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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *November 3, 2016*
BY *[Signature]* ANALYST

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

10 In the Matter of the Accusation and Petition to
11 Revoke Probation Against:

12 **MICHAEL ROLAND PUDE VIVIAN, M.D.**
13 **260 Maple Court, #205**
Ventura, CA 93003

14 **Physician's and Surgeon's Certificate No. G**
15 **78890,**

16 Respondent.

Case No. 800-2016-027060

ACCUSATION
AND
PETITION TO REVOKE PROBATION

17
18 Complainant alleges:

19 PARTIES

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

23 2. On or about May 18, 1994, the Medical Board of California issued Physician's and
24 Surgeon's Certificate Number G 78890 to MICHAEL ROLAND PUDE VIVIAN, M.D.
25 (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the
26 charges brought herein and will expire on February 28, 2018, unless renewed.

27 3. In a disciplinary action entitled "*In the Matter of Accusation Against Michael Roland*
28 *Pude Vivian, M.D.*," Case No. 800-2014-005638, the Medical Board of California, issued a

1 decision, effective March 4, 2016, in which Respondent's Physician's and Surgeon's Certificate
2 was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's
3 Certificate was placed on probation for a period of five (5) years with certain terms and
4 conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

5 4. On or about October 27, 2016, the Board issued a cease practice order to Respondent
6 prohibiting him from practicing medicine until a final decision of the Board on an accusation
7 and/or a petition to revoke probation.

8 JURISDICTION

9 5. This Accusation and Petition to Revoke Probation is brought before the Medical
10 Board of California (Board), Department of Consumer Affairs, under the authority of the
11 following laws. All section references are to the Business and Professions Code unless otherwise
12 indicated.

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 2004 of the Code states:

18 "The board shall have the responsibility for the following:

19 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
20 Act.

21 "(b) The administration and hearing of disciplinary actions.

22 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
23 administrative law judge.

24 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
25 disciplinary actions.

26 "(e) Reviewing the quality of medical practice carried out by physician and surgeon
27 certificate holders under the jurisdiction of the board.

28 "(f) Approving undergraduate and graduate medical education programs.

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

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

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

5 8. Section 2234 of the Code states in relevant part:

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

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

11 “...”

12 9. Section 2239 of the Code states in part as follows:

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

21 A...”

22 10. Section 315.2 of the Code states:

23 “(a) A board, as described in Section 315, shall order a licensee of the board to cease
24 practice if the licensee tests positive for any substance that is prohibited under the terms of the
25 licensee's probation or diversion program.

26 “(b) An order to cease practice under this section shall not be governed by the provisions of
27 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
28 Code.

1 determine if he was required to be tested that day, thereby violating Condition 4 of his
2 Probation Order. Respondent failed to provide the required biological fluid sample on
3 October 13, 2016, thereby violating Condition 4 of his Probation Order.

4 F. On or about October 14, 2016, Respondent failed to check into the FirstLab to
5 determine if he was required to be tested that day, thereby violating Condition 4 of his
6 Probation Order.

7 G. On or about October 15, 2016, Respondent failed to check into the FirstLab to
8 determine if he was required to be tested that day, thereby violating Condition 4 of his
9 Probation Order.

10 H. On or about October 16, 2016, Respondent failed to check into the FirstLab to
11 determine if he was required to be tested that day, thereby violating Condition 4 of his
12 Probation Order.

13 I. On or about October 17, 2016, Respondent failed to check into the FirstLab to
14 determine if he was required to be tested that day, thereby violating Condition 4 of his
15 Probation Order.

16 SECOND CAUSE TO REVOKE PROBATION

17 (Controlled Substances - Abstain from Use)

18 13. At all times after the effective date of Respondent's probation, Condition 2 stated that
19 Respondent shall abstain completely from the personal use or possession of controlled substances
20 as defined in the California Uniform Controlled Substances Act.

21 14. Respondent's probation is subject to revocation because he failed to comply with
22 Probation Condition 2, referenced above. The facts and circumstances regarding this violation are
23 as follows:

24 A. From on or about June 17, 2016, through June 19, 2016, Respondent used
25 amphetamine tablets,¹ thereby violating Condition 2 of his Probation Order.

26 _____
27 ¹ Amphetamine is a Schedule II controlled substance as defined in California Uniform
28 Controlled Substance Act, Health and Safety Code section 11055, subdivision (d)(1), and a
dangerous drug pursuant to Business and Professions Code section 4022.

1 FIRST CAUSE FOR DISCIPLINE

2 (Use of a Controlled Substance)

3 15. Respondent is subject to disciplinary action based on Code section 2239, subdivision
4 (a), in that he used or administered to himself a controlled substance. The circumstances are as
5 follows.

6 A. From on or about June 17, 2016, through June 19, 2016, Respondent used
7 controlled substances, to wit, amphetamine tablets.

8 DISCIPLINE CONSIDERATIONS

9 16. To determine the degree of discipline, if any, to be imposed on Respondent,
10 Complainant alleges that on or about February 5, 2016, in a prior disciplinary action entitled "*In*
11 *the Matter of the Accusation Against Michael Roland Pude Vivian, M.D.*" before the Medical
12 Board of California, in Case No. 800-2014-005638, Respondent's license was revoked, the
13 revocation was stayed, and Respondent was placed on probation for five years for use of
14 controlled substances. That decision is now final and is incorporated by reference as if fully set
15 forth.

16 PRAYER

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

19 1. Revoking the probation that was granted by the Medical Board of California in Case
20 No. 800-2014-005638 and imposing the disciplinary order that was stayed thereby revoking
21 Physician's and Surgeon's Certificate No. G 78890 issued to MICHAEL ROLAND PUDE
22 VIVIAN, M.D.;

23 2. Revoking or suspending his Physician's and Surgeon's Certificate No. G 78890;

24 3. Revoking, suspending or denying approval of his authority to supervise physician
25 assistants, pursuant to section 3527 of the Code;

26 4. If placed on probation, ordering him to pay the Medical Board of California, the costs
27 of probation monitoring; and

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

DATED: November 3, 2016



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

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Exhibit A

Decision and Order

Medical Board of California Case No. 800-2014-005638

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

In the Matter of the Accusation Against:)
)
)

Michael Roland Pude Vivian, M.D.)

Case No. 8002014005638

Physician's and Surgeon's)
Certificate No. G 78890)
)

Respondent)
)
_____)

DECISION AND ORDER

The attached Stipulation 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 March 4, 2016.

IT IS SO ORDERED: February 5, 2016.

MEDICAL BOARD OF CALIFORNIA



Howard Krauss, M.D., Chair
Panel B

1 KAMALA D. HARRIS
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH
Deputy Attorney General
4 State Bar No. 173955
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

12 MICHAEL VIVIAN, M.D.

13
14 260 Maple Court, #205
Ventura, California 93003

15 Physician's and Surgeon's Certificate G 78890,
16 Respondent.
17

Case No. 800-2014-005638

OAH No. 2015070755

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

20 PARTIES

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

25 2. Respondent Michael Vivian, M.D. ("Respondent") is represented in this proceeding
26 by attorney Courtney E. Pilchman, of 2030 Main Street, Suite 1300, Irvine, California 92614.
27
28

1 appointed board certified psychiatrist, who shall consider any information provided by the Board
2 or designee and any other information the psychiatrist deems relevant, and shall furnish a written
3 evaluation report to the Board or its designee.

4 If the psychiatrist determines during the evaluation process that respondent is a threat to
5 himself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a
6 determination.

7 The psychiatrist shall consider the following factors: respondent's license type;
8 respondent's history; respondent's documented length of sobriety (i.e., length of time that has
9 elapsed since respondent's last substance use); respondent's scope and pattern of substance abuse;
10 respondent's treatment history, medical history and current medical condition; the nature,
11 duration and severity of respondent's substance abuse problem or problems; and whether
12 respondent is a threat to himself or the public.

13 Psychiatric Evaluations conducted prior to the effective date of this Decision shall not be
14 accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all
15 psychiatric evaluations and psychological testing.

16 Respondent shall comply with all restrictions or conditions recommended by the evaluating
17 psychiatrist within 15 calendar days after being notified by the Board or its designee.

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

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

28 If Respondent has a confirmed positive biological fluid test for any substance (whether or

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

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

14 3. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the
15 use of products or beverages containing alcohol.

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

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

1 4. BIOLOGICAL FLUID TESTING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 The contract shall require that the laboratory directly notify the Board or its designee of

1 non-negative results within one (1) business day and negative test results within seven (7)
2 business days of the results becoming available. Respondent shall maintain this laboratory or
3 service contract during the period of probation.

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

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

12 A biological fluid test will not be considered negative if a positive result is obtained while
13 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited
14 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

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

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

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

25 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited
26 substance, respondent has committed a major violation, as defined in 16 CCR § 1361.52(a), and
27 the Board shall impose any or all of the consequences set forth in 16 CCR § 1361.52(b), in
28 addition to any other terms or conditions the Board determines are necessary for public protection

1 or to enhance respondent's rehabilitation.

2 5. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS

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

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

15 The facilitator shall provide a signed document to the Board or its designee showing
16 respondent's name, the group name, the date and location of the meeting, respondent's
17 attendance, and respondent's level of participation and progress. The facilitator shall report any
18 unexcused absence by respondent from any substance abuse support group meeting to the Board,
19 or its designee, within twenty-four (24) hours of the unexcused absence.

20 6. PROFESSIONALISM PROGRAM (ETHICS COURSE).

21 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
22 professionalism program, that meets the requirements of Title 16, California Code of Regulations
23 (CCR) section 1358. Respondent shall participate in and successfully complete that program.
24 Respondent shall provide any information and documents that the program may deem pertinent.
25 Respondent shall successfully complete the classroom component of the program not later than
26 six (6) months after Respondent's initial enrollment, and the longitudinal component of the
27 program not later than the time specified by the program, but no later than one (1) year after
28 attending the classroom component. The professionalism program shall be at Respondent's

1 expense and shall be in addition to the Continuing Medical Education (CME) requirements for
2 renewal of licensure.

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

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

11 7. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE

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

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

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

27 Respondent shall pay all worksite monitoring costs.

28 The worksite monitor shall have face-to-face contact with respondent in the work

1 environment on as frequent a basis as determined by the Board or its designee, but not less than
2 once per week; interview other staff in the office regarding respondent's behavior, if requested by
3 the Board or its designee; and review respondent's work attendance.

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

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

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

1 responsibility.

2 8. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING

3 LICENSEES

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

5 A. If respondent commits a major violation of probation as defined by section
6 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take
7 one or more of the following actions:

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

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

18 (3) Refer respondent for further disciplinary action, such as suspension, revocation, or
19 other action as determined by the Board or its designee.

20 B. If respondent commits a minor violation of probation as defined by section
21 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
22 one or more of the following actions:

23 (1) Issue a cease-practice order;

24 (2) Order practice limitations;

25 (3) Order or increase supervision of respondent;

26 (4) Order increased documentation;

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

28 (6) Order respondent to undergo a clinical diagnostic evaluation to be conducted in

1 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
2 Regulations, at respondent's expense;

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

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

11 9. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION

12 Within seven (7) days of the effective date of this Decision, respondent shall provide to the
13 Board the names, physical addresses, mailing addresses, and telephone numbers of any and all
14 employers and supervisors. Respondent shall also provide specific, written consent for the Board,
15 respondent's worksite monitor, and respondent's employers and supervisors to communicate
16 regarding respondent's work status, performance, and monitoring.

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

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

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

1 11. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
2 prohibited from supervising physician assistants.

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

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

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

11 14. GENERAL PROBATION REQUIREMENTS.

12 Compliance with Probation Unit

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

15 Address Changes

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

21 Place of Practice

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

25 License Renewal

26 Respondent shall maintain a current and renewed California physician's and surgeon's
27 license.

28 Travel or Residence Outside California

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

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

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

10 16. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
11 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
12 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
13 defined as any period of time Respondent is not practicing medicine in California as defined in
14 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
15 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
16 time spent in an intensive training program which has been approved by the Board or its designee
17 shall not be considered non-practice. Practicing medicine in another state of the United States or
18 Federal jurisdiction while on probation with the medical licensing authority of that state or
19 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
20 not be considered as a period of non-practice.

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

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

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

27 Periods of non-practice will relieve Respondent of the responsibility to comply with the
28 probationary terms and conditions with the exception of this condition and the following terms

1 and conditions of probation: Obey All Laws; and General Probation Requirements.

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

6 18. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
7 of probation is a violation of probation. If Respondent violates probation in any respect, the
8 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
9 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
10 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
11 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
12 the matter is final.

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

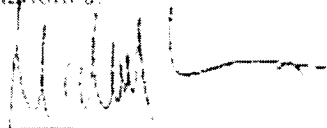
23 20. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
24 with probation monitoring each and every year of probation, as designated by the Board, which
25 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
26 California and delivered to the Board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

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney Courtney F. Pilchman. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

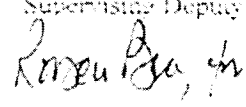
DATED: 12/17/2015 
MICHAEL VIVIAN, M.D.
Respondent

I have read and fully discussed with Respondent MICHAEL VIVIAN, 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: 12/17/2015 
COURTNEY F. PILCHMAN
Attorney for Respondent

ENDORSEMENT

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

Dated: 21 December 2015 Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

VLADIMIR SHALKOVICH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2014-005638

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 10, 2015
BY: J. K. Scholt ANALYST

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7 *Attorneys for Complainant*

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. 800-2014-005638

12 **MICHAEL VIVIAN, M.D.**
260 Maple Court, #205
13 Ventura, CA 93303

ACCUSATION

14 **Physician's and Surgeon's Certificate**
15 **No. G 78890,**

Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about May 18, 1994, the Medical Board issued Physician's and Surgeon's
24 Certificate Number G 78890 to Michael Vivian, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein
26 and will expire on February 29, 2016, unless renewed.

27 ///

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 unless otherwise indicated.

4 4. Section 2227 of the Code states:

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

9 "(1) Have his or her license revoked upon order of the board.

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

12 "(3) Be placed on probation and be required to pay the costs of probation monitoring upon
13 order of the board.

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

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

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

23 5. Section 2239 of the Code states:

24 "(a) The use or prescribing for or administering to himself or herself, of any controlled
25 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
26 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
27 any other person or to the public, or to the extent that such use impairs the ability of the licensee
28 to practice medicine safely or more than one misdemeanor or any felony involving the use,

1 consumption, or self-administration of any of the substances referred to in this section, or any
2 combination thereof, constitutes unprofessional conduct. The record of the conviction is
3 conclusive evidence of such unprofessional conduct.

4 "(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
5 deemed to be a conviction within the meaning of this section. The Division of Medical Quality¹
6 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing
7 may order the denial of the license when the time for appeal has elapsed or the judgment of
8 conviction has been affirmed on appeal or when an order granting probation is made suspending
9 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4
10 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of
11 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,
12 information, or indictment."

13 CAUSE FOR DISCIPLINE

14 (Use of Controlled Substances)

15 6. Respondent Michael Vivian, M.D. is subject to disciplinary action under section 2239,
16 subdivision (a), in that Respondent used or administered to himself controlled substances or used
17 dangerous drugs or alcoholic beverages, to the extent, or in such a manner as to be dangerous or
18 injurious to himself, or to another person or to the public, or to the extent that such use impaired
19 Respondent's ability to practice medicine safely. The circumstances are as follows:

20 7. Respondent is a board-certified psychiatrist. Between approximately July, 2013 and
21 March 2014, Respondent had several unanticipated and unexplained absences from his office, and
22 the appointments with some of his patients had to be cancelled. On or about May 21, 2014, a
23 Nurse-Practitioner and a receptionist employed in the medical office where Respondent worked,
24 discovered Respondent passed out in his office. They had difficulty waking him up.

25
26 ¹ Business and Professions Code section 2002, as amended and effective January 1, 2008,
27 provides that, unless otherwise expressly provided, the term "board" as used in the State Medical
28 Practice Act (Bus. & Prof. Code § 2000, et seq.) means the Medical Board of California, and
references to the Division of Medical Quality and Division of Licensing in the Act or any other
provision of law shall be deemed to refer to the Board.

1 8. Several days later, the Nurse-Practitioner spoke with Respondent and Respondent's
2 spouse, and discovered that Respondent had an ongoing substance abuse problem. She urged him
3 to seek treatment. Respondent, thereafter, had unexpected absences from his practice. When it
4 became apparent to the Nurse-Practitioner that Respondent had not sought treatment by June 2,
5 2014, she made a complaint to the Medical Board of California.

6 9. The investigator assigned to the case scheduled a mutually agreed upon interview with
7 Respondent and his attorney to take place on November 20, 2014. On November 18, 2014,
8 Respondent's attorney cancelled the interview, and provided no explanation as to why the
9 interview was cancelled.

10 10. Respondent was subsequently subpoenaed to the interview, which took place on
11 December 29, 2014. During the course of the interview, Respondent refused to answer any
12 questions related to his use of drugs or alcohol, or treatment of any drug or alcohol related illness,
13 or his current state of health. Respondent did, however, offer to provide a urine sample, and
14 agreed to submit to a psychiatric evaluation by a Board-appointed evaluator. Respondent's urine
15 sample, collected on December 29, 2014, was negative for any drug of abuse.

16 11. On or about March 20, 2015, Respondent submitted to a comprehensive psychiatric
17 examination by a Board-appointed evaluator, a board-certified psychiatrist. Prior to the
18 examination Respondent stated that he understood that because all information provided to the
19 evaluator will be put into a report for the Medical board of California, no doctor/patient
20 confidentiality existed.

21 12. Respondent brought to the Board-appointed evaluator partial records related to
22 Respondent's drug abuse treatment and monitoring. These partial records showed that
23 Respondent was admitted as an in-patient at College Hospital on June 19, 2014, and was
24 discharged on July 8, 2014, and that his diagnosis was polysubstance dependence and depressive
25 disorder NOS. Respondent also brought partial records from Hired Power, where he was enrolled
26 in a monitoring program. He provided to the board-appointed evaluator a copy of a "compliance
27 report" from Hired Power that showed a series of negative random drug tests, as well as several
28 "no show" and missed drug tests in late October 2014, which were marked "excused."

1 13. Respondent related to the Board-appointed evaluator that he had some recreational
2 marijuana use in high school and college. When he was in medical school and residency, however,
3 this was very rare. He might have used some marijuana after finals time, but primarily he was
4 focused on his studies. Around 2004 or 2005 he began using amphetamine² and cocaine.
5 Respondent refused to tell the board-appointed evaluator how his addiction started and how he
6 obtained the drugs. Respondent related that he was able to use the amphetamine and cocaine
7 recreationally and then recognized that this was not working. He started going to a 12-step group
8 in 2006 but still had intermittent use, with periods of sobriety lasting for three to six months. In
9 2007, he entered Impact House, a residential chemical dependency treatment, where he stayed for
10 90 days. This was for amphetamine abuse. He successfully completed this program and continued
11 to attend AA-based 12-step programs, maintaining sobriety for five years.

12 14. Respondent told the Board-appointed evaluator that in 2012 he had multiple
13 psychosocial stressors surrounding his father's death, following which Respondent began to use
14 amphetamine. At first, his use was intermittent. He would snort the amphetamine in lines and
15 would use several lines each time, generally using the amphetamine in his office after hours. On or
16 about May 21, 2014, Respondent used a great deal of amphetamine – he recalled that it would be
17 10 lines. At around three o'clock in the morning, he recognized that he needed to come down,
18 and in order to come down, he used his office samples of Saphris.³ This was the first time that he
19 had used Saphris. Normally, Respondent used either alcohol or Seroquel⁴ to come down from the
20 amphetamine. Respondent commented to the Board-appointed evaluator that Saphris had a
21 "bigger punch" than he intended. Respondent confirmed that in the morning, when other
22 employees in his office found him passed out, he was groggy and incoherent.

23
24 ² Amphetamine is a stimulant and a schedule II controlled substance pursuant to Health and
25 Safety Code section 11055, subdivision (d) (1). It is also a dangerous drug under the provisions of
Business and Professions Code section 4022.

26 ³ Saphris is a trade name for asenapine, an antipsychotic medication. It is a dangerous drug
27 under Business and Professions Code section 4022. Somnolence is a known side effect of this
medication.

28 ⁴ Seroquel is a trade name for quetiapine, an antipsychotic medication. It is a dangerous
drug pursuant to Business and Professions code section 4022.

