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

13 In the Matter of the Accusation Against:

Case No. 800-2015-017700

14 **CESAR BENITEZ, M.D.**
15 **225 W. Madison Ave., Ste. II**
16 **El Cajon, CA 92020-3454**

A C C U S A T I O N

17 **Physician's and Surgeon's Certificate**
No. A107600,

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about May 6, 2009, the Medical Board issued Physician's and Surgeon's
26 Certificate No. A107600 to Cesar Benitez, M.D. (Respondent). The Physician's and Surgeon's
27 Certificate was in full force and effect at all times relevant to the charges brought herein and will
28 expire on April 30, 2021, unless renewed.

JURISDICTION

1
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 2227 of the Code states, in pertinent part:

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

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

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

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

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

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

20 “...”

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

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

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

27 “...”

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1 6. Unprofessional conduct under Business and Professions Code section 2234 is conduct
2 which breaches the rules or ethical code of the medical profession, or conduct which is
3 unbecoming a member in good standing of the medical profession, and which demonstrates an
4 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
5 575.)

6 7. Section 2236 of the Code states, in pertinent part:

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

11 “...

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

15 8. Section 2239 of the Code states, in pertinent part:

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

24 “...”

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

26 “For the purposes of denial, suspension or revocation of a license, certificate or
27 permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act
28 shall be considered to be substantially related to the qualifications, functions or duties of a

1 person holding a license, certificate or permit under the Medical Practice Act if to a
2 substantial degree it evidences present or potential unfitness of a person holding a license,
3 certificate or permit to perform the functions authorized by the license, certificate or permit
4 in a manner consistent with the public health, safety or welfare. Such crimes or acts shall
5 include but not be limited to the following: Violating or attempting to violate, directly or
6 indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision
7 of the Medical Practice Act.”

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Conviction of an Offense Substantially Related to the Qualifications,
10 Functions, or Duties of a Physician and Surgeon)**

11 10. Respondent has subjected his Physician’s and Surgeon’s Certificate No.
12 A107600 to disciplinary action under sections 2227 and 2234, as defined by section 2236, of the
13 Code, and California Code of Regulations, title 16, section 1360, in that he has been convicted of
14 an offense substantially related to the qualifications, functions, or duties of a physician and
15 surgeon, as more particularly alleged hereinafter:

16 11. On or about October 9, 2015,¹ Respondent was engaged to R.E., a woman whom
17 he had been in a dating relationship for approximately three (3) years, and who was
18 approximately eight (8) weeks pregnant with his child.

19 12. On or about October 9, 2015, Respondent and R.E. went to a friend’s house where
20 Respondent consumed a large amount of hard alcohol. The couple returned to Respondent’s
21 home late that evening and an argument ensued. During the argument, Respondent grabbed R.E.
22 by her wrist and throat, threw her onto the bed, strangled her neck for approximately ten (10)
23 seconds, pulled her hair, and pinned her to the ground. When R.E. was able to escape from
24 Respondent’s grasp, she called the police. While on the phone with the police, Respondent

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27 ¹ Conduct occurring more than three years after the Board discovered the act or omission alleged
28 as the ground for disciplinary action is for informational purposes only and is not alleged as a basis for
disciplinary action. (Bus. & Prof. Code, § 2230.5.)

1 grabbed R.E. again and forced her to the ground. When R.E. attempted to call the police again,
2 Respondent hung up the phone and threw it across the room.

3 13. On or about October 10, 2015, at approximately 12:46 a.m., law enforcement
4 officers responded to R.E.'s call for help. Upon their arrival, they spoke with R.E. and observed
5 her to be upset and crying and noted redness to her throat. R.E. was transported to the hospital by
6 ambulance, and Respondent was placed under arrest for domestic violence.

7 14. On or about January 7, 2016, the San Diego City Attorney filed a criminal
8 complaint against Respondent in the matter of *The People of the State of California v. Cesar*
9 *Benitez*, San Diego County Superior Court Case No. M209988DV. Respondent was charged with
10 eight misdemeanors including: (1) Corporal injury to spouse and/or roommate, in violation of
11 Penal Code section 273.5(a); (2) Assault by means likely to produce great bodily injury, in
12 violation of Penal Code section 245(a)(4); (3) Battery of a current or former significant other, in
13 violation of Penal Code section 243(e)(1); (4) Battery of a current or former significant other, in
14 violation of Penal Code section 243(e)(1); (5) False imprisonment, in violation of Penal Code
15 section 236; (6) Battery of a current or former significant other, in violation of Penal Code section
16 243(e)(1); (7) Attempting to dissuade a witness from reporting a crime, in violation of Penal Code
17 section 136.1(b)(1); and (8) Damaging a wireless communication device to prevent assistance, in
18 violation of Penal Code section 591.5.

19 15. On or about June 6, 2016, Respondent was convicted upon his plea of guilty to
20 count 3, battery of a current or former significant other, in violation of Penal Code section
21 243(e)(1). Respondent was sentenced to three years of probation, ordered to attend 52 weeks of
22 individual counseling, pay standard fines, and a criminal protective order was ordered that
23 prohibited him from having any negative contact with R.E. during the pendency of probation.

24 16. On or about August 20, 2017, Respondent and R.E. went to a friend's barbeque
25 with their two children. During the barbeque, both R.E. and Respondent consumed a large
26 amount of alcohol. Shortly after the couple returned home that evening with their children, an
27 argument ensued. At some point, the argument became physical, and Respondent struck R.E. in
28 the face, causing her nose to bleed.

1 17. At approximately 7:15 p.m., law enforcement officers responded to the scene to
2 investigate a report of a woman yelling for help. Upon their arrival, they spoke with R.E. and
3 observed her to be upset and crying, and noted she had a bloody nose and bruising to her face.
4 R.E. was transported to the hospital by ambulance, and Respondent was placed under arrest for
5 domestic violence.

6 18. As a result of his arrest, on or about September 19, 2017, the San Diego City
7 Attorney filed an Order to Show Cause in San Diego County Superior Court Case No.
8 M209988DV. On that date, Respondent admitted his probation violation, and was ordered to
9 complete an outpatient alcohol rehabilitation program, abstain from alcohol for the pendency of
10 probation, and a full criminal protective order was ordered that prohibited Respondent from
11 having any contact with R.E. for ten (10) years.

12 19. On or about February 26, 2019, Respondent was interviewed by an investigator for
13 the Board. During that interview, Respondent admitted that both of his arrests were appropriate,
14 and based upon the outcomes of those experiences, he considers himself an alcoholic.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Use of Alcoholic Beverages to the Extent, or in Such a Manner, as to be Dangerous or**
17 **Injurious to Himself, Another Person, or the Public)**

18 20. Respondent has further subjected his Physician's and Surgeon's Certificate No.
19 A107600 to disciplinary action under sections 2227 and 2234, as defined by section 2239,
20 subdivision (a), of the Code, in that he has used alcoholic beverages to the extent, or in such a
21 manner, as to be dangerous or injurious to himself, another person, or the public, as more
22 particularly alleged in paragraphs 10 through 19, above, which are hereby incorporated by
23 reference and realleged as if fully set forth herein.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(General Unprofessional Conduct)**

26 21. Respondent has further subjected his Physician's and Surgeon's Certificate No.
27 A107600 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged
28 in conduct which breaches the rules or ethical code of the medical profession, or conduct which is

1 unbecoming to a member in good standing of the medical profession, and which demonstrates an
2 unfitness to practice medicine, as more particularly alleged in paragraphs 10 through 20, above,
3 which are hereby incorporated by reference and realleged as if fully set forth herein.

4 **PRAYER**

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

- 7 1. Revoking or suspending Physician's and Surgeon's Certificate No. A107600, issued
8 to Respondent, Cesar Benitez, M.D.;
- 9 2. Revoking, suspending or denying approval of Respondent, Cesar Benitez, M.D.'s
10 authority to supervise physician assistants and advanced practice nurses;
- 11 3. Ordering Respondent, Cesar Benitez, M.D., if placed on probation, to pay the Board
12 the costs of probation monitoring; and
- 13 4. Taking such other and further action as deemed necessary and proper.

14
15 DATED: May 2, 2019
16 _____


17 KIMBERLY KIRCHMEYER
18 Executive Director
19 Medical Board of California
20 Department of Consumer Affairs
21 State of California
22 Complainant

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