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

12 In the Matter of the First Amended Accusation
13 Against:

14 ROBERT T. PEREZ, M.D.

15 1420 E. Edinger Avenue, Suite 123
16 Santa Ana, California 92705

17 Physician's and Surgeon's Certificate G80178,

18 Respondent.

Case No. 800-2014-007888

FIRST AMENDED ACCUSATION

19
20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant), brings this First Amended Accusation solely
23 in her official capacity as Executive Director of the Medical Board of California (Board). This
24 pleading supplants the original Accusation filed in this matter on August 22, 2017.

25 2. On November 2, 1994, the Board issued Physician's and Surgeon's Certificate
26 Number G80178 to Robert Perez, M.D. (Respondent). That license was in full force and effect at
27 all times relevant to the charges brought herein and will expire on February 29, 2020, unless
28 renewed.

JURISDICTION

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

5 4. Section 2227 of the Code states, in pertinent part:

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

10 “(1) Have his or her license revoked upon order of the Board.

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

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

15 “(4) Be publicly reprimanded by the Board.

16 “(5) Have any other action taken in relation to discipline as the Board or
17 an administrative law judge may deem proper.”

18 5. Section 2234 of the Code provides that the Board shall taken disciplinary action
19 against any licensee guilty of unprofessional conduct.

20 6. Unprofessional conduct under 2234 of the Code is conduct which breaches the rules
21 or ethical code of the medical profession, or conduct which is unbecoming to a member in good
22 standing of the medical profession, and which demonstrates an unfitness to practice medicine.

23 (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

24 7. Section 726 of the Code provides,

25 “(a) The commission of any act of sexual abuse, misconduct, or relations with a patient,
26 client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any
27 person licensed under this division or under any initiative act referred to in this division.

1 “(b) This section shall not apply to consensual sexual contact between a licensee and his or
2 her spouse or person in an equivalent domestic relationship when that licensee provides medical
3 treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent
4 domestic relationship.”

5 8. Section 729 of the Code states:

6 “(a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor
7 or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or
8 alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral
9 copulation, or sexual contact with a patient or client, or with a former patient or client when the
10 relationship was terminated primarily for the purpose of engaging in those acts, unless the
11 physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the
12 patient or client to an independent and objective physician and surgeon, psychotherapist, or
13 alcohol and drug abuse counselor recommended by a third-party physician and surgeon,
14 psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual
15 exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

16 “(b) Sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug
17 abuse counselor is a public offense:

18 “(1) An act in violation of subdivision (a) shall be punishable by imprisonment in a county
19 jail for a period of not more than six months, or a fine not exceeding one thousand dollars
20 (\$1,000), or by both that imprisonment and fine.

21 “(2) Multiple acts in violation of subdivision (a) with a single victim, when the offender has
22 no prior conviction for sexual exploitation, shall be punishable by imprisonment in a county jail
23 for a period of not more than six months, or a fine not exceeding one thousand dollars (\$1,000),
24 or by both that imprisonment and fine.

25 “(3) An act or acts in violation of subdivision (a) with two or more victims shall be
26 punishable by imprisonment in the state prison for a period of 16 months, two years, or three
27 years, and a fine not exceeding ten thousand dollars (\$10,000); or the act or acts shall be
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1 punishable by imprisonment in a county jail for a period of not more than one year, or a fine not
2 exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

3 "(4) Two or more acts in violation of subdivision (a) with a single victim, when the
4 offender has at least one prior conviction for sexual exploitation, shall be punishable by
5 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16
6 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000); or the
7 act or acts shall be punishable by imprisonment in a county jail for a period of not more than one
8 year, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and
9 fine.

10 "(5) An act or acts in violation of subdivision (a) with two or more victims, and the offender
11 has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment
12 pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two
13 years, or three years, and a fine not exceeding ten thousand dollars (\$10,000).

14 "For purposes of subdivision (a), in no instance shall consent of the patient or client be a
15 defense. However, physicians and surgeons shall not be guilty of sexual exploitation for touching
16 any intimate part of a patient or client unless the touching is outside the scope of medical
17 examination and treatment, or the touching is done for sexual gratification.

18 "(c) For purposes of this section:

19 "(1) 'Psychotherapist' has the same meaning as defined in Section 728.

20 "(2) 'Alcohol and drug abuse counselor' means an individual who holds himself or herself
21 out to be an alcohol or drug abuse professional or paraprofessional.

22 "(3) 'Sexual contact' means sexual intercourse or the touching of an intimate part of a
23 patient for the purpose of sexual arousal, gratification, or abuse.

24 "(4) 'Intimate part' and 'touching' have the same meanings as defined in Section 243.4 of
25 the Penal Code.

26 "(d) In the investigation and prosecution of a violation of this section, no person shall seek
27 to obtain disclosure of any confidential files of other patients, clients, or former patients or clients
28 of the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

1 "(e) This section does not apply to sexual contact between a physician and surgeon and his
2 or her spouse or person in an equivalent domestic relationship when that physician and surgeon
3 provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person
4 in an equivalent domestic relationship.

5 "(f) If a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in a
6 professional partnership or similar group has sexual contact with a patient in violation of this
7 section, another physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in
8 the partnership or group shall not be subject to action under this section solely because of the
9 occurrence of that sexual contact."

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Sexual Exploitation)

12 9. Respondent is subject to disciplinary action under Code section 729 in that engaged
13 in sexual exploitation, specifically by engaging in sexual contact with a patient. The
14 circumstances are as follows:

15 **Patient A.**

16 A. In or around July 2014, Patient A., an adult female, began receiving medical /
17 psychiatric care from Respondent. On August 14, 2014, Respondent prescribed to Patient A,
18 Clonazepam, .5 mg, # 120, Prescription No 4429026, with three (3) refills.¹

19 B. Starting in about August 2014, Respondent and Patient A. began intimate sexual
20 contact and Patient A. subsequently moved in with Respondent.

21 C. On or about September 11, 2014, Respondent prescribed to Patient A Clonazepam, .5
22 mg, # 120, Prescription No 4429026, with 4 refills.

23 D. Respondent and Patient A. were married on September 27, 2014.

24 E. Respondent and Patient A.'s divorce is currently pending.

25 ¹ Clonazepam, sold under the brand name Klonopin among others, is a medication used to
26 prevent and treat seizures, panic disorder, and for the movement disorder known as akathisia. It
27 is a tranquilizer of the benzodiazepine class. Taken by mouth, it begins having an effect within
28 an hour and lasts between six and 12 hours. Common side effects include sleepiness, poor
coordination, and agitation. Long-term use may result in tolerance, dependence, and withdrawal
symptoms if stopped abruptly. Dependence occurs in one-third of people who take clonazepam
for longer than four weeks, and it may increase risk of suicide in people who are depressed.

1 **SECOND CAUSE FOR DISCIPLINE**

2 (Sexual Misconduct)

3 10. By reason of the facts set forth above in the First Cause for Discipline, Respondent is
4 subject to disciplinary action under Code section 726 for engaging in sexual relations with a
5 patient.

6 **THIRD CAUSE FOR DISCIPLINE**

7 (Unprofessional Conduct)

8 11. By reason of the facts set forth above in the First Cause for Discipline, Respondent is
9 subject to disciplinary action under section 2234 of the Code for unprofessional conduct in the
10 care and treatment of Patient A.

11 **DISCIPLINE CONSIDERATIONS**

12 12. To determine the degree of discipline, if any, to be imposed on Respondent,
13 Complainant alleges that on or about December 8, 2017, in a prior disciplinary action entitled *In*
14 *the Matter of the Accusation Against Robert T. Perez*, Case No. 04-2013-234367, before the
15 Medical Board of California, Respondent's license was revoked with revocation stayed for thirty-
16 five (35) months on terms and conditions for violations of gross negligence, repeated negligent
17 acts, dishonest acts, failure to maintain adequate and accurate records, and unprofessional
18 conduct. Probation will expire on or about December 8, 2020. That decision is now final and is
19 incorporated by reference as if fully set forth.

20 **PRAYER**

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

23 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 80178,
24 issued to Robert T. Perez, M.D.;

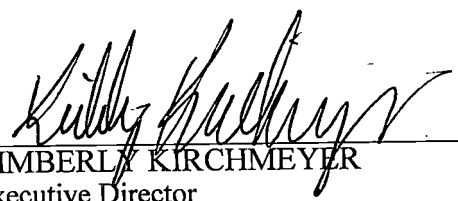
25 2. Revoking, suspending or denying approval of his authority to supervise physician
26 assistants and advance practice nurses;

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

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

DATED: April 5, 2018



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

Complainant

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