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

12 In the Matter of the Accusation Against:

Case No. 800-2014-007888

13 **ROBERT T. PEREZ, M.D.**
14 1420 E. Edinger Avenue, Suite 123
Santa Ana, CA 92705

ACCUSATION

15 Physician's and Surgeon's Certificate
16 No. G80178,

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about November 2, 1994, the Board issued Physician's and Surgeon's
24 Certificate Number G80178 to Robert Perez, M.D. (Respondent). This license was in full force
25 and effect at all times relevant to the charges brought herein and expires on February 28, 2018,
26 unless renewed.

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JURISDICTION

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

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

6 “(a) A licensee whose matter has been heard by an administrative law judge of the
7 Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or
8 whose default has been entered, and who is found guilty, or who has entered into a 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, states:

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

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

24 “(b) Gross negligence.

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

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

4 "(2) When the standard of care requires a change in the diagnosis, act, or omission
5 that constitutes the negligent act described in paragraph (1), including, but not limited to, a
6 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
7 applicable standard of care, each departure constitutes a separate and distinct breach of the
8 standard of care.

9 "(d) Incompetence.

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

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

13 "...."

14 6. Section 2266 of the Code states: AThe failure of a physician and surgeon to
15 maintain adequate and accurate records relating to the provision of services to their patients
16 constitutes unprofessional conduct.@

17 7. Unprofessional conduct under 2234 of the Code is conduct which breaches the rules
18 or ethical code of the medical profession, or conduct which is unbecoming to a member in good
19 standing of the medical profession, and which demonstrates an unfitness to practice medicine.
20 (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

21 8. Section 729 of the Code states:

22 "(a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor
23 or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or
24 alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral
25 copulation, or sexual contact with a patient or client, or with a former patient or client when the
26 relationship was terminated primarily for the purpose of engaging in those acts, unless the
27 physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the

1 patient or client to an independent and objective physician and surgeon, psychotherapist, or
2 alcohol and drug abuse counselor recommended by a third-party physician and surgeon,
3 psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual
4 exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

5 "(b) Sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug
6 abuse counselor is a public offense:

7 "(1) An act in violation of subdivision (a) shall be punishable by imprisonment in a county
8 jail for a period of not more than six months, or a fine not exceeding one thousand dollars
9 (\$1,000), or by both that imprisonment and fine.

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

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

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

26 "(5) An act or acts in violation of subdivision (a) with two or more victims, and the offender
27 has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment

1 pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two
2 years, or three years, and a fine not exceeding ten thousand dollars (\$10,000).

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

7 "(c) For purposes of this section:

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

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

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

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

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

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

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Sexual Exploitation)

3 9. Respondent is subject to disciplinary action under Code section 729 in that he is
4 guilty of sexual exploitation by a physician, by engaging in sexual contact with a patient. The
5 circumstances are as follows:

6 **Patient M.A.**

7 A. In or around July 2014, Patient M.A.,¹ a female patient, began receiving treatment
8 from Respondent. Respondent prescribed to M.A on August 14, 2014, Clonazepam, .5 mg,
9 # 120, Prescription No 4429026, with three (3) refills..

10 B. Starting in about August 2014, Respondent and M.A. began a sexual relationship and
11 Patient M.A. subsequently moved in with Respondent.

12 C. On or about September 11, 2014, during the personal relationship, Respondent
13 prescribed to M.A Clonazepam, .5 mg, # 120, Prescription No 4429026, with 4 refills.

14 D. Respondent and M.A. were married on September 29, 2014.

15 E. Respondent and M.A.'s divorce is currently pending.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (Sexual Misconduct)

18 10. Respondent is subject to disciplinary action under Code section 726 in that he
19 committed acts of sexual abuse and misconduct with Patient M.A. The facts and circumstances
20 alleged in Paragraph 9 are incorporated herein as if fully set forth.

21 **THIRD CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct)

23 11. Respondent is subject to disciplinary action under Code section 2234 in that he
24 engaged in unprofessional conduct in the care and treatment of Patient M.A. The facts and
25 circumstances alleged in Paragraphs 9 and 10 are incorporated herein as if fully set forth.

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27 ¹The names of patients are kept confidential to protect their privacy rights, and, though known
28 to respondent, will be revealed to him upon receipt of a timely request for discovery.


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P R A Y E R

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

- 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 80178, issued to Robert T. Perez, M.D.;
- 2. Revoking, suspending or denying approval of Robert T. Perez, M.D.'s authority to supervise physician assistants and advance practice nurses;
- 3. Ordering Robert T. Perez, M.D. to pay the Medical Board of California, if placed on probation, the costs of probation monitoring; and
- 4. Taking such other and further action as deemed necessary and proper.

DATED: August 22, 2017


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

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