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FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO September 29 20 16  
BY R. Firdaus ANALYST

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

In the Matter of the Accusation Against:  
**RYAN MATTHEW SPIVAK, M.D.**  
**2200 West Third Street, Suite 120A**  
**Los Angeles, California 90057**  
  
Physician's and Surgeon's Certificate  
No. A113632,  
  
Respondent.

Case No. 800-2016-020767

**A C C U S A T I O N**

Complainant alleges:

**PARTIES**

1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs ("Board").
2. On August 11, 2010, the Board issued Physician's and Surgeon's Certificate Number A113632 to Ryan Matthew Spivak, M.D. ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2018, unless renewed.

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**JURISDICTION**

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

5           4.     Section 2004 of the Code states:

6           “The board shall have the responsibility for the following:

7           “(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice  
8 Act.

9           “(b) The administration and hearing of disciplinary actions.

10          “(c) Carrying out disciplinary actions appropriate to findings made by a panel or an  
11 administrative law judge.

12          “(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of  
13 disciplinary actions.

14          “(e) Reviewing the quality of medical practice carried out by physician and surgeon  
15 certificate holders under the jurisdiction of the board.

16          “(f) Approving undergraduate and graduate medical education programs.

17          “(g) Approving clinical clerkship and special programs and hospitals for the programs in  
18 subdivision (f).

19          “(h) Issuing licenses and certificates under the board's jurisdiction.

20          “(i) Administering the board's continuing medical education program.”

21          5.     Section 2227 of the Code states:

22          “(a) A licensee whose matter has been heard by an administrative law judge of the Medical  
23 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default  
24 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary  
25 action with the board, may, in accordance with the provisions of this chapter:

26          “(1) Have his or her license revoked upon order of the board.

27          “(2) Have his or her right to practice suspended for a period not to exceed one year upon  
28 order of the board.

1           “(3) Be placed on probation and be required to pay the costs of probation monitoring upon  
2 order of the board.

3           “(4) Be publicly reprimanded by the board. The public reprimand may include a  
4 requirement that the licensee complete relevant educational courses approved by the board.

5           “(5) Have any other action taken in relation to discipline as part of an order of probation, as  
6 the board or an administrative law judge may deem proper.

7           “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical  
8 review or advisory conferences, professional competency examinations, continuing education  
9 activities, and cost reimbursement associated therewith that are agreed to with the board and  
10 successfully completed by the licensee, or other matters made confidential or privileged by  
11 existing law, is deemed public, and shall be made available to the public by the board pursuant to  
12 Section 803.1.”

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

17           7.       Section 2234 of the Code, states:

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

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

23           “(b) Gross negligence.

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

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

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

6           “(d) Incompetence.

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

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

10           “(g) The practice of medicine from this state into another state or country without meeting  
11 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not  
12 apply to this subdivision. This subdivision shall become operative upon the implementation of  
13 the proposed registration program described in Section 2052.5.

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

17           8. Section 2021 of the Code states:

18           “...

19           “(b) Each licensee shall report to the board each and every change of address within 30 days  
20 after each change, giving both the old and new address. If an address reported to the board at the  
21 time of application for licensure or subsequently is a post office box, the applicant shall also  
22 provide the board with a street address. If another address is the licensee's address of record, he  
23 or she may request that the second address not be disclosed to the public.

24           “(c) Each licensee shall report to the board each and every change of name within 30 days  
25 after each change, giving both the old and new names.

26           “...”

27           //

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1           12. Section 4324 of the Code states:

2           “(a) Every person who signs the name of another, or of a fictitious person, or falsely makes,  
3 alters, forges, utters, publishes, passes or attempts to pass, as genuine, any prescription for any  
4 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment pursuant  
5 to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail for not  
6 more than one year.

7           “(b) Every person who has in his or her possession any drugs secured by a forged  
8 prescription shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the  
9 Penal Code, or by imprisonment in the county jail of not more than one year.”

10           13. Health and Safety Code section 11153 states in pertinent part:

11           “(a) A prescription for a controlled substance shall only be issued for a legitimate medical  
12 purpose by an individual practitioner acting in the usual course of his or her professional  
13 practice...

14           “(b) Any person who knowingly violates this section shall be punished by imprisonment in  
15 the state prison or in a county jail not exceeding one year, or by a fine not exceeding twenty  
16 thousand (\$20,000), or by both that fine and imprisonment...”

17           14. Health and Safety Code section 11157 states:

18           “No person shall issue a prescription that is false or fictitious in any respect.”

19           15. Health and Safety Code section 11170 states:

20           “No person shall prescribe, administer, or furnish a controlled substance for himself.”

21           16. Health and Safety Code section 11173, subdivision (a), states:

22           “No person shall obtain or attempt to obtain controlled substances, or procure or attempt to  
23 procure the administration of or prescription for controlled substances by (1) fraud, deceit,  
24 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

25           17. Health and Safety Code section 11175 states:

26           “No person shall obtain or possess a prescription that does not comply with his division, nor  
27 shall any person obtain a controlled substance by means of a prescription which does not comply  
28 with this division or possess a controlled substance obtained by such a prescription.”

1 18. Health and Safety Code section 11368 states:

2 "Every person who forges or alters a prescription or who issues or utters an altered  
3 prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any  
4 narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or altered prescription,  
5 or who has in possession any narcotic drug secured by a forged, fictitious, or altered prescription,  
6 shall be punished by imprisonment in the county jail for not less than six months nor more than  
7 one year, or in the state prison."

8 **DRUGS INVOLVED**

9 19. Eszopiclone, also known by the trade name Lunesta, is a Schedule IV controlled  
10 substance as defined by section 11057, subdivision (d), of the Health and Safety Code and is a  
11 dangerous drug as defined in Section 4022 of the Code. Eszopiclone is a sedative and is used to  
12 treat insomnia.

13 20. Phentermine is a Schedule IV controlled substance as defined by section 11057,  
14 subdivision (f)(4), of the Health and Safety Code and is a dangerous drug as defined in Section  
15 4022 of the Code. It is a stimulant.

16 21. Metformin is an oral diabetes medicine that helps control blood sugar levels. It is  
17 a dangerous drug as defined in Section 4022 of the Code.

18 **FACTUAL SUMMARY**

19 22. On February 26, 2016, the Central Complaint Unit ("CCU") of the Board received a  
20 complaint dated February 22, 2016 by Dr. M.R. alleging that Respondent used her Drug  
21 Enforcement Administration ("DEA") license number to obtain prescriptions in his name.

22 23. Investigation by the Health Quality Investigations Unit of the Department of  
23 Consumer Affairs revealed that Respondent had falsely and fraudulently obtained prescriptions  
24 for phentermine in his name using the names and DEA licenses of Dr. M.R., Dr. J.C., and Dr.  
25 R.B.  
26

27 24. Dr. M.R. reviewed the California Department of Justice Controlled Substance  
28 Utilization Review and Evaluation System (CURES) report setting forth her prescribing history in

1 California from March 22, 2015 through March 22, 2016 and noted that it inaccurately reflects  
2 that she prescribed medications to Respondent during the timeframe of June 2015 through  
3 December 2015. More specifically:

4 a. Dr. M.R. did not prescribe or authorize the prescription for Eszopiclone 3 mg  
5 tablets that Respondent filled on June 4, 2015.

6 b. Dr. M.R. did not prescribe or authorize the prescription for additional  
7 Eszopiclone 3 mg tablets that Respondent filled on June 4, 2015.

8 c. Dr. M.R. did not prescribe or authorize the prescription for Eszopiclone 3 mg  
9 tablets that Respondent filled on June 29, 2015.

10 d. Dr. M.R. did not prescribe or authorize the prescription for additional  
11 Eszopiclone 3 mg tablets that Respondent filled on June 29, 2015.

12 e. Dr. M.R. did not prescribe or authorize the prescription for Eszopiclone 3 mg  
13 tablets that Respondent filled on August 28, 2015.

14 f. Dr. M.R. did not prescribe or authorize the prescription for Eszopiclone 3 mg  
15 tablets that Respondent filled on October 12, 2015.

16 25. Dr. M.R. reviewed a prescription that she purportedly issued to Respondent dated  
17 June 3, 2015 for thirty (30) Eszopiclone 3 mg tablets with four (4) refills. Dr. M.R. declared  
18 under the penalty of perjury that the prescription was not ordered, prescribed, written, issued or  
19 authorized by her; and, the signature at the bottom of the prescription was not written by her.

20 26. Dr. J.C., an Assistant Professor of Surgery in the Division of Plastic and  
21 Reconstructive Surgery at the University of Southern California (USC), Keck School of Medicine  
22 and an attending physician at USC Hospital, last had contact with Respondent in approximately  
23 June 2015, at the time of Respondent's graduation from the plastic and reconstructive surgery  
24 residency program at USC. Respondent was never one of Dr. J.C.'s patients, Dr. J.C. never  
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1 treated Respondent for any medical conditions, and Dr. J.C. never prescribed any medications to  
2 Respondent.

3 27. Dr. J.C. reviewed a prescription he purportedly issued to Respondent dated June  
4 12, 2015 for sixty (60) Phentermine HCL 15 mg tablets with no refills. Dr. J.C. declared under  
5 penalty of perjury that the prescription was not ordered, prescribed, written or authorized by him;  
6 and, the signature at the bottom of the prescription was not written by him.  
7

8 28. Dr. J.C. reviewed another prescription he purportedly issued to Respondent dated  
9 June 12, for thirty (30) Lunesta or Eszopiclone 3 mg tablets with no refills. Dr. J.C. declared  
10 under penalty of perjury that the prescription was not ordered, prescribed, written or authorized by  
11 him; and, the signature at the bottom of the prescription was not written by him.  
12

13 29. Dr. R.B. is Program Director for Micrographic Surgery and Dermatologic  
14 Oncology with the Accreditation Counsel for Graduate Medical Education and the American  
15 Board of Dermatology. He provides a fellowship training program at his office. Respondent was  
16 a research fellow in Micrographic Surgery at Dr. R.B.'s office for approximately five months in  
17 late 2015 through approximately February 2016. In approximately February 2016, Dr. R.B.  
18 terminated Respondent from the training program when he became aware that Respondent was  
19 using Dr. R.B.'s name and DEA license to write prescriptions for himself.  
20

21 30. Dr. R.B. obtained the California Department of Justice Controlled Substance  
22 Utilization Review and Evaluation System (CURES) report for Respondent's prescribing history  
23 from January 27, 2015 through January 27, 2016 and noted that it inaccurately reflects that Dr.  
24 R.B. prescribed medications to Respondent during the timeframe of October 2015 through  
25 December 2015. More specifically:  
26

27 a. Dr. R.B. did not prescribe or authorize the prescription for Phentermine  
28 HCL 15 mg capsules that Respondent filled on October 1, 2015.



1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Violation of Drug Statutes)**

3 36. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's  
4 license is subject to disciplinary action pursuant to section 2238 of the Code for violating drug  
5 statutes.

6 37. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above,  
7 whether proven individually, jointly, or in any combination thereof, constitute drug statute  
8 violations in violation of section 2238. Therefore, cause for discipline exists.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Misuse of Controlled Substances)**

11 38. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's  
12 license is subject to disciplinary action pursuant to section 2239, subdivision (a), of the Code for  
13 the misuse of controlled substances.

14 39. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above,  
15 whether proven individually, jointly, or in any combination thereof, constitute misuse of  
16 controlled substances in violation of section 2239, subdivision (a), of the Code. Therefore, cause  
17 for discipline exists.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Illegitimate Prescriptions)**

20 40. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's  
21 license is subject to disciplinary action pursuant to Health and Safety Code section 11153 for  
22 prescribing illegitimate prescriptions for controlled substances.

23 41. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above,  
24 whether proven individually, jointly, or in any combination thereof, constitute prescribing  
25 illegitimate prescriptions for controlled substances in violation of Health and Safety Code section  
26 11153. Therefore, cause for discipline exists.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(False/Fictitious Prescriptions)**

3 42. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's  
4 license is subject to disciplinary action pursuant to Health and Safety Code section 11157 for  
5 issuing false/fictitious prescriptions for controlled substances.

6 43. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above,  
7 whether proven individually, jointly, or in any combination thereof, constitute issuing  
8 false/fictitious prescriptions for controlled substances in violation of Health and Safety Code  
9 section 11157. Therefore, cause for discipline exists.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(Obtaining Prescriptions by Fraud/Deceit)**

12 44. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's  
13 license is subject to disciplinary action pursuant to Health and Safety Code sections 11173 and  
14 11175 for obtaining/procuring prescriptions for controlled substances by fraud/deceit.

15 45. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above,  
16 whether proven individually, jointly, or in any combination thereof, constitute obtaining/procuring  
17 prescriptions for controlled substances by fraud/deceit in violation of Health and Safety Code  
18 sections 11173 and 11175. Therefore, cause for discipline exists.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(Making or Signing False Documents)**

21 46. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's  
22 license is subject to disciplinary action pursuant to section 2261 of the Code for knowingly  
23 making or signing documents directly or indirectly related to the practice of medicine which  
24 falsely represented the existence or nonexistence of a state of facts.

25 47. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above,  
26 whether proven individually, jointly, or in any combination thereof, constitute knowingly making  
27 or signing documents directly or indirectly related to the practice of medicine which falsely

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1 represented the existence or nonexistence of a state of facts in violation of section 2261 of the  
2 Code. Therefore, cause for discipline exists.

3 **EIGHTH CAUSE FOR DISCIPLINE**

4 **(Forging Prescriptions for Self-Use)**

5 48. By reason of the facts set forth above in paragraphs 22 through 32, Respondent's  
6 license is subject to disciplinary action pursuant to section 4324 of the Code and Health and  
7 Safety Code sections 11170 and 11368 for forging prescriptions for self-use.

8 49. Respondent's acts and/or omissions set forth in paragraphs 22 through 32 above,  
9 whether proven individually, jointly, or in any combination thereof, constitute forging  
10 prescriptions for self-use in violation of section 4324 of the Code and Health and Safety Code  
11 sections 11170 and 11368. Therefore, cause for discipline exists.

12 **NINTH CAUSE FOR DISCIPLINE**

13 **(Failure to Report Change of Address)**

14 50. By reason of the facts set forth above in paragraph 33, Respondent's license is subject  
15 to disciplinary action pursuant to section 2021, subdivisions (b) and (c), of the Code for failing to  
16 report his changes of address.

17 51. Respondent's acts and/or omissions set forth in paragraph 33 above, whether proven  
18 individually, jointly, or in any combination thereof, constitutes a failure to report his change of  
19 address in violation of section 2021, subdivisions (b) and (c), of the Code. Therefore, cause for  
20 discipline exists.

21 **TENTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct)**

23 52. By reason of the facts set forth above in paragraphs 22 through 51, Respondent's  
24 license is subject to disciplinary action pursuant to section 2234 of the Code for engaging in  
25 unprofessional conduct.

26 53. Respondent's acts and/or omissions set forth in paragraphs 22 through 51 above,  
27 whether proven individually, jointly, or in any combination thereof, constitute unprofessional  
28 conduct in violation of section 2234 of the Code. Therefore, cause for discipline exists.

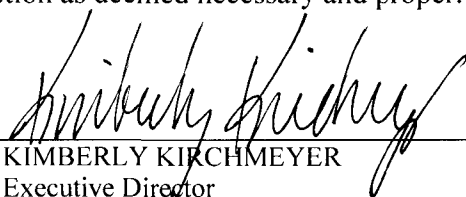
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**PRAYER**

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A113632, issued to Ryan Matthew Spivak, M.D.;
2. Prohibiting him from supervising physician assistants;
3. If placed on probation, ordering him to pay the Medical Board of California the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: September 29, 2016



KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California

*Complainant*

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