

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

**In the Matter of the Accusation** )  
**Against:** )  
 )  
 )  
**MICHAEL JOSEPH COSGROVE, M.D.** )  
 )  
**Physician's and Surgeon's** )  
**Certificate No. G62191** )  
 )  
**Respondent** )  
\_\_\_\_\_ )

Case No. 800-2016-028127

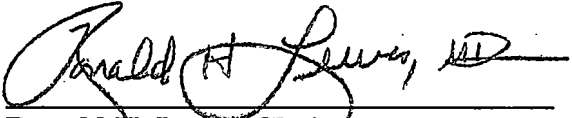
**DECISION**

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 May 10, 2019.

IT IS SO ORDERED: April 12, 2019.

**MEDICAL BOARD OF CALIFORNIA**

  
\_\_\_\_\_  
**Ronald H. Lewis, Chair**  
**Panel A**

1 XAVIER BECERRA  
Attorney General of California  
2 STEVEN D. MUNI  
Supervising Deputy Attorney General  
3 MEGAN R. O'CARROLL  
Deputy Attorney General  
4 State Bar No. 215479  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 210-7543  
Facsimile: (916) 327-2247  
7 *Attorneys for Complainant*

8  
9  
10 **BEFORE THE**  
11 **MEDICAL BOARD OF CALIFORNIA**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
13 **STATE OF CALIFORNIA**  
14

15 In the Matter of the Accusation Against:

16 **MICHAEL JOSEPH COSGROVE, M.D.**  
17 **2100 Napa Vallejo Hwy**  
**Napa, CA 94558**

18 **Physician's and Surgeon's Certificate No. G**  
19 **62191**

20 Respondent.

Case No. 800-2016-028127

OAH No. 2018080123

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

21  
22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
23 entitled proceedings that the following matters are true:

24 PARTIES

25 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
26 of California (Board). She brought this action solely in her official capacity and is represented in  
27 this matter by Xavier Becerra, Attorney General of the State of California, by Megan R.  
28 O'Carroll, Deputy Attorney General.



1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation  
3 No. 800-2016-028127.

4 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to  
5 discipline and he agrees to be bound by the Board's probationary terms as set forth in the  
6 Disciplinary Order below.

7 CONTINGENCY

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

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

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

24 DISCIPLINARY ORDER

25 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 62191 issued  
26 to Respondent Michael Joseph Cosgrove, M.D. is revoked. However, the revocation is stayed  
27 and Respondent is placed on probation for seven (7) years on the following terms and conditions.

28 ///

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

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

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

13           3.    PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of  
14 the effective date of this Decision, Respondent shall enroll in a professionalism program, that  
15 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.  
16 Respondent shall participate in and successfully complete that program. Respondent shall  
17 provide any information and documents that the program may deem pertinent. Respondent shall  
18 successfully complete the classroom component of the program not later than six (6) months after  
19 Respondent's initial enrollment, and the longitudinal component of the program not later than the  
20 time specified by the program, but no later than one (1) year after attending the classroom  
21 component. The professionalism program shall be at Respondent's expense and shall be in  
22 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

28    ///

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

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

9 If Respondent fails to establish a practice with another physician or secure employment in  
10 an appropriate practice setting within 60 calendar days of the effective date of this Decision,  
11 Respondent shall receive a notification from the Board or its designee to cease the practice of  
12 medicine within three (3) calendar days after being so notified. The Respondent shall not resume  
13 practice until an appropriate practice setting is established.

14 If, during the course of the probation, the Respondent's practice setting changes and the  
15 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent  
16 shall notify the Board or its designee within five (5) calendar days of the practice setting change.  
17 If Respondent fails to establish a practice with another physician or secure employment in an  
18 appropriate practice setting within 60 calendar days of the practice setting change, Respondent  
19 shall receive a notification from the Board or its designee to cease the practice of medicine within  
20 three (3) calendar days after being so notified. The Respondent shall not resume practice until an  
21 appropriate practice setting is established.

22 5. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of  
23 this Decision, and on whatever periodic basis thereafter may be required by the Board or its  
24 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological  
25 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall  
26 consider any information provided by the Board or designee and any other information the  
27 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its  
28 designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not

1 be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all  
2 psychiatric evaluations and psychological testing.

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

5 6. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)  
6 days of the effective date of this Decision, Respondent shall provide to the Board the names,  
7 physical addresses, mailing addresses, and telephone numbers of any and all employers and  
8 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's  
9 worksite monitor, and Respondent's employers and supervisors to communicate regarding  
10 Respondent's work status, performance, and monitoring.

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

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

24 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.  
25 During the second year of probation and for the duration of the probationary term, up to five (5)  
26 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no  
27 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing  
28 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number

1 of random tests to the first-year level of frequency for any reason.

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

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

8 (b) Its specimen collectors conform to the current United States Department of  
9 Transportation Specimen Collection Guidelines.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

27 After the issuance of a cease-practice order, the Board shall determine whether the positive  
28 biological fluid test is in fact evidence of prohibited substance use by consulting with the

1 specimen collector and the laboratory, communicating with the licensee, his or her treating  
2 physician(s), other health care provider, or group facilitator, as applicable.

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

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

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

14 8. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of  
15 the effective date of this Decision, Respondent shall submit to the Board or its designee, for its  
16 prior approval, the name of a substance abuse support group which he or she shall attend for the  
17 duration of probation. Respondent shall attend substance abuse support group meetings at least  
18 once per week, or as ordered by the Board or its designee. Respondent shall pay all substance  
19 abuse support group meeting costs.

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

27 The facilitator shall provide a signed document to the Board or its designee showing  
28 Respondent's name, the group name, the date and location of the meeting, Respondent's

1 attendance, and Respondent's level of participation and progress. The facilitator shall report any  
2 unexcused absence by Respondent from any substance abuse support group meeting to the Board,  
3 or its designee, within twenty-four (24) hours of the unexcused absence.

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

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

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

20 Respondent shall pay all worksite monitoring costs.

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

25 The worksite monitor shall verbally report any suspected substance abuse to the Board and  
26 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected  
27 substance abuse does not occur during the Board's normal business hours, the verbal report shall  
28 be made to the Board or its designee within one (1) hour of the next business day. A written

1 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and  
2 any other information deemed important by the worksite monitor shall be submitted to the Board  
3 or its designee within 48 hours of the occurrence.

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

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

23 10. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING  
24 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of  
25 probation.

26 A. If Respondent commits a major violation of probation as defined by section  
27 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take  
28 one or more of the following actions:

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

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

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

13 B. If Respondent commits a minor violation of probation as defined by section  
14 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take  
15 one or more of the following actions:

16 (1) Issue a cease-practice order;

17 (2) Order practice limitations;

18 (3) Order or increase supervision of Respondent;

19 (4) Order increased documentation;

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

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

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

25 C. Nothing in this Decision shall be considered a limitation on the Board's authority  
26 to revoke Respondent's probation if he or she has violated any term or condition of probation. If  
27 Respondent violates probation in any respect, the Board, after giving Respondent notice and the  
28 opportunity to be heard, may revoke probation and carry out the disciplinary order that was

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

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

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

13 12. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE  
14 NURSES. During probation, Respondent is prohibited from supervising physician assistants and  
15 advanced practice nurses.

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

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

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

24 15. GENERAL PROBATION REQUIREMENTS.

25 Compliance with Probation Unit

26 Respondent shall comply with the Board's probation unit.

27 Address Changes

28 Respondent shall, at all times, keep the Board informed of Respondent's business and

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

5 Place of Practice

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

9 License Renewal

10 Respondent shall maintain a current and renewed California physician's and surgeon's  
11 license.

12 Travel or Residence Outside California

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

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

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

22 17. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
23 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
24 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
25 defined as any period of time Respondent is not practicing medicine as defined in Business and  
26 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct  
27 patient care, clinical activity or teaching, or other activity as approved by the Board. If  
28 Respondent resides in California and is considered to be in non-practice, Respondent shall

1 comply with all terms and conditions of probation. All time spent in an intensive training  
2 program which has been approved by the Board or its designee shall not be considered non-  
3 practice and does not relieve Respondent from complying with all the terms and conditions of  
4 probation. Practicing medicine in another state of the United States or Federal jurisdiction while  
5 on probation with the medical licensing authority of that state or jurisdiction shall not be  
6 considered non-practice. A Board-ordered suspension of practice shall not be considered as a  
7 period of non-practice.

8 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
9 months, Respondent shall successfully complete the Federation of State Medical Boards' Special  
10 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
11 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model  
12 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

15 Periods of non-practice for a Respondent residing outside of California will relieve  
16 Respondent of the responsibility to comply with the probationary terms and conditions with the  
17 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
18 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or  
19 Controlled Substances; and Biological Fluid Testing.

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

24 19. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
25 of probation is a violation of probation. If Respondent violates probation in any respect, the  
26 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
27 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,  
28 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have



1 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
2 the matter is final.

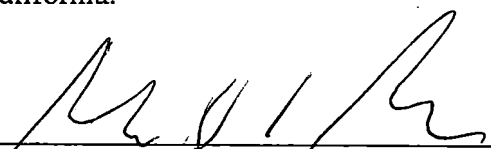
3 20. LICENSE SURRENDER. Following the effective date of this Decision, if  
4 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
5 the terms and conditions of probation, Respondent may request to surrender his or her license.  
6 The Board reserves the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

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

18  
19 ACCEPTANCE

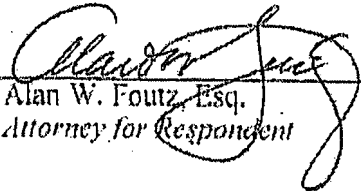
20 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
21 discussed it with my attorney, Alan Foutz, Esq. I understand the stipulation and the effect it will  
22 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and  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

25  
26 DATED: January 30, 2019

  
27 MICHAEL JOSEPH COSGROVE, M.D.  
28 Respondent

1 I have read and fully discussed with Respondent Michael Joseph Cosgrove, M.D. the terms  
2 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
3 Order. I approve its form and content.

4 DATED: 1-28-2019

  
5 Alan W. Foutz, Esq.  
6 Attorney for Respondent

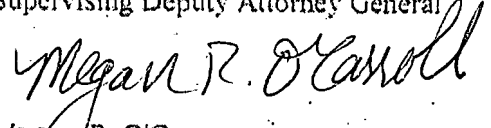
7  
8 ENDORSEMENT

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

11 Dated: 1-28-2019

12 Respectfully submitted,

13 XAVIER BECERRA  
14 Attorney General of California  
15 STEVEN D. MUNI  
16 Supervising Deputy Attorney General

  
17 MEGAN R. O'CARROLL  
18 Deputy Attorney General  
19 Attorneys for Complainant

20  
21 SA2018301108  
22 33754930.docx  
23  
24  
25  
26  
27  
28

**Exhibit A**

**Accusation No. 800-2016-028127**

1 XAVIER BECERRA  
Attorney General of California.  
2 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
3 MEGAN R. O'CARROLL  
Deputy Attorney General  
4 State Bar No. 215479  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 210-7543  
Facsimile: (916) 327-2247  
7

*Attorneys for Complainant*  
8  
9

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO July 11 20 18  
BY                      ANALYST

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

13 In the Matter of the Accusation Against:

Case No. 800-2016-028127

14 **Michael Joseph Cosgrove, M.D.**  
2100 Napa Vallejo Hwy  
15 Napa, CA 94558

**ACCUSATION**

16 **Physician's and Surgeon's Certificate**  
17 **No. G 62191,**

Respondent.  
18

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 January 25, 1988, the Medical Board issued Physician's and Surgeon's  
26 Certificate No. G 62191 to Michael Joseph Cosgrove, M.D. (Respondent). The Physician's and  
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought  
28 herein and will expire on January 31, 2020, 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 provides that a licensee who is found guilty under the  
6 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed  
7 one year, placed on probation and required to pay the costs of probation monitoring, or such other  
8 action taken in relation to discipline as the Board deems proper.

9       5. Section 2234 of the Code states:

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

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

15       “(b) Gross negligence.

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

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

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

26       “(d) Incompetence.

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

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

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

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

9           6. Section 2239 of the Code states:

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

18           “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is  
19 deemed to be a conviction within the meaning of this section. The Medical Board may order  
20 discipline of the licensee in accordance with Section 2227 or the Medical Board may order the  
21 denial of the license when the time for appeal has elapsed or the judgment of conviction has been  
22 affirmed on appeal or when an order granting probation is made suspending imposition of  
23 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal  
24 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,  
25 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or  
26 indictment.”

27       ///

28       ///

1 7. Section 822 of the Code states:

2 "If a licensing agency determines that its licentiate's ability to practice his or her profession  
3 safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the  
4 licensing agency may take action by any one of the following methods:

5 "(a) Revoking the licentiate's certificate or license.

6 "(b) Suspending the licentiate's right to practice.

7 "(c) Placing the licentiate on probation.

8 "(d) Taking such other action in relation to the licentiate as the licensing agency in its  
9 discretion deems proper.

10 "The licensing agency shall not reinstate a revoked or suspended certificate or license until  
11 it has received competent evidence of the absence or control of the condition which caused its  
12 action and until it is satisfied that with due regard for the public health and safety the person's  
13 right to practice his or her profession may be safely reinstated."

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Use of Alcohol in a Dangerous Manner)**

16 8. Respondent Michael Joseph Cosgrove, M.D., is subject to disciplinary action under  
17 section 2239 of the Code, in that he used alcoholic beverages in a manner, or to such an extent, as  
18 to be injurious to himself, another person, and/or the public. The circumstances are as follows:

19 9. On November 9, 2016, at approximately 9:05 a.m., Respondent, a staff psychiatrist at  
20 Napa State Hospital (NSH), was walking through Parking Lot C of the hospital on his way to  
21 work. Officer Robert Medina of the NSH Police was on duty at a Kiosk near the entry of the  
22 hospital adjacent to the Parking Lot C. Officer Medina observed that Respondent walked with an  
23 unsteady gait, slowly, and appeared to have difficulty trying to keep his balance. Officer Medina  
24 asked Respondent if he had been drinking, and Respondent stated that he had been drinking all  
25 night because he was depressed by the Presidential election. Officer Medina asked Respondent if  
26 he had driven himself to the Hospital, and Respondent denied having driven himself. Officer  
27 Medina sought assistance from Officer Ross Tweedy, reporting to Officer Tweedy that  
28 Respondent was visibly intoxicated.

1           10. Officer Tweedy arrived on scene at approximately 9:07 a.m. and observed that  
2 Respondent was unsteady on his feet. Officer Tweedy assisted Respondent to sit down because  
3 he appeared to be losing his balance. Respondent's breath smelled of alcohol, and he had  
4 difficulty enunciating complete sentences. When questioned by Officer Tweedy, Respondent  
5 admitted that he drove himself to work in his vehicle that morning. Respondent told Officer  
6 Tweedy that he had been "drinking scotch last night and this morning." A third NSH Officer,  
7 Jose Martinez, arrived on the scene at approximately 9:10 a.m. and also noted that Respondent  
8 was very unsteady, even while sitting down. His body swayed from side to side, he had slurred  
9 speech and was at times unable to use complete sentences. Officer Tweedy called a friend to pick  
10 Respondent up and drive him home. At approximately 10:10 a.m., Respondent's friend arrived  
11 and drove him off the NSH grounds.

12           11. An Investigator with the Napa State Hospital Police Department, Christopher Boals,  
13 was assigned to investigate Respondent's conduct. He interviewed Respondent on November 10,  
14 2016, at approximately 11:00 a.m. in interview room #4 on NSH grounds. During the interview,  
15 Respondent told Investigator Boals that on the evening of November 8, 2016, he was very upset  
16 about the state of the U.S. Presidential Election and so he went to a liquor store where he  
17 purchased "a six-pack [beer] and tiny bottle of scotch." He began to consume this alcohol  
18 between 11:30 p.m. on November 8, 2016 and stopped drinking at approximately 4:00 a.m. on the  
19 morning of November 9, 2016. Respondent claimed that he was "not drunk" when he drove to  
20 work at 9:00 a.m., although he stated he was hung over and sleep deprived, feeling "woozy." He  
21 acknowledged that he likely smelled "like a brewery" when the Police Officers were speaking to  
22 him on the Napa State Hospital grounds on the morning of November 9, 2016. Investigator Boals  
23 asked Respondent why he came into work that morning, and Respondent stated that he had a new  
24 patient admission arriving that day and he felt pressured to attend work to perform the admission.  
25 Upon the completion of his investigation, Investigator Boals concluded by a preponderance of the  
26 evidence that Respondent violated Administrative Directive No. 376, "Substance Abuse" and  
27 recommended the Executive Director of the Health and Human Services Agency adopt that  
28 finding.





1 CAUSE FOR ACTION

2 (Mental Illness and/or Physical Illness Affecting Competency)

3 15. Respondent is subject to action under section 822 in that he is not safe to practice  
4 medicine safely as he suffers from a mental illness that affects his competency to practice  
5 medicine. The circumstances are as follows:

6 16. Paragraphs 7 through 14, above, are hereby incorporated by reference and realleged as  
7 if fully set forth herein.

8 17. The materials gathered by the Medical Board Investigators were forwarded to a Board  
9 expert specializing in substance abuse disorders, J.M., M.D. (Dr. M.). Respondent voluntary  
10 agreed to be interviewed by Dr. M. Dr. M. met with Respondent and reviewed the materials  
11 Board investigators compiled. After performing this review, Dr. M. noted that Respondent has a  
12 history of alcohol abuse, including multiple prior convictions for driving under the influence of  
13 alcohol, which has led to serious criminal and professional consequences for Respondent. He  
14 further noted that Respondent's account of the facts of the November 9, 2016 incident has  
15 contained multiple inconsistencies in various retelling of the event and that he offered several  
16 excuses or external factors to minimize or excuse his conduct. Dr. M. noted instances of  
17 Respondent having poor insight into his condition and impaired judgment. Dr. M. concluded that  
18 Respondent suffers from an alcohol use disorder, requiring treatment and monitoring in order for  
19 him to be able to practice medicine safely.

20 DISCIPLINARY CONSIDERATIONS

21 18. To determine the degree of discipline, if any, to be imposed on Respondent Michael  
22 Joseph Cosgrove, M.D., Complainant alleges that on or about April 8, 2003, without a valid  
23 California driver's license, Respondent was driving while under the influence of alcohol, and was  
24 arrested. His Blood Alcohol Content (BAC) at the time of the arrest was .28%. Respondent  
25 sustained a criminal conviction on May 21, 2003, in *People v. Michael Joseph Cosgrove*,  
26 (Sacramento Superior Court Case No. 03T02896) for violating Vehicle Code § 23152  
27 subdivision (b), [driving under the influence of alcohol].

28 ///

1 19. To further determine the degree of discipline, if any, to be imposed on Respondent  
2 Michael Joseph Cosgrove, M.D., Complainant alleges that on or about March 5, 2007, at  
3 approximately 9:20 a.m., Respondent was involved in a collision while driving under the  
4 influence of alcohol in Yuba City, California. After the collision, respondent attempted to leave  
5 the scene. When questioned by the police, Respondent initially misrepresented that he was not  
6 involved in the collision. The police ran a registration check and discovered one of the cars in the  
7 collision was registered to Respondent. Respondent failed the field sobriety tests and was  
8 arrested. At the time of his arrest, Respondent's BAC was .16%.

9 20. On or about March 6, 2007, the Sutter County District Attorney's Office filed a  
10 criminal complaint against Respondent, in the case entitled, *People v. Michael Joseph Cosgrove*,  
11 Case No. Case No. CRTR-0918. The criminal complaint alleged the following violations against  
12 Respondent: (1) Vehicle Code § 23152(b) [driving under the influence of an alcoholic beverage];  
13 (2) Vehicle Code § 11359 [driving while under the influence of alcohol with a BAC .15% or  
14 more]; and (3) Vehicle Code § 20002(a) [hit & run].

15 21. On May 30, 2007, Respondent pled guilty in the case, *People v. Michael Joseph*  
16 *Cosgrove*, (Case No. CRTR-0918), to violating Vehicle Code section 23152, and the other two  
17 counts were dismissed. Respondent was placed on probation for 60 months; ordered to pay  
18 restitution; a \$2,250 fine, 17 days of jail; and pay Sutter County Fire Department \$124.67.

19 22. On or about May 7, 2009, in a prior disciplinary action entitled, *In the Matter of the*  
20 *Accusation Against Michael Joseph Cosgrove, M.D.*, before the Medical Board of California, in  
21 Case Number 02-2008-190755, Respondent's license was revoked, with the revocation stayed and  
22 probation granted for three years on various terms and conditions. That decision is now final and  
23 is incorporated by reference as if fully set forth herein.

24 **PRAYER**

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

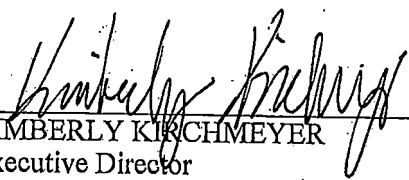
27 ///

28 ///

- 1           1.    Revoking or suspending Physician's and Surgeon's Certificate No. G 62191, issued to
- 2 Michael Joseph Cosgrove, M.D.;
- 3           2.    Revoking, suspending or denying approval of Michael Joseph Cosgrove, M.D.'s
- 4 authority to supervise physician assistants and advanced practice nurses;
- 5           3.    Ordering Michael Joseph Cosgrove, M.D., if placed on probation, to pay the Board
- 6 the costs of probation monitoring;
- 7           4.    Taking action authorized by section 822 of the Code as the Medical Board of
- 8 California, in its discretion, deems necessary and proper; and
- 9           5.    Taking such other and further action as deemed necessary and proper.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: July 11, 2018

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

SA2018301108  
33395174.doc