

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

In the Matter of the Accusation Against:)

DAVID A. GAVEL, M.D.)

Case No. 11-2013-230055

**Physician's and Surgeon's)
Certificate No. A 97054)**

Respondent)

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on November 20, 2015.

IT IS SO ORDERED: October 21, 2015.

MEDICAL BOARD OF CALIFORNIA



**Jamie Wright, J.D., Chair
Panel A**

1 KAMALA D. HARRIS
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 CHRISTINE R. FRIAR
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8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 11-2013-230055

12 **DAVID A. GAVEL, M.D.**
13 **P.O. Box 97**
Sierra Madre, CA 91025

OAH No. 2015010240

14 **Physician's and Surgeon's Certificate**
15 **No. A 97054,**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16 Respondent.

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

19 **PARTIES**

20 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
21 Board of California. She brought this action solely in her official capacity and is represented in
22 this matter by Kamala D. Harris, Attorney General of the State of California, by Christine R.
23 Friar, Deputy Attorney General.

24 2. Respondent David A. Gavel, M.D. ("Respondent") is represented in this proceeding
25 by attorney Carolyn Lindholm of Bonne, Bridges, Mueller, O'Keefe & Nichols, located at 3699
26 Wilshire Boulevard, 10th Floor, Los Angeles, CA 90010-2179.

27 3. On or about August 25, 2006, the Medical Board of California issued Physician's and
28 Surgeon's Certificate No. A 97054 to David A. Gavel, M.D.. The Physician's and Surgeon's

1 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
2 No. 11-2013-230055 and will expire on March 31, 2016, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 11-2013-230055 was filed before the Medical Board of California
5 (“Board”), Department of Consumer Affairs, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 November 26, 2014. Respondent timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 11-2013-230055 is attached as Exhibit A and incorporated
9 herein by reference.

10 **ADVISEMENT AND WAIVERS**

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 11-2013-230055. Respondent has also carefully read,
13 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
14 Disciplinary Order.

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

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

24 **CULPABILITY**

25 9. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 11-2013-230055.

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

1 Disciplinary Order below.

2 **CONTINGENCY**

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

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

16 13. In consideration of the foregoing admissions and stipulations, the parties agree that
17 the Board may, without further notice or formal proceeding, issue and enter the following
18 Disciplinary Order:

19 **DISCIPLINARY ORDER**

20 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 97054 issued
21 to Respondent David A. Gavel, M.D. is revoked. However, the revocation is stayed and
22 Respondent is placed on probation for five (5) years on the following terms and conditions.

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

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

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

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

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

21 If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall
22 receive a notification from the Board or its designee to immediately cease the practice of
23 medicine. The Respondent shall not resume the practice of medicine until final decision on an
24 accusation and/or a petition to revoke probation. An accusation and/or petition to revoke
25 probation shall be filed by the Board within 15 days of the notification to cease practice. If the
26 Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board
27 shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent
28 stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or

1 the Board within 15 days unless good cause can be shown for the delay. The cessation of practice
2 shall not apply to the reduction of the probationary time period.

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

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

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

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

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

28 (b) Its specimen collectors conform to the current United States Department of

1 Transportation Specimen Collection Guidelines

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

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

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

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

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

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

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

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

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

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

28 (m) It will not consider a toxicology screen to be negative if a positive result is obtained

1 while practicing, even if the Respondent holds a valid prescription for the substance.

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

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

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

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

17 A biological fluid test will not be considered negative if a positive result is obtained while
18 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited
19 substance use exists, the Board shall lift the cease-practice order within one (1) business day.
20 After the issuance of a cease-practice order, the Board shall determine whether the positive
21 biological fluid test is in fact evidence of prohibited substance use by consulting with the
22 specimen collector and the laboratory, communicating with the licensee, his or her treating
23 physician(s), other health care provider, or group facilitator, as applicable.

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

26 For purposes of this condition, the term "prohibited substance" means an illegal drug, a
27 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by
28 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been

1 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

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

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

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

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

23 Respondent shall pay all worksite monitoring costs.

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

28 The worksite monitor shall verbally report any suspected substance abuse to the Board and

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

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

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

26 5. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
27 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
28 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.

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

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

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

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

23 The psychotherapist shall consider any information provided by the Board or its designee
24 and any other information the psychotherapist deems relevant and shall furnish a written
25 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
26 psychotherapist any information and documents that the psychotherapist may deem pertinent.

27 Respondent shall have the treating psychotherapist submit quarterly status reports to the
28 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric

1 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of
2 probation, Respondent is found to be mentally unfit to resume the practice of medicine without
3 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
4 period of probation shall be extended until the Board determines that Respondent is mentally fit
5 to resume the practice of medicine without restrictions.

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

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

16 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
17 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
18 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
19 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
20 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
21 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
22 signed statement for approval by the Board or its designee.

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

28 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective

1 date of this Decision, Respondent shall receive a notification from the Board or its designee to
2 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
3 shall cease the practice of medicine until a monitor is approved to provide monitoring
4 responsibility.

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

11 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
12 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
13 name and qualifications of a replacement monitor who will be assuming that responsibility within
14 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
15 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
16 notification from the Board or its designee to cease the practice of medicine within three (3)
17 calendar days after being so notified Respondent shall cease the practice of medicine until a
18 replacement monitor is approved and assumes monitoring responsibility.

19 In lieu of a monitor, Respondent may participate in a professional enhancement program
20 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the
21 University of California, San Diego School of Medicine, that includes, at minimum, quarterly
22 chart review, semi-annual practice assessment, and semi-annual review of professional growth
23 and education. Respondent shall participate in the professional enhancement program at
24 Respondent's expense during the term of probation.

25 8. NOTIFICATION OF EMPLOYER OR SUPERVISOR INFORMATION. Within
26 seven (7) days of the effective date of this Decision, Respondent shall provide to the Board the
27 names, physical addresses, mailing addresses, and telephone numbers of any and all employers
28 and supervisors. Respondent shall also provide specific, written consent for the Board,

1 Respondent's worksite monitor, and Respondent's employers and supervisors to communicate
2 regarding Respondent's work status, performance, and monitoring.

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

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

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

15 10. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
16 prohibited from supervising physician assistants.

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

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

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

25 13. GENERAL PROBATION REQUIREMENTS.

26 Compliance with Probation Unit

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

1 Address Changes

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

7 Place of Practice

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

11 License Renewal

12 Respondent shall maintain a current and renewed California physician's and surgeon's
13 license.

14 Travel or Residence Outside California

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

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

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

24 15. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
25 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
26 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
27 defined as any period of time Respondent is not practicing medicine in California as defined in
28 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month

1 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
2 time spent in an intensive training program which has been approved by the Board or its designee
3 shall not be considered non-practice. Practicing medicine in another state of the United States or
4 Federal jurisdiction while on probation with the medical licensing authority of that state or
5 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
6 not be considered as a period of non-practice.

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

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

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

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

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

20 17. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
21 of probation is a violation of probation.

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

25 (1) Issue an immediate cease-practice order and order Respondent to undergo a clinical
26 diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of
27 Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice
28 order issued by the Board or its designee shall state that Respondent must test negative for at least

1 a month of continuous biological fluid testing before being allowed to resume practice. For
2 purposes of the determining the length of time a Respondent must test negative while undergoing
3 continuous biological fluid testing following issuance of a cease-practice order, a month is
4 defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until
5 notified in writing by the Board or its designee that he or she may do so.

6 (2) Increase the frequency of biological fluid testing.

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

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

12 (1) Issue a cease-practice order;

13 (2) Order practice limitations;

14 (3) Order or increase supervision of Respondent;

15 (4) Order increased documentation;

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

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

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

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

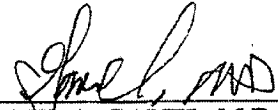
28 18. LICENSE SURRENDER. Following the effective date of this Decision, if

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

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

15 ACCEPTANCE


16 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
17 discussed it with my attorney, Carolyn Lindholm. I understand the stipulation and the effect it
18 will have on my Physician's and Surgeon's certificate. I enter into this Stipulated Settlement and
19 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
20 Decision and Order of the Medical Board of California.

21
22 DATED: 9/7/15 
23 DAVID A. GAVEL, M.D.
24 Respondent

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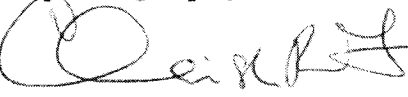
I have read and fully discussed with Respondent David A. Gavel, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 9/8/15 
CAROLYN LINDHOLM
Attorney for Respondent

ENDORSEMENT

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

Dated: 9/9/2015

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

CHRISTINE R. FRIAR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 11-2013-230055

1 KAMALA D. HARRIS
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 CHRISTINE R. FRIAR
Deputy Attorney General
4 State Bar No. 228421
California Department of Justice
5 300 South Spring Street, Suite 1702
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6 Telephone: (213) 897-6404
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *November 24, 2014*
BY: *[Signature]* ANALYST

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

11 In the Matter of the Accusation Against:
12 DAVID A. GAVEL, M.D.
P.O. Box 97
13 Sierra Madre, CA 91025
14 Physician's and Surgeon's License
No. A 97054,
15
16 Respondent.

Case No. 11-2013-230055

ACCUSATION

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 (Board).
22 2. On August 25, 2006, the Board issued Physician's and Surgeon's License number A
23 97054 to David A. Gavel, M.D. (Respondent). That license was in full force and effect at all
24 times relevant to the charges brought herein and will expire on March 31, 2016, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board¹ under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2234 of the Code, states:

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

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

"...."

5. Section 2236 of the Code states:

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

"...

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

6. Section 2239 of the Code states:

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

¹ The term "Board" means the Medical Board of California. "Division of Medical Quality" or "Division" shall also be deemed to refer to the Board. (Bus. & Prof. Code section 2002).

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

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

12 FIRST CAUSE FOR DISCIPLINE

13 (Criminal Conviction)

14 7. Respondent is subject to disciplinary action under Code sections 2234, subdivision
15 (a), 2236, subdivisions (a) and (d), and 2239, subdivisions (a) and (b), in that Respondent was
16 convicted of two (2) misdemeanors after pleading nolo contendere to violating California Penal
17 Code sections 234 (e)(1) (battery against a spouse/ex spouse) and 136.1(b)(1) (intimidating or
18 threatening a witness). The circumstances are as follows:

19 8. On or about February 10, 2013, at approximately 5:44 p.m., two Officers from the
20 Sierra Madre Police Department were dispatched to a reported disturbance at 187 West Montecito
21 Avenue, Sierra Madre, California 91024, the residence of the Respondent.

22 9. A neighbor reported hearing a man arguing with a woman and children crying.

23 10. Upon arrival, the officers found a man, woman and two children, aged 5 and 3, inside
24 the residence.

25 11. The officers observed that the man, the Respondent, had a strong odor of alcohol
26 emitting from his breath and person. They also observed his eyes to be bloodshot, red and watery
27 and his speech to be moderately slurred. His movements were observed to be slow and deliberate.

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1 12. The Respondent told the officers that he and the woman present had been married for
2 five years and had been having marital problems for the last two years. The two children present
3 at the scene were their children.

4 13. The Respondent further told the officers that he had been drinking liquor daily for the
5 last year and that he had been drinking Wild Turkey (bourbon/whiskey) since that morning. The
6 Respondent's wife told officers that the Respondent had begun drinking at 8:00 a.m. on the
7 morning of February 10, 2013.

8 14. The Respondent admits that he remembers "drinking too much" and that he was
9 "blacked out" during portions of that day.

10 15. The Respondent told the officers that he and his wife had been arguing and she left
11 the house with the children without his knowledge.

12 16. The Respondent admits to drinking up to eight ounces of whiskey prior to his wife
13 leaving the house that day.

14 17. After she left, the Respondent called his wife who told him that she had taken the
15 children to the store.

16 18. The Respondent told the officers that he then smashed the table in the kitchen and
17 threw a clear liquor glass into the sink, breaking it. The Respondent also admits he broke the
18 dining room chairs.

19 19. The Respondent told the officers that he then continued to drink and consumed at
20 least one-half bottle of liquor that day.

21 20. The Respondent told the officers that when his wife returned home that evening with
22 the children, he grabbed her shirt collar with both hands and yelled at her, "Why the fuck did you
23 take the kids?" He then pushed his wife backwards with both hands causing her to fall on the
24 floor on her buttocks. The Respondent admitted his actions were wrong and that he has a violent
25 temper. The Respondent further admits that alcohol has caused him to be violent in the past.

26 21. At the scene, the officers observed smashed wooden chairs piled in the southwest
27 corner of the kitchen, a half empty bottle of Wild Turkey liquor and plaster pieces on the floor
28 above which the stairwell wall was damaged.

1 22. The officers interviewed the children who said they saw their father grab their mother
2 and push her to the floor.

3 23. One of the children also told the officers that they observed the Respondent kick the
4 wall by the stairs and break it.

5 24. The Respondent's wife also told the officers that after he pushed her to the floor she
6 told him that if touched her again she would call the police. The Respondent then grabbed her
7 cell phone from her hand and threw it down onto the floor, breaking it.

8 25. As a result of being pushed to the floor, the Respondent's wife was injured.
9 Specifically, the officers observed a scratch surrounded by a circular (1" by 1") red swelling mark
10 by her front right scapula and a 4" line of swelling along her bra line on the left side of her back.

11 26. The Respondent was arrested for domestic battery.

12 27. The Respondent spent the next three days in jail.

13 28. On February 13, 2013, a complaint was filed against the Respondent in *The People of*
14 *the State of California vs. David Gavel*, Superior Court of the County of Los Angeles, Case No.
15 3PS10245, charging him with violating California Penal Code sections 243(e)(1) (misdemeanor
16 battery of a spouse/ex spouse) (Count 1) and 136.1(b)(1) (misdemeanor intimidating or
17 threatening a witness) (Count 2). At a hearing on the same date, the Court ordered, as conditions
18 of the Respondent's release from jail, that the Respondent not use or possess any alcoholic
19 beverage, enroll within thirty days and successfully complete a 52-week domestic violence
20 treatment program, attend at least five NA/AA meeting per week, and not to harass, molest or
21 annoy the victim, among other things.

22 29. On March 15, 2013, the Respondent pled nolo contendere and was convicted of two
23 (2) misdemeanor violations. Specifically, pursuant to his plea, he was convicted of violating
24 California Penal Code section 243(e)(1) and 136.1(b)(1). The Court sentenced the Respondent to
25 three years of summary probation with the following terms and conditions: three days in county
26 jail with credit for time served; \$710 in fines and fees; enroll within thirty days and successfully
27 complete a 52-week domestic violence treatment program; attend at least two NA/AA meetings
28 per week for the next six months; obey all laws and orders of the Court; and not to harass, molest

1 or annoy the victim.

2 30. The Respondent's conduct, as set forth in paragraphs 7 through 29, inclusive above,
3 constitutes the conviction of a crime substantially related to the qualifications, functions or duties
4 of a physician in that he used alcohol in a manner dangerous or injurious to others and, as a result,
5 was convicted of two misdemeanors. Accordingly, his license is subject to discipline pursuant to
6 Code sections 2234, subdivision (a), 2236, subdivisions (a) and (d), and 2239, subdivisions (a)
7 and (b).

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Dangerous Use of Alcohol)

10 31. The Respondent is subject to disciplinary action under Code sections 2234,
11 subdivision (a) and 2239, subdivisions (a) and (b), in that the Respondent consumed alcohol in a
12 manner dangerous or injurious to himself and others and which resulted in more than one
13 misdemeanor conviction involving the use, consumption or self-administration of alcohol. The
14 circumstances are as follows:

15 32. The allegations contained in paragraphs 7-30 are hereby re-alleged and incorporated
16 as though set forth fully within.

17 33. The Respondent admits that he is an alcoholic.

18 34. The Respondent admits that he uses alcohol to self-medicate for anxiety and
19 depression, both which he has suffered from since he was in high school.

20 35. The Respondent admits he began abusing alcohol when he turned twenty-one in 1994.
21 Though he admits he had used and abused alcohol in the past, it was not until this time, that he
22 began drinking every day. The Respondent admits to generally consuming about nine beers a day.
23 This behavior continued for six years, until 2000.

24 36. The Respondent began medical school in 2001 and claims to have been sober for the
25 first year. He admits to then drinking again from 2002 through 2004.

26 37. After the administration at the Respondent's medical program noticed a decline in his
27 performance and intervened, the Respondent claims to have maintained a period of sobriety from
28 2004 through 2006.

1 38. The Respondent admits that he began using alcohol again during his last year of
2 medical school and first year of residency. By his second year of residency, the Respondent
3 admits that he was again abusing alcohol.

4 39. The Respondent admits that sometime during either medical school or his residency
5 he once pushed his step-father while intoxicated.

6 40. The Respondent admits that during the second year of his residency he also became
7 addicted to Klonopin and entered into a ten-day detox program at the Las Encinas mental health
8 and rehabilitation hospital in Pasadena, California for Klonopin and alcohol addiction. The
9 Respondent admits he had been taking Klonopin that was both prescribed to him and that he
10 obtained on his own over the Internet.

11 41. After completing the in-patient detox program, the Respondent participated in an out-
12 patient rehabilitation program for several months.

13 42. The Respondent claims that he was sober upon completion of these programs in 2007
14 and maintained his sobriety through 2012.

15 43. The Respondent admits that he began drinking again in 2012 to self-medicate for his
16 anxiety and depression and because he and his wife were not getting along. The Respondent
17 admits to frequently yelling at his wife and believing that if he started drinking alcohol again that
18 it would calm him down.

19 44. The Respondent claims to have been sober since his arrest on February 13, 2013;
20 however, he is not currently participating in any alcohol monitoring system.

21 45. The Respondent admits that he has a recurrent pattern of sobriety and alcohol use that
22 is triggered by his depression.

23 46. The Respondent's conduct, as set forth in paragraphs 32 through 45, inclusive above,
24 demonstrates that the Respondent has consumed alcohol in a manner dangerous or injurious to
25 others and, that as a result of his consumption of alcohol, he was convicted of two misdemeanors,
26 which involved a domestic dispute with his wife, in which he became violent and she was injured.
27 Accordingly, his license is subject to discipline pursuant to Code sections 2234, subdivision (a)
28 and 2239, subdivisions (a) and (b).

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

47. Respondent is subject to disciplinary action under Code sections 2234, subdivision (a), 2236, subdivisions (a) and (d), and 2239, subdivisions (a) and (b), in that he has exhibited unprofessional conduct. The circumstances are as follows:

48. The allegations contained in paragraphs 7-46 are hereby re-alleged and incorporated as though set forth fully within.

49. The Respondent admittedly has had an almost a two-decade long battle with alcohol abuse and addiction. Though he has maintained periods of sobriety, he has an admitted pattern of relapsing.

50. The Respondent's excessive use and abuse of alcohol culminated on February 10, 2013, when he was arrested, while admittedly intoxicated, after having an argument with his wife in front of their two young children during which he became violent and she was injured.

51. Respondent's acts as set forth in paragraphs 48-50, inclusive above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct pursuant to Code sections 2234, subdivision (a), 2236, subdivisions (a) and (d), and 2239, subdivisions (a) and (b). As such, 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 A 97054, issued to David A. Gavel, M.D.;
2. Revoking, suspending or denying approval of his authority to supervise physician's assistants, pursuant to section 3527 of the Code;
2. Ordering him to pay the Medical Board of California, if placed on probation, the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: November 26, 2014


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

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