

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

In the Matter of the Accusation
Against:

David Michael Scarpino, M.D.

Physician's and Surgeon's
Certificate No. A 51468

Respondent.

Case No.: 800-2018-041546

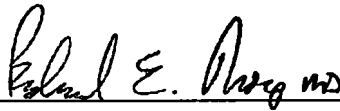
DECISION

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 December 18, 2024.

IT IS SO ORDERED: November 18, 2024.

MEDICAL BOARD OF CALIFORNIA



Richard E. Thorp, Chair
Panel B

1 ROB BONTA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 GIOVANNI F. MEJIA
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8 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:
14 **DAVID MICHAEL SCARPINO, M.D.**
18685 Main Street, A457
15 **Huntington Beach, CA 92648**
16 **Physician's and Surgeon's Certificate**
No. A 51468
17
18 Respondent.

Case No. 800-2018-041546
OAH No. 2024030431
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

21 **PARTIES**

- 22 1. Reji Varghese (Complainant) is the Executive Director of the Medical Board of
23 California (Board). He brought this action solely in his official capacity and is represented in this
24 matter by Rob Bonta, Attorney General of the State of California, by Giovanni F. Mejia, Deputy
25 Attorney General.
26 2. Respondent David Michael Scarpino, M.D. (Respondent) is represented in this
27 proceeding by attorney Robert Keith Weinberg, Esq., whose address is: 19200 Von Karman
28 Avenue, Suite 380, Irvine, CA 92612-8508.

1 or its designee, be accepted towards the fulfillment of this condition if the course would have
2 been approved by the Board or its designee had the course been taken after the effective date of
3 this Decision.

4 Respondent shall submit a certification of successful completion to the Board or its
5 designee not later than 15 calendar days after successfully completing the course, or not later than
6 15 calendar days after the effective date of the Decision, whichever is later.

7 3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective
8 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in
9 advance by the Board or its designee. Respondent shall provide the approved course provider
10 with any information and documents that the approved course provider may deem pertinent.
11 Respondent shall participate in and successfully complete the classroom component of the course
12 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
13 complete any other component of the course within one (1) year of enrollment. The medical
14 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing
15 Medical Education (CME) requirements for renewal of licensure.

16 A medical record keeping course taken after the acts that gave rise to the charges in the
17 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
18 or its designee, be accepted towards the fulfillment of this condition if the course would have
19 been approved by the Board or its designee had the course been taken after the effective date of
20 this Decision.

21 Respondent shall submit a certification of successful completion to the Board or its
22 designee not later than 15 calendar days after successfully completing the course, or not later than
23 15 calendar days after the effective date of the Decision, whichever is later.

24 4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
25 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
26 meets the requirements of title 16, California Code of Regulations (CCR) section 1358.1.
27 Respondent shall participate in and successfully complete that program. Respondent shall provide
28 any information and documents that the program may deem pertinent. Respondent shall

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

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

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

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

23 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
24 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
25 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
26 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
27 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees

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1 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
2 signed statement for approval by the Board or its designee.

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

7 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
8 date of this Decision, Respondent shall receive a notification from the Board or its designee to
9 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
10 shall cease the practice of medicine until a monitor is approved to provide monitoring
11 responsibility.

12 The monitor(s) shall submit a quarterly written report to the Board or its designee which
13 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
14 are within the standards of practice of medicine, and whether Respondent is practicing medicine
15 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
16 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
17 preceding quarter.

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

26 In lieu of a monitor, Respondent may participate in a professional enhancement program
27 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
28 review, semi-annual practice assessment, and semi-annual review of professional growth and

1 education. Respondent shall participate in the professional enhancement program at Respondent's
2 expense during the term of probation.

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

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

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

15 8. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
16 ordered to reimburse the Board its costs of investigation and enforcement, in the amount of
17 \$15,452.00. Costs shall be payable to the Medical Board of California. Failure to pay such costs
18 shall be considered a violation of probation.

19 Payment must be made in full within 30 calendar days of the effective date of the Order, or
20 by a payment plan approved by the Medical Board of California. Any and all requests for a
21 payment plan shall be submitted in writing by respondent to the Board. Failure to comply with the
22 payment plan shall be considered a violation of probation.

23 The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to
24 repay investigation and enforcement costs.

25 9. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
26 under penalty of perjury on forms provided by the Board, stating whether there has been
27 compliance with all the conditions of probation.

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

3 10. GENERAL PROBATION REQUIREMENTS.

4 Compliance with Probation Unit

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

6 Address Changes

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

12 Place of Practice

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

16 License Renewal

17 Respondent shall maintain a current and renewed California physician's and surgeon's
18 license.

19 Travel or Residence Outside California

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

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

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

1 12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
2 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
3 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
4 defined as any period of time Respondent is not practicing medicine as defined in Business and
5 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
6 patient care, clinical activity or teaching, or other activity as approved by the Board. If
7 Respondent resides in California and is considered to be in non-practice, Respondent shall
8 comply with all terms and conditions of probation. All time spent in an intensive training program
9 which has been approved by the Board or its designee shall not be considered non-practice and
10 does not relieve Respondent from complying with all the terms and conditions of probation.
11 Practicing medicine in another state of the United States or Federal jurisdiction while on
12 probation with the medical licensing authority of that state or jurisdiction shall not be considered
13 non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-
14 practice.

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

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

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

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

27 13. COMPLETION OF PROBATION. Respondent shall comply with all financial
28 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the

1 completion of probation. This term does not include cost recovery, which is due within 30
2 calendar days of the effective date of the Order, or by a payment plan approved by the Medical
3 Board and timely satisfied. Upon successful completion of probation, Respondent's certificate
4 shall be fully restored.

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

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

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

27 17. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a
28 new license or certification, or petition for reinstatement of a license, by any other health care

1 licensing action agency in the State of California, all of the charges and allegations contained in
2 Accusation No. 800-2018-041546 shall be deemed to be true, correct, and admitted by
3 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
4 restrict license.

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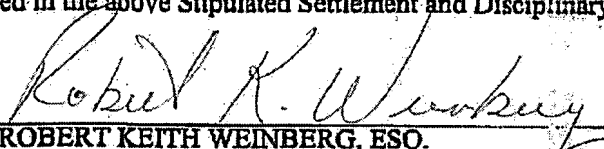
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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert Keith Weinberg, Esq. 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: 08/27/2024 
DAVID MICHAEL SCARPINO, M.D.
Respondent

I have read and fully discussed with Respondent David Michael Scarpino, 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: 8/27/24 
ROBERT KEITH WEINBERG, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: August 28, 2024

Respectfully submitted,

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General


GIOVANNI F. MEJA
Deputy Attorney General
Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 800-2018-041546

**David Michael Scarpino, M.D.
18685 Main Street, # A457
Huntington Beach, CA 92648**

ACCUSATION

**Physician's and Surgeon's Certificate
No. A 51468,**

Respondent.

PARTIES

1. Reji Varghese (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about December 2, 1992, the Medical Board issued Physician's and Surgeon's Certificate No. A 51468 to David Michael Scarpino, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2024, unless renewed.

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JURISDICTION

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

4. Section 2227, subdivision (a) of the Code states:

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

- (1) Have his or her license revoked upon order of the board.
- (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
- (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
- (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
- (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

5. Section 2234 of the Code, states:

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

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

...

6. Section 2242, subdivision (a) of the Code states:

Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct. An appropriate prior examination does not require a synchronous interaction between the patient and the licensee and can be achieved through the use of telehealth, including, but not limited to, a self-screening tool or a questionnaire, provided that the licensee complies with the appropriate standard of care.

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1 7. As in effect at all times relevant to the acts or omissions alleged herein as having
2 occurred on or before December 31, 2023, section 2266 of the Code stated:¹

3 The failure of a physician and surgeon to maintain adequate and accurate
4 records relating to the provision of services to their patients constitutes unprofessional
5 conduct.

6 8. Section 2236 of the Code states:

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

12 ...

13 (c) ... The division may inquire into the circumstances surrounding the
14 commission of a crime in order to fix the degree of discipline or to determine if the
15 conviction is of an offense substantially related to the qualifications, functions, or
16 duties of a physician and surgeon.

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

21 9. Section 2237 of the Code states:

22 (a) The conviction of a charge of violating any federal statutes or regulations or
23 any statute or regulation of this state, regulating dangerous drugs or controlled
24 substances, constitutes unprofessional conduct. The record of the conviction is
25 conclusive evidence of such unprofessional conduct. A plea or verdict of guilty or a
26 conviction following a plea of nolo contendere is deemed to be a conviction within
27 the meaning of this section.

28 (b) Discipline may be ordered in accordance with Section 2227 or the Medical
Board may order the denial of the license when the time for appeal has elapsed, or the
judgment of conviction has been affirmed on appeal, or when an order granting
probation is made suspending the imposition of sentence, irrespective of a subsequent
order under the provisions of Section 1203.4 of the Penal Code allowing such person
to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
the verdict of guilty, or dismissing the accusation, complaint, information, or
indictment.

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¹ Effective January 1, 2024, section 2266 of the Code was amended to state:

The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients for at least seven years after the last date of service to a patient constitutes unprofessional conduct.

(Stats. 2023, ch. 294, § 18.)

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10. Section 490 of the Code states, in pertinent part:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

....

11. Section 2228.1 of the Code states, in pertinent part:

(a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board... shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information internet website, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, in any of the following circumstances:

(1) A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:

...

(C) Criminal conviction directly involving harm to patient health.

...

(2) An accusation or statement of issues alleged that the licensee committed any of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and a stipulated settlement based upon a nolo contendere or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does include an express acknowledgment that the disclosure requirements of this section would serve to protect the public interest.

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1 (b) A licensee required to provide a disclosure pursuant to subdivision (a) shall
2 obtain from the patient, or the patient's guardian or health care surrogate, a separate,
signed copy of that disclosure.

3 (c) A licensee shall not be required to provide a disclosure pursuant to
4 subdivision (a) if any of the following applies:

5 (1) The patient is unconscious or otherwise unable to comprehend the
6 disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a
guardian or health care surrogate is unavailable to comprehend the disclosure and
sign the copy.

7 (2) The visit occurs in an emergency room or an urgent care facility or the visit
8 is unscheduled, including consultations in inpatient facilities.

9 (3) The licensee who will be treating the patient during the visit is not known to
10 the patient until immediately prior to the start of the visit.

11 (4) The licensee does not have a direct treatment relationship with the patient.

12 12. Section 1360 of title 16, division 13 of the California Code of Regulations (the
13 Medical Practice Regulations) states:

14 (a) For the purposes of denial, suspension or revocation of a license pursuant to
15 Section 141 or Division 1.5 (commencing with Section 475) of the code, a crime,
16 professional misconduct, or act shall be considered to be substantially related to the
17 qualifications, functions or duties of a person holding a license if to a substantial
18 degree it evidences present or potential unfitness of a person holding a license to
perform the functions authorized by the license in a manner consistent with the public
health, safety or welfare. Such crimes, professional misconduct, or acts shall include
but not be limited to the following: Violating or attempting to violate, directly or
indirectly, or assisting in or abetting the violation of, or conspiring to violate any
provision of state or federal law governing the applicant's or licensee's professional
practice.

19 (b) In making the substantial relationship determination required under
20 subdivision (a) for a crime, the board shall consider the following criteria:

21 (1) The nature and gravity of the crime;

22 (2) The number of years elapsed since the date of the crime; and

23 (3) The nature and duties of the profession.

24 13. Section 1360.1 of the Medical Practice Regulations states:

25 (a) When considering the suspension or revocation of a license under Section
26 490 of the code on the ground that a person holding a license has been convicted of a
27 crime, the board shall consider whether the licensee made a showing of rehabilitation
if the licensee completed the criminal sentence at issue without a violation of parole
or probation. In making this determination, the board shall consider the following
28 criteria:

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- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for the modification.
- (b) If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), or the suspension or revocation is based on disciplinary action as described in Section 141 of the Code, the board shall apply the following criteria in evaluating the licensee's rehabilitation:
 - (1) The nature and gravity of the act(s), professional misconduct, or crime(s).
 - (2) The total criminal record, or record of professional misconduct.
 - (3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s).
 - (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
 - (5) The criteria in subdivisions (a)(1)-(5), as applicable.
 - (6) If applicable, evidence of dismissal proceedings pursuant to Section 1203.4 of the Penal Code.
 - (7) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

14. Section 125.3 of the Code states:

- (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.
- (b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.
- (c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of

1 investigation and prosecution of the case. The costs shall include the amount of
2 investigative and enforcement costs up to the date of the hearing, including, but not
3 limited to, charges imposed by the Attorney General.

4 (d) The administrative law judge shall make a proposed finding of the amount
5 of reasonable costs of investigation and prosecution of the case when requested
6 pursuant to subdivision (a). The finding of the administrative law judge with regard to
7 costs shall not be reviewable by the board to increase the cost award. The board may
8 reduce or eliminate the cost award, or remand to the administrative law judge if the
9 proposed decision fails to make a finding on costs requested pursuant to subdivision
10 (a).

11 (e) If an order for recovery of costs is made and timely payment is not made as
12 directed in the board's decision, the board may enforce the order for repayment in any
13 appropriate court. This right of enforcement shall be in addition to any other rights
14 the board may have as to any licensee to pay costs.

15 (f) In any action for recovery of costs, proof of the board's decision shall be
16 conclusive proof of the validity of the order of payment and the terms for payment.

17 (g)(1) Except as provided in paragraph (2), the board shall not renew or
18 reinstate the license of any licensee who has failed to pay all of the costs ordered
19 under this section.

20 (2) Notwithstanding paragraph (1), the board may, in its discretion,
21 conditionally renew or reinstate for a maximum of one year the license of any
22 licensee who demonstrates financial hardship and who enters into a formal agreement
23 with the board to reimburse the board within that one-year period for the unpaid
24 costs.

25 (h) All costs recovered under this section shall be considered a reimbursement
26 for costs incurred and shall be deposited in the fund of the board recovering the costs
27 to be available upon appropriation by the Legislature.

28 (i) Nothing in this section shall preclude a board from including the recovery of
the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in
that board's licensing act provides for recovery of costs in an administrative
disciplinary proceeding.

FIRST CAUSE FOR DISCIPLINE

(Conviction of One or More Crimes Substantially Related to the Qualifications, Functions, or Duties of a Physician and Surgeon)

15. Respondent David Michael Scarpino, M.D. has subjected his Physician's and
Surgeon's Certificate No. A 51468 to disciplinary action under sections 2227, 2234, 2236, and
490 of the Code, and section 1360 of the Medical Practice Regulations, in that he was convicted

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1 of one or more offenses substantially related to the qualifications, functions, or duties of a
2 physician and surgeon. The circumstances are as follows:

3 16. On or about August 1, 2022, in the case entitled *The People of the State of California*
4 *vs. David Michael Scarpino*, case No. 18CF2704, Superior Court of California, County of
5 Orange, Respondent was convicted of one misdemeanor violation of Business and Professions
6 Code section 2242, subdivision (a) (prescribing, dispensing, or furnishing dangerous drugs
7 without an appropriate prior examination and a medical indication).

8 17. On or about August 1, 2022, in the case entitled *The People of the State of California*
9 *vs. David Michael Scarpino*, case No. 18CF2704, Superior Court of California, County of
10 Orange, Respondent was convicted of one misdemeanor violation of Business and Professions
11 Code section 2266 (failure to maintain adequate and adequate records relating to the provision of
12 services to patients).

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Conviction of Any Statute or Regulation Regulating Dangerous Drugs or**
15 **Controlled Substances)**

16 18. Respondent David Michael Scarpino, M.D. has further subjected his Physician's and
17 Surgeon's Certificate No. A 51468 to disciplinary action under sections 2227 and 2234, as
18 defined by section 2237, of the Code in that he was convicted of a charge of violating a statute or
19 regulation regulating dangerous drugs or controlled substances as more particularly alleged in
20 paragraphs 15 to 16, above, which are hereby incorporated by reference as if fully set forth
21 herein.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Violation of the Medical Practice Act)**

24 19. Respondent David Michael Scarpino, M.D. has further subjected his Physician's and
25 Surgeon's Certificate No. A 51468 to disciplinary action under sections 2227 and 2234, as
26 defined by section 2234, subdivision (a), of the Code in that he violated, directly or indirectly,
27 assisted in or abetted the violation of, or conspired to violate one or more provisions of the

28 *////*

1 Medical Practice Act as more particularly alleged in paragraphs 15 to 18, above, which are hereby
2 incorporated by reference as if fully set forth herein.

3 PRAYER

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

- 6 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 51468, issued
7 to Respondent David Michael Scarpino, M.D.;
- 8 2. Revoking, suspending or denying approval of Respondent David Michael
9 Scarpino, M.D.'s authority to supervise physician assistants and advanced practice nurses;
- 10 3. Ordering Respondent David Michael Scarpino, M.D., to pay the Board the costs of
11 the investigation and enforcement of this case, and if placed on probation, the costs of probation
12 monitoring;
- 13 4. Ordering Respondent David Michael Scarpino, M.D., if placed on probation, to
14 provide patient notification in accordance with Business and Professions Code section 2228.1;
15 and
- 16 5. Taking such other and further action as deemed necessary and proper.

17
18 DATED: JAN 25 2024

JENNA JONES FOR
REJI VARGHESE
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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