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

In the Matter of the Amended Accusation Against:

HOWARD P. LEVY, D.O.
57370 29 Palms Highway, Suite 203
Yucca Valley, CA 92284

Osteopathic Physician's and Surgeon's
Certificate No. 20A4148

Respondent

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby
adopted by the Osteopathic Medical Board of California, Department of Consumer Affairs,
as its Decision in the above-entitled matter.

This Decision shall become effective on 8/15/2018.

It is so ORDERED 7/16/2018.

JOSEPH A. ZAMMUTO, D.O., PRESIDENT
FOR THE OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
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OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
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In the Matter of the Amended Accusation
Against:

HOWARD P. LEVY, D.O.
57370 29 Palms Highway, Suite 203
Yucca Valley, CA 92284
Osteopathic Physician’s and Surgeon’s Certificate No. 20A 4148,
Respondent.

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

PARTIES

1. Angelina M. Burton (Complainant) is the Executive Director of the Osteopathic
Medical Board of California (Board). She brought this action solely in her official capacity and is
represented in this matter by Xavier Becerra, Attorney General of the State of California, by
Wendy Widlus, Deputy Attorney General.

2. Respondent Howard P. Levy, D.O. is represented in this proceeding by attorney
Jeffrey G. Keane, Esq., whose address is: 74770 Highway 111, Suite 201, Indian Wells, CA
92210.
3. On or about August 3, 1997, the Board issued Osteopathic Physician’s and Surgeon’s Certificate No. 20A 4148 to Howard P. Levy, D.O. (Respondent). The Osteopathic Physician’s and Surgeon’s Certificate was in full force and effect at all times relevant to the charges brought in Amended Accusation No. 900-2014-000044, and will expire on February 29, 2020, unless renewed.

JURISDICTION

4. Amended Accusation No. 900-2014-000044 was filed before the Board, and is currently pending against Respondent. The Amended Accusation and all other statutorily required documents were properly served on Respondent on November 28, 2017. Respondent timely filed his Notice of Defense contesting the Amended Accusation.

5. A copy of Amended Accusation No. 900-2014-000044 is attached as exhibit A and incorporated herein by reference.

ADVICEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Amended Accusation No. 900-2014-000044. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Amended
Accusation No. 900-2014-000044, if proven at a hearing, constitute cause for imposing discipline.

10. For the purpose of resolving the Amended Accusation without the expense and uncertainty of further proceedings, Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges in the Amended Accusation, and Respondent hereby gives up his right to contest those charges.

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

CONTINGENCY

12. This stipulation shall be subject to approval by the Osteopathic Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Osteopathic Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it.

If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, shall have the same force and effect as the originals.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Osteopathic Physician's and Surgeon's Certificate No.
20A 4148 issued to Respondent Howard P. Levy, D.O. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.

2. **Quarterly Reports.** Respondent shall submit to the Board quarterly declaration under penalty of perjury on the Quarterly Report of Compliance Form, OMB 10 (07/08) which is hereby incorporated by reference, stating whether there has been compliance with all the conditions of probation.

3. **Probation Surveillance Program.** Respondent shall comply with the Board’s probation surveillance program. Respondent shall, at all times, keep the Board informed of his addresses of business and residence which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Board. Under no circumstances shall a post office box serve as an address of record.

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

4. **Interviews with Medical Consultants.** Respondent shall appear in person for interviews with the Board’s medical consultants upon request at various intervals and with reasonable notice.

5. **Cost Recovery.** The Respondent is hereby ordered to reimburse the Board the amount of $15,000.00 in five quarterly payments at $3,000 per quarter for its investigative and prosecution costs. Failure to reimburse the Board’s cost of its investigation and prosecution shall constitute a violation of the probation order, unless the Board agrees in writing to payment by an installment plan because of financial hardship.

6. **License Surrender.** Following the effective date of this decision, if Respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions.
conditions of probation, Respondent may voluntarily tender his certificate to the Board. The Board reserves the right to evaluate the Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the terms and conditions of probation.

7. **Tolling for Out-of-State Practice or Residence, or In-State Non-Practice (Inactive License).** In the event Respondent should leave California to reside or to practice outside the State or for any reason should Respondent stop practicing medicine in California, Respondent shall notify the board or its designee in writing within ten (10) days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty days in which Respondent is not engaging in any activities defined in Section 2051 and/or 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the Board or its designee in or out of state shall be considered as time spent in the practice of medicine. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary period.

8. **Probation Violation/Completion of Probation.** If Respondent violates probation in any respect, the Board may revoke probation and carry out the disciplinary order that was stayed after giving Respondent notice and the opportunity to be heard. If an Accusation and/or Petition to revoke is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. Upon successful completion of probation, Respondent's certificate will be fully restored.

9. **Controlled Drugs - Partial Restriction.** Respondent shall not prescribe, administer, dispense, order, or possess any Schedule II and III controlled substances as defined by the California Uniform Controlled Substances Act, except for ordering or possessing medications lawfully prescribed to Respondent for a bona fide illness or condition by another practitioner, until Respondent completes a pharmacology course approved in advance by the Board or its designee, and has been so notified by the Board in writing.
10. **Controlled Drugs - Maintain Record.** Respondent shall maintain a record of all controlled substances prescribed, dispensed or administered by Respondent during probation, showing all the following: (1) the name and address of the patient, (2) the date, (3) the character and quantity of controlled substances involved and (4) the pathology and purpose for which the controlled substance was furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the Board or its designee, upon request.

11. **Pharmacology Course.** Within sixty (60) days of the effective date of this decision, Respondent shall enroll in a pharmacology course approved in advance by the Board or its designee, and shall successfully complete the course during the first year of probation. The pharmacology course shall be a minimum of sixteen (16) hours, and may not be taken on-line. This course shall be in addition to the continuing medical education requirements for re-licensure.

12. **Medical Ethics.** Within sixty (60) days of the effective date of this decision, Respondent shall enroll in a two (2) day course in medical ethics, approved in advance by the Board or its designee, and shall successfully complete the course during the first year of probation. The medical ethics course shall be a minimum of sixteen (16) hours, and may not be taken on-line. This course shall be in addition to the continuing medical education requirements for re-licensure. Respondent shall provide proof of attendance for the medical ethics course.

13. **Clinical Competence Assessment and Training Program.** Within thirty (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board for its prior approval, a clinical competence assessment and training program by Affiliated Monitors, Inc. or by the Physician Assessment and Education (PACE) Program of the University of California, San Diego. The exact number of hours and the specific content of the program shall be determined by the Board or its designee based on the results of the clinical assessment and shall be related to the violations charged in the Amended Accusation involving nine (9) patients, SG, TT, IN, AS, LW, EM, DP, MW, and DP2.

14. **Monitoring – Practice.** Within ninety (90) days of the effective date of this decision, Respondent shall contract with Affiliated Monitors, Inc. Respondent shall pay all monitoring
The Board or its designee shall provide the approved monitor with copies of the Decision and Amended Accusation, and a proposed monitoring plan. Within fifteen (15) calendar days of receipt of the Decision, Amended Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Amended Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

For the first two (2) years of probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to contract with the approved monitor within ninety (90) calendar days of the effective date of this decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until Respondent contracts with the approved monitor.

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

If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, as a replacement monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties certified or certified by the American Osteopathic Association. A monitor...
shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor.

The replacement monitor must assume responsibility as the monitor within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of the above referenced practice monitor Respondent may participate in a professional enhancement program approved in advance by the Board or its designee, or an enhancement program approved by the Board or its designee equivalent to the Physician Enhancement Program (“PEP”), that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the monitoring aspect of the professional enhancement at Respondent's expense during at least the first two years of the term of probation.

The monitoring portion of the program shall last two years, after the initial assessment is completed. Respondent shall successfully complete the professional enhancement program and shall pay the cost of such program.
ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jeffrey G. Keane, Esq. I understand the stipulation and the effect it will have on my Osteopathic 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 Osteopathic Medical Board of California.

DATED: 5/11/18

HOWARD P. LEVY, D.O.
Respondent

I have read and fully discussed with Respondent HOWARD P. LEVY, D.O. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 5-10-18

JEFFREY G. KEANE, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

WENDY WIDLUS
Deputy Attorney General
Attorneys for Complainant