saw Respondent for a follow-up interview in approximately mid-January 2016. Mulligan read all of the criminal court documents and reports by Anderson and Farrell. After years of interviews, Mulligan believes he is “astute at listening to people’s reaction to the negative consequences of their behavior and their ability to see opportunities.” He is interested to determine whether his impressions coincide with the impressions of other professionals.

Respondent presented to Mulligan as sober, very thoughtful, coherent, and insightful about himself and his children, and what led to his circumstances. It was clear to Mulligan that Respondent had given a lot of thought to his recovery and that he wanted very badly to rehabilitate his life, continue being an effective parent and resume his career. Mulligan observed no effort to minimize or rationalize his behavior or to evade personal responsibility. To the contrary; Respondent accepted responsibility for his actions.

60. Mulligan’s opinions concerning Respondent were interwoven and supported by information he provided about the neuroscience of addiction and Norco specifically, and research studies concerning addiction in physicians. Mulligan reported that research has established that the “vast majority of physicians who become addicted to prescription medications do so as a way of coping with stress related to their medical practice.” He noted

that Respondent evidenced few self-help or management skills to support him as a doctor with a very busy practice. Therefore, Respondent's ability to discover coping skills that work for him is an essential part of his recovery.

61. Mulligan opined that Respondent's actions in recovery have "considerably strengthened his resilience and ability to cope." Based on his "treatment track record following his arrest, he has clearly demonstrated that he is fully capable of maintaining his sobriety and is serious about deepening his recovery." Further, "he has learned the self-help and stress management skills that he did not have when he became addicted to Norco. In short, it is my professional opinion that [Respondent] is at minimal risk for relapse and is quite capable of leading a productive and law abiding life."

Although biological testing is a useful tool, and can be helpful in assessing credibility, Mulligan opined that Respondent would remain sober without testing. He also opined that the ability to prescribe pain medications would not jeopardize his recovery, and would not pose a risk to patients.

62. George Salinger, MFT, is certified as a drug counselor. He has been facilitating groups for chemically dependent physicians and other medical professionals for 17 years. Salinger gave a brief description of his lengthy history of alcohol abuse. He became sober in 1957, but in ten months started drinking again. He was in and out of AA, and used street drugs, Valium and smoked hash. In 1976 Salinger was found in a motel room with 14 half-gallon empty bottles of vodka. He weighed 118 pounds. He then began a recovery program and as of June 17, 2015, has had 40 years of sobriety.

Salinger is clearly attuned to signs of relapse in his group members. He notes that "people say things they think you want to hear." He recognizes this phenomenon because he experienced it himself.

Salinger describes Respondent as "one of the top people I have ever had. He understood recovery better than anyone I have known." When Respondent began the group approximately two and one-half years ago, Salinger was impressed, and has watched him grow in his recovery. Respondent helps others in the group. He is not afraid to challenge others when they say something that does not make sense. Respondent evidences understanding of the importance of the 12 steps and what it means to start growing emotionally. Respondent telephones Salinger if he has a question, which is unusual for group members. Salinger explained that the sixth and seventh AA steps are about character, and this is where work needs to continue.

Salinger concluded that "we are all susceptible to relapse." But he believes that as long as people do the three things he believes are essential, live a spiritual life and watch oneself emotionally and physically, the potential is minimalized. Respondent believes that Respondent is sincere, remorseful, and engaged in a strong program.

63. Allan Pont, M.D., was the Vice President of Medical Affairs and Chief Medical Officer of California Pacific Medical Center (CPMC) from 2006 to 2013. From 1995 to 2008, he was the Medical Director of CPMC. Along with many other positions and medical-related activities, he has been the Team Physician for the Oakland Athletics since 1984. Dr. Pont is board certified in internal medicine and endocrinology.

By virtue of his training and experience, Dr. Pont's areas of expertise include credentialing of medical staff and handling "difficult doctors." He is familiar with the administration of medications in hospital settings, and with the protocols for providing pain relief for sports medicine procedure patients.

64. Dr. Pont opined that the diversion of narcotics in a hospital setting by physicians is very difficult, unless the physician is an anesthesiologist. Other physicians prescribe, but do not "touch the drugs." The prescriptions are issued through a computer, and checked by the pharmacy, before a nurse pulls the drug and administers it to the patient. In addition, it would be "impossible for a physician to create a patient and prescribe" medication to a fictitious patient in a hospital setting.

Dr. Pont also opined that it would be impossible for an orthopaedist performing sports medicine procedures not to be able to prescribe narcotics for patients. It would be inappropriate for another physician to prescribe the narcotics.

65. Dr. Pont authored a paper outlining a monitoring program designed to assist surgeons with substance abuse issues to return to practice. The program utilizes the CURES database in the process, and is principally addressed to inpatient settings such as hospitals and surgery centers.

66. The opinions expressed by experts witnesses Anderson, Pena, Farrell, Mulligan, Salinger and Pont were based upon solid training, experience and personal knowledge of Respondent and his circumstances. They were persuasive.

Additional character evidence

67. Joan Kobrine, M.D., met Respondent when they attended UCLA, and described him as a close friend and colleague for over 30 years. Dr. Kobrine practiced as an anesthesiologist from 1999 to 2006. In 2008, she left clinical medicine and now works as a consultant for NetChemistry, and for a non-profit that provides free surgeries and specialty medical care for uninsured patients in Orange County.

68. Dr. Kobrine is aware of Respondent's history of substance abuse and has read the Accusation. After the arrest, Respondent talked about his situation in detail. They have discussed his recovery, the steps he has taken, his enrollment in PAG, the drug screening, and other matters.

Dr. Kobrine testified, and also wrote a letter of support. She wrote that Respondent “is committed to his health, his family, and his career. With the current challenges he is facing, he is completely focused on being truthful and accountable. His continued courage, dedication, and strength in these efforts are impressive.”

69. Respondent submitted 33 additional letters of reference, all of which appear to have been submitted to the superior court prior to sentencing. Five are from physicians and 17 from patients. The authors uniformly and sincerely praise Respondent for his surgical skills and good qualities. Many express surprise about his addiction and criminal activity in support of the addiction.

LEGAL CONCLUSIONS

Causes for discipline

1. Unprofessional conduct is grounds for discipline of a physician’s certificate pursuant to Business and Professions Code section 2234. Unprofessional conduct includes violating provisions of the Medical Practice Act (Bus. & Prof. Code, § 2234, subd. (a)), gross negligence (Bus. & Prof. Code, § 2234, subd. (b)), repeated negligent acts (Bus. & Prof. Code, § 2234, subd. (c)), dishonesty or corruption (Bus. & Prof. Code, § 2234, subd. (e)), prescribing dangerous drugs without an appropriate prior examination and a medical indication (Bus. & Prof. Code, § 2242, subd. (a)), conviction of a substantially related crime (Bus. & Prof. Code, § 2236), conviction of statutes regulating dangerous drugs or controlled substances (Bus. & Prof. Code, § 2237), failing to maintain adequate records (Bus. & Prof. Code, § 2266), false representation in a document (Bus. & Prof. Code, § 2261), violations of federal or state statutes regulating controlled substances (Bus. & Prof. Code, § 2238) and dangerous use of controlled substances (Bus. & Prof. Code, § 2239).

Criminal conviction

2. Respondent was convicted of crimes substantially related to the practice of medicine and of statutes regulating dangerous drugs or controlled substances. Cause for license discipline exists under Business and Professions Code sections 2236 and 2237 by reason of the matters set forth in Findings 8 through 10.

Gross negligence

3. Respondent committed gross negligence. Cause for license discipline exists for unprofessional conduct pursuant to Business and Professions Code section 2234, subdivision (b), by reason of the matters set forth in Findings 11 through 17, 22 and 23.

Repeated negligent acts

4. Respondent committed repeated negligent acts. Cause for license discipline exists for unprofessional conduct pursuant to Business and Professions Code section 2234, subdivision (c), by reason of the matters set forth in Finding 11 through 17, 22 and 23.

Dishonest or corrupt acts

5. Respondent's fraudulent prescribing was dishonest. Cause for license discipline exists for unprofessional conduct pursuant to Business and Professions Code section 2234, subdivision (e), by reason of the matters set forth in Findings 11 through 17, 22 and 23.

Unlawful prescribing

6. Respondent prescribed dangerous drugs without an appropriate prior examination and/or medical indication. Cause for license discipline for unprofessional conduct exists pursuant to Business and Professions Code section 2242, subdivision (a), by reason of the matters set forth in Findings 11 through 17, 22 and 23.

False statement in a document

7. Respondent made false statements in documents related to the practice of medicine. Cause for license discipline for unprofessional conduct exists pursuant to Business and Professions Code section 2261, by reason of the matters set forth in Findings 11 through 17, 22 and 23.

Inadequate record keeping

8. Respondent failed to maintain adequate and accurate records. Cause for license discipline for unprofessional conduct exists pursuant to Business and Professions Code section 2266, by reason of the matters set forth in Findings 11 through 17, 22 and 23.

Violations of statutes regulating controlled substances

9. Health and Safety Code section 11153 provides that prescriptions for controlled substances shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of practice. Health and Safety Code section 11154 prohibits prescribing a controlled substance to a person not under the physician's treatment. Health and Safety Code section 11157 prohibits the issuance of a false or fictitious prescription. Health and Safety Code section 11173 prohibits, in pertinent part, obtaining or attempting to obtain controlled substances by fraud and making false statements in prescriptions. The evidence established that Respondent violated Health and Safety Code sections 11153, 11154, 11157 and 11173. Cause for license discipline for unprofessional conduct exists pursuant to Business and Professions Code section 2238, by reason of the matters set forth in Findings 11 through 17, 22 and 23.

Other matters

10. Business and Professions Code section 3527, subdivision (c), provides that the Board may deny, suspend, or revoke the authority of a physician to supervise physician assistants where the physician has committed unprofessional conduct. Cause for such action exists by reason of the above-described violations.

Analysis and disciplinary considerations

11. Cause for discipline having been established, it remains to determine the appropriate measure of discipline to impose. In this regard, it is noted that the purpose of these proceedings is protection of the public, not punishment of the licensee. When possible, certificates should be placed on probation with conditions designed to enable rehabilitation and eventual reinstatement. Such a result is often appropriate the first time cause to discipline a physician is found, and is so here.

The Board has adopted the Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th ed., 2011), and “Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees” (Cal. Code Regs., tit. 16, § 1361). Under the Disciplinary Guidelines, the minimum recommended discipline is five years’ probation, with partial or total restrictions on prescribing controlled substances. In addition, the Uniform Standards contain probationary terms and conditions that “shall be used without deviation in the case of a substance-abusing licensee.” (Cal. Code Regs., tit. 16, § 1361, subd. (b).) The Guidelines contain both standard and optional conditions; the optional conditions are properly analyzed and applied depending upon the circumstances. Although there are many conditions that all respondents similarly situated should receive, it is also important to treat each person as an individual.

Complainant and Respondent differ as to which probation conditions and restrictions should be imposed on Respondent should he be granted a probationary license. Complainant strongly asserts that Respondent should receive a lengthy term with stringent conditions and not conditions tailor-made for his situation. Respondent argues that he will not be able to work as an orthopaedic surgeon should he not be able to prescribe narcotics and supervise physician assistants, which are common probation conditions. The relevant issue is not whether Respondent is entitled to “special” conditions of probation, or whether Respondent will be able to obtain employment or work as he wishes, but what conditions are necessary for public protection.

Addiction is a brain disease that is never cured, but it can be managed and lived with successfully. Respondent presented extraordinary evidence of recovery and rehabilitation. Respondent’s own testimony was impressive, and it was corroborated by persuasive expert testimony. Two and one-half years is a significant period of sobriety, especially where a recovery program is comprehensive and wholeheartedly embraced. If Respondent seeks drugs, there are various routes he can take, whether or not he has the ability to prescribe narcotics for his patients. Preventing him from prescribing controlled substances would not prevent a

relapse, and it would prevent the Board from learning if he will be able to do so safely while he is under Board scrutiny.

The heart of Respondent's discipline is his addiction, not competency. There is no real risk that Respondent, in supervising a physician assistant, will instruct that assistant incorrectly. And there is no reason that a physician assistant will be more likely to assist Respondent to divert drugs than any other health professional working with him.

The evidence justifies a departure from the Guidelines. It is not necessary to prevent Respondent from supervising physician assistants or from prescribing. The public interest will be sufficiently protected by the following order, which is very comprehensive. It requires an extensive clinical evaluation, abstention from drugs and alcohol, no solo practice, completion of courses in ethics and prescribing, workplace monitoring, and the maintenance of special records regarding controlled substances, among other conditions.

ORDER

Physician's and Surgeon's Certificate No. G80508, issued to Respondent Brian Marcel Cable, M.D., is revoked; however, the revocation is stayed and the certificate placed on probation for five years under the following terms and conditions.

1. Clinical Diagnostic Evaluations and Reports

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with Respondent within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a threat to himself or others, and recommendations for

substance abuse treatment, practice restrictions, or other recommendations related to Respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that Respondent is a threat to himself or others, the evaluator shall notify the Board within 24 hours of such a determination.

In formulating his or her opinion as to whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: Respondent's license type; Respondent's history; Respondent's documented length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use); Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical history and current medical condition; the nature, duration and severity of Respondent's substance abuse problem or problems; and whether Respondent is a threat to himself or the public. For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed 30 days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five business days of receipt to determine whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on Respondent based on the recommendations made by the evaluator. Respondent shall not be returned to practice until he has at least 30 days of negative biological fluid tests or biological fluid tests indicating that he has not used, consumed, ingested, or administered to himself a prohibited substance, as defined in section 1361.51, subdivision (e), of title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that he is fit to practice medicine safely. The period of time that Respondent is not practicing medicine shall not be counted toward completion of the term of probation. Respondent shall undergo biological fluid testing as required in this Decision at least two times per week while awaiting the notification from the Board if he is fit to practice medicine safely.

Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within 15 calendar days after being notified by the Board or its designee.

2. Notice of Employer or Supervisor Information

Within seven days of the effective date of this Decision, Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's worksite monitor, and Respondent's employers and supervisors to communicate regarding Respondent's work status, performance, and monitoring.

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

3. Controlled Substances - Abstain From Use

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

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

If Respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide Respondent with a hearing within 30 days of the request, unless Respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

4. Alcohol - Abstain From Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide Respondent with a hearing within 30 days of the request, unless Respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

5. Biological Fluid Testing

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

During the first year of probation, Respondent shall be subject to 52 to 104 random tests.

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

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

- (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
- (b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.
- (c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.
- (d) Its specimen collectors observe the collection of testing specimens.
- (e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.
- (f) Its testing locations shall submit a specimen to a laboratory within one business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven business days of receipt of the specimen. The Board will be notified of non-negative results within one business day and will be notified of negative test results within seven business days.
- (g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test Respondent on any day of the week.
- (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

- (i) It maintains testing sites located throughout California.
- (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows Respondent to check in daily for testing.
- (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.
- (l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.
- (m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if Respondent holds a valid prescription for the substance.

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

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

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

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

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for

the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one business day.

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

For purposes of this condition, the terms “biological fluid testing” and “testing” mean the acquisition and chemical analysis of Respondent’s urine, blood, breath, or hair.

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

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

6. Substance Abuse Support Group Meetings

Within 30 days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three years’ experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with Respondent within the last five years. Respondent’s previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

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

7. Solo Practice Prohibition

Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, Respondent's practice setting changes and Respondent is no longer practicing in a setting in compliance with this Decision, Respondent shall notify the Board or its designee within five calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

8. Worksite Monitor for Substance-Abusing Licensee

Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring Respondent at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with Respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render

impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but Respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

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

Respondent shall pay all worksite monitoring costs.

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

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

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

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

9. Controlled Substances – Maintain Records and Access to Records and Inventories

Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or a patient's primary caregiver to possess or cultivate marijuana for personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

10. Prescribing Practices Course

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

11. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

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

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

12. Violation of Probation Condition for Substance-Abusing Licensees

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

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

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

(2) Increase the frequency of biological fluid testing.

(3) Refer Respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

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

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

(7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and

carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

13. Notification

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

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

14. Obey All Laws

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

15. Quarterly Declarations

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

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

16. Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

17. Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone

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

18. Place of Practice

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

19. License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's certificate.

20. Travel or Residence Outside California

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

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

21. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

22. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered

non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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


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

Periods of non-practice will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws and General Probation Requirements.

23. Completion of Probation

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

DATED: March 2, 2016

DocuSigned by:

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MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 18 20 15
BY W. [Signature] ANALYST

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

11 In the Matter of the Accusation Against:
12 **Brian Marcel Cable, M.D.**
13 **4877 Black Bart Trail**
Redwood Valley, CA 95470
14 **Physician's and Surgeon's Certificate**
15 **No. G80508,**
16 Respondent.

Case No. 12-2013-234005
A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On January 11, 1995, the Board issued Physician's and Surgeon's Certificate Number
24 G80508 to Brian Marcel Cable, M.D. (Respondent). The certificate was in full force and effect at
25 all times relevant to the charges brought herein and will expire on May 31, 2016, unless renewed.

26 **JURISDICTION**

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

1 4. Section 2004 of the Code provides that the Board shall have the responsibility for the
2 enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

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

7 6. Section 2234 of the Code states:

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

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

12 (b) Gross negligence.

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

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

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

21

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

24

25 7. Section 2236 of the Code states:

26 (a) The conviction of any offense substantially related to the qualifications,
27 functions, or duties of a physician and surgeon constitutes unprofessional conduct
28 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.

29

30 (d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is

1 deemed to be a conviction within the meaning of this section and Section 2236.1.
2 The record of conviction shall be conclusive evidence of the fact that the conviction
3 occurred.

4 8. Section 2237, subdivision (a) states:

5 The conviction of a charge of violating any federal statutes or regulations or any
6 statute or regulation of this state, regulating dangerous drugs or controlled substances,
7 constitutes unprofessional conduct. The record of the conviction is conclusive
8 evidence of such unprofessional conduct. A plea or verdict of guilty or a conviction
9 following a plea of nolo contendere is deemed to be a conviction within the meaning
10 of this section.

11 9. Section 2238 of the Code provides, in part:

12 A violation of any federal statute or federal regulation or any of the statutes or
13 regulations of this state regulating dangerous drugs or controlled substances
14 constitutes unprofessional conduct.

15 10. Section 2239 of the Code provides that the use or prescribing for or administering to
16 him or herself, of any controlled substance; or the use of any of the dangerous drugs specified in
17 Section 4022, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or
18 to any other person or to the public, or to the extent that such use impairs the ability of the
19 licensee to practice medicine safely, or self-administration of any of the substances referred to in
20 this section, or any combination thereof, constitutes unprofessional conduct.

21 11. Section 2242, subdivision (a), of the Code provides that prescribing, dispensing, or
22 furnishing dangerous drugs without an appropriate prior examination and a medical indication,
23 constitutes unprofessional conduct.

24 12. Section 2261 of the Code states:

25 Knowingly making or signing any certificate or other document directly or indirectly
26 related to the practice of medicine . . . which falsely represents the existence or
27 nonexistence of a state of facts, constitutes unprofessional conduct.

28 13. Section 2266 of the Code provides that the failure of a physician and surgeon to
maintain adequate and accurate records relating to the provision of patient services constitutes
unprofessional conduct.

14. Health and Safety Code section 11153 provides that a prescription for a controlled
substance shall only be issued for a legitimate medical purpose by an individual practitioner
acting in the usual course of his or her professional practice.

1 21. Respondent supplied his addiction to pain medication by illegally and fraudulently
2 prescribing narcotics to individuals who were not his patients and/or for whom he did not
3 maintain a patient chart, including to friends, family, and co-workers. Respondent then obtained
4 or purchased the prescribed medication for his personal use.

5 22. Between January 1, 2012 and July 15, 2013, Respondent prescribed pain medication
6 to a former work colleague of his, T.S. Respondent then paid T.S. to obtain the medication for his
7 own use. During this time, Respondent also prescribed pain medication to T.S.'s daughter, S.S.,
8 which he also later diverted for his own use. S.S. had no indication for such medication and did
9 not use any of it.

10 23. Between January 1, 2012 and July 15, 2013, Respondent prescribed pain medication
11 to his mother, M.H., his stepfather, T.H., and to a friend, K.B., when such medication was in fact
12 for Respondent's own use. During a two month period alone, from January 2013 through
13 February 2013, Respondent prescribed approximately 500 Hydrocodone pills to K.B. None of
14 these individuals had an indication for such medication.

15 24. Respondent also prescribed pain medication to J.T., whom he believed had a
16 substance abuse problem and was addicted to pain medication. Respondent then obtained some of
17 the medication for his own use.

18 25. Respondent used several of these individuals' names and personal information
19 without their knowledge to facilitate his fraudulent prescriptions.

20 26. Respondent was grossly negligent and/or repeatedly negligent in his treatment of
21 and/or prescribing to T.S., K.B., M.H., T.H., J.T. and S.S. Respondent's conduct constitutes
22 unprofessional conduct and extreme departures from the standard of care, and is cause for
23 discipline pursuant to section 2234, subdivision (a) (violation of Medical Practice Act),
24 subdivision (b) (gross negligence), and subdivision (c) (repeated negligent acts).

25 27. Respondent's fraudulent prescribing to and/or diversion of controlled substances
26 from T.S., K.B., M.H., T.H., J.T. and S.S. constitutes unprofessional conduct and is cause for
27 discipline pursuant to section 2234(e) (dishonesty or corruption) and section 2261 (false
28

1 documents); and Health and Safety Code section 11157 (false or fictitious prescriptions) and
2 section 11173 (obtaining or prescribing of controlled substances by fraud; false statement).

3 28. Respondent's prescribing of dangerous drugs to T.S., K.B., M.H., T.H., J.T. and S.S.
4 without an appropriate prior examination or medical indication constitutes unprofessional
5 conduct and is cause for discipline pursuant to section 2242 (inappropriate prescribing of
6 dangerous drugs), section 2239 (dangerous use and prescribing of controlled substances); and
7 Health & Safety Code section 11153 (inappropriate prescribing of controlled substance) and
8 section 11154 (prescribing to non-patient).

9 29. Respondent's failure to maintain adequate records for patients T.S., K.B., M.H., T.H.,
10 J.T. and S.S. constitutes unprofessional conduct and is cause for discipline pursuant to section
11 2266.

12 30. Respondent's self-prescribing and self-administration of controlled substances as
13 alleged above constitutes unprofessional conduct, and/or a violation of state and federal drug
14 statutes, and is cause for discipline pursuant to section 2234 (unprofessional conduct) and section
15 2238 (violation of statute or regulation regulating dangerous drugs or controlled substances); and
16 Health & Safety Code section 11170 (self-administration of controlled substance).

17 **SECOND CAUSE FOR DISCIPLINE**
18 **(Unprofessional Conduct: Substantially Related Convictions)**

19 31. On September 20, 2013, the Mendocino County District Attorney's Office filed a
20 Criminal Complaint against Respondent in Mendocino County Superior Court, charging
21 Respondent with eight counts of unlawful and fraudulent prescribing. On October 15, 2014, an
22 expanded Criminal Complaint was re-filed against Respondent, charging him with twelve counts
23 of unlawful and fraudulent prescribing.

24 32. On April 13, 2015, Respondent pleaded nolo contendere to six misdemeanor counts
25 of unlawful prescribing. The six counts alleged that between January 1, 2012 and July 15, 2013,
26 Respondent unlawfully issued a prescription for hydrocodone without a legitimate medical
27 purpose to, respectively, T.S., K.B., M.H., T.H., J.T. and S.S.

28

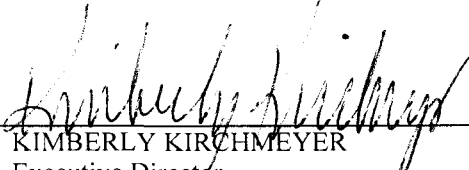
1 33. Respondent is subject to discipline under section 2234 (unprofessional conduct),
2 section 2236 (criminal conviction), and section 2237 (conviction of violating statute or regulation
3 regulating dangerous drugs or controlled substances) in that he was convicted of two counts of
4 violating Health & Safety Code section 11153(a) (unlawful prescription of a controlled
5 substance), and four counts of violating Health & Safety Code section 11154(a) (unlawful
6 prescription of a controlled substance). Respondent's offenses are substantially related to the
7 qualifications, functions or duties of a physician and surgeon and constitute unprofessional
8 conduct.

9 **PRAYER**

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

- 12 1. Revoking or suspending Physician's and Surgeon's certificate Number G80508,
13 issued to Brian Marcel Cable, M.D.;
- 14 2. Revoking, suspending or denying approval of Brian Marcel Cable, M.D.'s authority
15 to supervise physician assistants, pursuant to section 3527 of the Code;
- 16 3. Ordering Brian Marcel Cable, M.D., if placed on probation, to pay the Board the
17 costs of probation monitoring; and
- 18 4. Taking such other and further action as deemed necessary and proper.

19
20 DATED: June 18, 2015


21 KIMBERLY KIRCHMEYER
22 Executive Director
23 Medical Board of California
24 Department of Consumer Affairs
25 State of California
26 Complainant

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