

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

In the Matter of the First Amended)
Accusation Against:)
)
)
David Jee Wei Chao, M.D.)
)
Physician's and Surgeon's)
Certificate No. G 78677)
)
Respondent)
_____)

Case No. 10-2011-214928

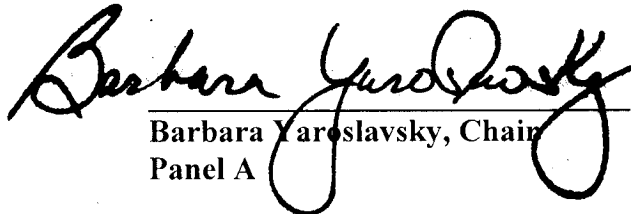
DECISION

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 April 25, 2014.

IT IS SO ORDERED: March 28, 2014.

MEDICAL BOARD OF CALIFORNIA



Barbara Yaroslavsky, Chair
Panel A

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MATTHEW M. DAVIS
Deputy Attorney General
4 State Bar No. 202766
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
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8 *Attorneys for Complainant*

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

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

15 **DAVID JEE WEI CHAO, M.D.**
16 **5471 Kearny Villa Road, Suite 200**
San Diego, CA 92123

17 **Physician's and Surgeon's Certificate**
No. G78677

Respondent.

Case No. 10-2011-214928

OAH No. 2013020630

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
20 above-entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (hereinafter "complainant") is the Interim Executive
23 Director of the Medical Board of California and is represented herein by Kamala D. Harris,
24 Attorney General of the State of California, by Matthew M. Davis, Deputy Attorney General.

25 2. Respondent David Jee Wei Chao, M.D. (hereinafter "respondent"), is
26 represented herein by Robert W. Frank, Esq., whose address is 1010 Second Avenue, Suite 2500,
27 San Diego, CA 92101.

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1 **JURISDICTION**

2 3. On April 20, 1994, the Medical Board of California (Board) issued
3 Physician's and Surgeon's Certificate Number G 78677 to respondent. The Physician's and
4 Surgeon's Certificate was in full force and effect at all times relevant to the charges and
5 allegations in First Amended Accusation No. 10-2011-214928 and will expire on March 31,
6 2014, unless renewed.

7 4. On July 27, 2012, complainant Linda K. Whitney, in her then
8 official capacity as the Executive Director of the Board, filed Accusation No. 10-2011-214928
9 against respondent. On July 27, 2012, respondent was served with a true and correct
10 copy of Accusation No. 10-2011-214928, together with true and correct copies of all other
11 statutorily required documents, at his address of record on file with the Board which was and is:
12 5471 Kearney Villa Rd., Suite 200, San Diego, CA 92123. On or about August 8, 2012,
13 respondent filed a Notice of Defense and requested a hearing on the charges and allegations
14 contained in Accusation No. 10-2011-214928.

15 5. On August 26, 2013, complainant Kimberly Kirchmeyer, in her official
16 capacity as the Interim Executive Director of the Board, filed First Amended Accusation No. 10-
17 2011-214928 against respondent. On August 26, 2013, respondent was served with a true and
18 correct copy of First Amended Accusation No. 10-2011-214928, together with true and correct
19 copies of all other statutorily required documents, at his address of record on file with the Board
20 which was and is: 5471 Kearney Villa Rd., Suite 200, San Diego, CA 92123. A true and correct
21 copy of First Amended Accusation No. 10-2011-214928 is attached hereto as Attachment "A"
22 and incorporated by reference as if fully set forth herein.

23 **ADVISEMENT AND WAIVERS**

24 6. Respondent has carefully read, fully discussed with counsel, and fully
25 understands the charges and allegations in First Amended Accusation No. 10-2011-214928.
26 Respondent also has carefully read, fully discussed with counsel, and fully understands the effects
27 of this Stipulated Settlement and Disciplinary Order.

1 7. Respondent is fully aware of his legal rights in this matter, including the
2 right to a hearing on the charges and allegations in First Amended Accusation No. 10-2011-
3 214928; the right to confront and cross-examine the witnesses against him; the right to present
4 evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the
5 attendance of witnesses and the production of documents; the right to reconsideration and court
6 review of an adverse decision; and all other rights accorded by the California Administrative
7 Procedure Act, the California Code of Civil Procedure and other applicable laws, having been
8 fully advised of same by his attorney of record, Robert W. Frank, Esq.

9 8. Respondent, having the benefit of counsel, hereby voluntarily, knowingly,
10 and intelligently waives and gives up each and every right set forth above.

11 **CULPABILITY**

12 9. Respondent does not contest that, at an administrative hearing, complainant
13 could establish a *prima facie* case with respect to the charges and allegations in First Amended
14 Accusation No. 10-2011-214928, a true and correct copy of which is attached hereto as
15 Attachment "A," and that he has thereby subjected his Physician's and Surgeon's Certificate
16 G 78677 to disciplinary action. Respondent further agrees to be bound by the Board's imposition
17 of discipline as set forth in the Disciplinary Order below.

18 10. Respondent agrees that if he ever petitions for early termination or
19 modification of probation, or if an accusation and/or petition to revoke probation is filed against
20 him before the Medical Board of California, all of the charges and allegations contained in First
21 Amended Accusation No. 10-2011-214928 shall be deemed true, correct and fully admitted by
22 respondent for purposes of any such proceeding or any other licensing proceeding involving
23 respondent in the State of California.

24 **CONTINGENCY**

25 11. The parties agree that this Stipulated Settlement and Disciplinary Order
26 shall be submitted to the Board for its consideration in the above-entitled matter and, further, that
27 the Board shall have a reasonable period of time in which to consider and act on this Stipulated
28 Settlement and Disciplinary Order after receiving it. By signing this stipulation, respondent fully

1 understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation
2 prior to the time the Board considers and acts upon it.

3 12. The parties agree that this Stipulated Settlement and Disciplinary Order
4 shall be null and void and not binding upon the parties unless approved and adopted by the Board,
5 except for this paragraph, which shall remain in full force and effect. Respondent fully
6 understands and agrees that in deciding whether or not to approve and adopt this Stipulated
7 Settlement and Disciplinary Order, the Board may receive oral and written communications from
8 its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall
9 not disqualify the Board, any member thereof, and/or any other person from future participation
10 in this or any other matter affecting or involving respondent. In the event that the Board, in its
11 discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with the
12 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
13 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
14 hereto. Respondent further agrees that should the Board reject this Stipulated Settlement and
15 Disciplinary Order for any reason, respondent will assert no claim that the Board, or any member
16 thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated
17 Settlement and Disciplinary Order or of any matter or matters related hereto.

18 **ADDITIONAL PROVISIONS**

19 13. This Stipulated Settlement and Disciplinary Order is intended by the
20 parties herein to be an integrated writing representing the complete, final and exclusive
21 embodiment of the agreements of the parties in the above-entitled matter.

22 14. The parties agree that copies of this Stipulated Settlement and Disciplinary
23 Order, including copies of the signatures of the parties, may be used in lieu of original documents
24 and signatures and, further, that such copies and signatures shall have the same force and effect as
25 originals.

26 15. In consideration of the foregoing admissions and stipulations, the parties
27 agree the Board may, without further notice to or opportunity to be heard by respondent, issue
28 and enter the following Disciplinary Order:

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No.
3 G 78677 issued to respondent David Jee Wei Chao, M.D., (respondent) is revoked. However, the
4 revocation is stayed and respondent is placed on probation for five (5) years from the effective
5 date of this decision on the following terms and conditions:

6 **1. Medical Record Keeping Course**

7 Within 60 calendar days of the effective date of this Decision, respondent shall
8 enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course
9 offered by the Physician Assessment and Clinical Education Program, University of California,
10 San Diego School of Medicine (Program), approved in advance by the Board or its designee.
11 Respondent shall provide the program with any information and documents that the Program may
12 deem pertinent. Respondent shall participate in and successfully complete the classroom
13 component of the course not later than six (6) months after respondent's initial enrollment.
14 Respondent shall successfully complete any other component of the course within one (1) year of
15 enrollment. The medical record keeping course shall be at respondent's expense and shall be in
16 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

22 Respondent shall submit a certification of successful completion to the Board or its
23 designee not later than 15 calendar days after successfully completing the course, or not later than
24 15 calendar days after the effective date of the Decision, whichever is later.

25 **2. Professionalism Program (Ethics Course)**

26 Within 60 calendar days of the effective date of this Decision, respondent shall
27 enroll in a professionalism program, that meets the requirements of Title 16, California Code of
28 Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that

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

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

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

16 3. Clinical Training Program

17 Within 60 calendar days of the effective date of this Decision, respondent shall
18 enroll in a clinical training or educational program equivalent to the Physician Assessment and
19 Clinical Education Program (PACE) offered at the University of California - San Diego School of
20 Medicine ("Program"). Respondent shall successfully complete the Program not later than six (6)
21 months after respondent's initial enrollment unless the Board or its designee agrees in writing to
22 an extension of that time.

23 The Program shall consist of a Comprehensive Assessment program comprised of
24 a two-day assessment of respondent's physical and mental health; basic clinical and
25 communication skills common to all clinicians; and medical knowledge, skill and judgment
26 pertaining to respondent's area of practice in which respondent was alleged to be deficient, and at
27 minimum, a 40 hour program of clinical education in the area of practice in which respondent was
28 alleged to be deficient and which takes into account data obtained from the assessment,

1 Decision(s), Accusation(s), and any other information that the Board or its designee deems
2 relevant. Respondent shall pay all expenses associated with the clinical training program.

3 Based on respondent's performance and test results in the assessment and clinical
4 education, the Program will advise the Board or its designee of its recommendation(s) for the
5 scope and length of any additional educational or clinical training, treatment for any medical
6 condition, treatment for any psychological condition, or anything else affecting respondent's
7 practice of medicine. Respondent shall comply with Program recommendations.

8 At the completion of any additional educational or clinical training, respondent
9 shall submit to and pass an examination. Determination as to whether respondent successfully
10 completed the examination or successfully completed the program is solely within the program's
11 jurisdiction.

12 If respondent fails to enroll, participate in, or successfully complete the clinical
13 training program within the designated time period, respondent shall receive a notification from
14 the Board or its designee to cease the practice of medicine within three (3) calendar days after
15 being so notified. The respondent shall not resume the practice of medicine until enrollment or
16 participation in the outstanding portions of the clinical training program have been completed. If
17 the respondent did not successfully complete the clinical training program, the respondent shall
18 not resume the practice of medicine until a final decision has been rendered on the accusation
19 and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of
20 the probationary time period.

21 **4. Monitoring - Practice**

22 Within 30 calendar days of the effective date of this Decision, respondent shall
23 submit to the Board or its designee for prior approval as a practice monitor, the name and
24 qualifications of one or more licensed physicians and surgeons whose licenses are valid and in
25 good standing, and who are preferably American Board of Medical Specialties (ABMS) certified.
26 A monitor shall have no prior or current business or personal relationship with respondent, or
27 other relationship that could reasonably be expected to compromise the ability of the monitor to
28 render fair and unbiased reports to the Board, including but not limited to any form of bartering,

1 shall be in respondent's field of practice, and must agree to serve as respondent's monitor.

2 Respondent shall pay all monitoring costs.

3 The Board or its designee shall provide the approved monitor with copies of the
4 Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of
5 receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit
6 a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands
7 the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor
8 disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan
9 with the signed statement for approval by the Board or its designee.

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

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

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

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

9 In lieu of a monitor, respondent may participate in a professional enhancement
10 program equivalent to the one offered by the Physician Assessment and Clinical Education
11 Program at the University of California, San Diego School of Medicine, that includes, at
12 minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of
13 professional growth and education. Respondent shall participate in the professional enhancement
14 program at respondent's expense during the term of probation.

15 **5. Notification**

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

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

25 **6. Supervision of Physician Assistants**

26 During probation, respondent is prohibited from supervising physician assistants.

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7. 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.

8. Quarterly Declarations

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

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

9. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

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

Place of Practice

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

License Renewal

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

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Travel or Residence Outside California

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

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

10. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent’s place of business or at the probation unit office, with or without prior notice throughout the term of probation.

11. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent’s return to practice. Non-practice is defined as any period of time respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent’s period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board’s “Manual of Model Disciplinary Orders and Disciplinary Guidelines” prior to resuming the practice of medicine.

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1 Respondent's period of non-practice while on probation shall not exceed two (2)
2 years. Periods of non-practice will not apply to the reduction of the probationary term.
3 Periods of non-practice will relieve respondent of the responsibility to comply with the
4 probationary terms and conditions with the exception of this condition and the following terms
5 and conditions of probation: Obey All Laws; and General Probation Requirements.

6 **12. Completion of Probation**

7 Respondent shall comply with all financial obligations (e.g., restitution, probation
8 costs) not later than 120 calendar days prior to the completion of probation. Upon successful
9 completion of probation, respondent's certificate shall be fully restored.

10 **13. Violation of Probation**

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

17 **14. License Surrender**

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

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15. **Probation Monitoring Costs**

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

ACCEPTANCE

I, David Jee Wei Chao, M.D., have carefully read this Stipulated Settlement and Disciplinary Order and, having the benefit of counsel, enter into it freely, voluntarily, intelligently, and with full knowledge of its force and effect on my Physician's and Surgeon's Certificate No. G 78677. I fully understand that, after signing this stipulation, I may not withdraw from it, that it shall be submitted to the Medical Board of California for its consideration, and that the Board shall have a reasonable period of time to consider and act on this stipulation after receiving it. By entering into this stipulation, I fully understand that, upon acceptance by the Board, my Physician's and Surgeon's Certificate No. G 78677 will be revoked, with the revocation stayed, and I shall be placed on probation and required to comply with all of the terms and conditions of the Disciplinary Order set forth above. I also fully understand that any failure to comply with the terms and conditions of the Disciplinary Order set for above shall constitute unprofessional conduct and a violation or violations of probation, will subject to my Physician's and Surgeon's Certificate No. G 78677 to further disciplinary action and, in addition, that the Board, after giving me notice and opportunity to be heard, may carry out the disciplinary order that was stayed, i.e., revocation of my Physician's and Surgeon's Certificate No. G 78677.

DATED: 2/12/14 
DAVID JEE WEI CHAO, M.D.
Respondent

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I have read and fully discussed with respondent David Jee Wei Chao, 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: 2-12-14 


ROBERT W. FRANK, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: 2/12/14

Respectfully Submitted,
KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General


MATTHEW M. DAVIS
Deputy Attorney General
Attorneys for Complainant

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Attachment "A"
First Amended Accusation No. 10-2011-214928

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MATTHEW M. DAVIS
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6 San Diego, CA 92186-5266
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7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

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

Case No. 10-2011-214928

14 **DAVID JEE WEI CHAO, M.D.**
15 **5471 Kearny Villa Road, Suite 200**
San Diego, CA 92123

FIRST AMENDED ACCUSATION

(Gov. Code Section 11507.)

16 **Physician's and Surgeon's Certificate**
17 **No. G78677**

Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation
22 solely in her official capacity as the Interim Executive Director of the Medical Board of
23 California, Department of Consumer Affairs.

24 2. On or about April 20, 1994, the Medical Board of California issued Physician's
25 and Surgeon's Certificate Number G78677 to DAVID JEE WEI CHAO, M.D. (Respondent). The
26 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
27 charges brought herein and will expire on March 31, 2014, unless renewed.

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1 JURISDICTION

2 3. This First Amended Accusation which supersedes the Accusation filed on July
3 27, 2012, in the above-entitled matter, is brought before the Medical Board of California (Medical
4 Board) for the Department of Consumer Affairs, State of California, under the authority of the
5 following laws. All section references are to the Business and Professions Code (Code) unless
6 otherwise indicated.

7 4. In a previous disciplinary action entitled “In the Matter of the Accusation
8 Against David Jee Wei Chao, M.D.,” Case No. 10-2007-187749, the Board issued a Decision and
9 Order, effective June 8, 2012, in which respondent’s Physician’s and Surgeon’s Certificate No. G
10 78677 was publicly reprimanded. Respondent was additionally required to complete a medical
11 records keeping course and a professionalism (ethics) course. A true and correct copy of that
12 decision and order is attached hereto as Exhibit A and incorporated by reference as if fully set
13 forth herein.

14 5. Section 2227 of the Code provides that a licensee who is found guilty under
15 the Medical Practice Act may have his or her license revoked, suspended for a period not to
16 exceed one year, placed on probation and required to pay the costs of probation monitoring, be
17 publicly reprimanded and ordered to complete relevant educational courses, or have such other
18 action taken in relation to discipline as the Board deems proper.

19 6. Section 2234 of the Code states:

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

23 “...

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

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

“... ”

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

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

“... ”

7. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.”

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

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

9. Respondent has subjected his Physician’s and Surgeon's Certificate Number G78677 to disciplinary action under sections 2227 and 2234, as defined in section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of patients K. A., and M.C. as more particularly alleged hereinafter:

1 **Patient K.A.**

2 A. On about May 30, 2007, respondent performed a right Birmingham Hip
3 Resurfacing (BHR)¹ procedure on patient K.A. at Oasis Surgery Center. Respondent noted
4 that he had to perform a difficult complete capsulotomy to allow for complete exposure of
5 the surgical field due to the patient's very large size.

6 B. During the BHR procedure, patient K.A.'s blood pressure dropped from
7 100/70 to 70/50. Dr. M.L., an anesthesiologist, administered 1000 cc Hetastarch and noted
8 that patient K.A.'s blood pressure rose to 90/50.

9 C. On or about May 30, 2007, respondent noted patient K.A.'s blood loss at
10 500cc. Dr. M.L. noted patient K.A.'s blood loss at 1.5 to 2.0 liters.

11 D. On or about May 30, 2007, a post operative standard neurovascular check
12 revealed patient K.A. had decreased sensation, decreased motor function and no palpable or
13 Doppler pulse in the right lower extremity. Patient K.A. was emergently transferred to
14 Scripps Mercy Hospital for a CT angiogram.

15 E. On or about May 30, 2007, patient K.A. underwent a CT angiogram at
16 Scripps Mercy Hospital that revealed acute thrombosis of the right external iliac artery
17 extending through the visualized portions of the right superficial femoral artery and a small
18 to moderate sized hematoma anterior to the right hip and in the lower portion of the anterior
19 abdominal wall.

20 F. On or about May 30, 2007, Patient K.A. underwent a thrombectomy at
21 Scripps Mercy Hospital that was performed by Dr. M.S. and assisted by respondent.
22 Patient K.A. exhibited a laceration of the common femoral artery and vein and copious
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25 ¹ The BHR procedure consists of placing a cobalt-chrome metal cap, which is hollow and
26 shaped like a mushroom, over the head of the femur while a matching metal cup (similar to what
27 is used with a total hip replacement) is placed in the acetabulum, replacing the articulating
28 surfaces of the patient's hip joint and removing very little bone compared to a total hip
 replacement.

1 blood loss. Respondent noted that patient K.A. suffered iatrogenic damage in the femoral
2 triangle.

3 G. On or about June 28, 2007, patient K.A. was discharged from Scripps
4 Mercy Hospital. Subsequent to discharge from Scripps Mercy Hospital, patient K.A.
5 continued to have significant neurological problems in the right lower extremity including,
6 but not limited to, decreased motor nerve responses in the right tibial nerve, right sural
7 nerve and no motor nerve response in the right peroneal nerve.

8 H. Respondent committed gross negligence in his care and treatment of
9 patient K.A. which included, but was not limited to, the following:

10 (i) Respondent traumatized patient K.A.'s neurovascular structures
11 adjacent to the anterior acetabulum with the capsulotomy scissors and/or the
12 acetabular reamer.

13 **Patient M.C.**

14 I. On about February 13, 2007, respondent performed a left total knee
15 arthroplasty with correction of varus deformity and left knee lateral retinacular release on
16 patient M.C. at Scripps Memorial Hospital in La Jolla. Pre-operatively patient M.C. had a
17 history of hypertension and type II diabetes and was maintained on several medications
18 including, Lipitor, Lisinopril, Actos, and Atenolol

19 J. On about February 13, 2007, respondent made post operative orders that
20 failed to order monitoring of patient M.C.'s blood sugar levels, failed to order patient
21 M.C.'s pre-operative medications including, beta blockers and diabetic medication, and
22 failed to order any VTE prophylaxis². Respondent further failed to order a diabetic diet for
23 patient M.C.

24 K. Respondent committed gross negligence in his care and treatment of
25 patient M.C. which included, but was not limited to, the following:

26 (i) Respondent failed to manage, and failed to document his
27 management of, patient M.C.'s hypertension or diabetes postoperatively, and

28 ² Venous Thromboembolism Prevention.

1 (ii) Respondent failed to document consideration of VTE prophylaxis.

2
3 **SECOND CAUSE FOR DISCIPLINE**

(Repeated Negligent Acts)

4 10. Respondent has further subjected his Physician and Surgeon's Certificate
5 Number G78677 to disciplinary action under sections 2227 and 2234, as defined in section 2234,
6 subdivision (c), of the Code, in that he engaged in repeated negligent acts in his care and
7 treatment of patients K.A., M.C., E.A., D.K., M.E. and D.E., as more particularly alleged
8 hereinafter.

9 **Patient K.A. and M.C.**

10 A. Paragraph 9, above, is hereby incorporated by reference as if fully set forth
11 herein.

12 **Patient E.A.**

13 B. On or about May 3, 2007, respondent performed a BHR procedure on
14 patient E.A.'s right hip. Patient E.A. had an uncomplicated hospital and postoperative
15 course and was discharged on or about May 4, 2007.

16 C. Respondent's records for patient E.A. do not indicate any VTE prophylaxis
17 or consideration if patient E.A. had risk factors for VTE.

18 D. Respondent committed a negligent act in his care and treatment of patient
19 E.A. which included, but was not limited to, the following:

20 (i) Respondent failed to document patient E.A.'s risk criteria in
21 deciding whether or not to use chemical VTE prophylaxis.

22 **Patient M.E.**

23 E. On or about July 20, 2010, respondent performed a total knee replacement
24 on patient M.E.'s right knee.

25 F. On or about November 9, 2010, respondent performed a total knee
26 replacement on patient M.E.'s left knee. There is a note from respondent's physician
27 assistant (P.A.) that indicates, in addition to the left total knee replacement, "right knee
28

1 needs manipulation under anesthesia...” There are no notations in respondent’s office
2 records or in the Scripps Mercy Hospital records that respondent explained the need for
3 the right knee procedure or the risks of the right knee procedure to patient M.E.

4 G. Between on or about November 10, 2010, and November 15, 2010,
5 respondent’s whereabouts were unknown. During this time respondent left his P.A.s,
6 A.D. and S.Y. in charge of the care and treatment of patient M.E. and “signed out” to Dr.
7 D. and Dr. D. N. to cover for him in his absence.

8 H. There are no notations in respondent’s office records or in the Scripps
9 Mercy Hospital records that Dr. D. or Dr. D. N. agreed to cover for respondent.

10 I. Between on or about November 10, 2010, and November 15, 2010,
11 respondent’s P.A. notes were not properly co-signed by an M.D.

12 J. On or about November 11, 2010, patient M.E. was seen by respondent’s
13 P.A. and was noted to have moderate bruising and mild calf swelling on her left lower
14 extremity. A Doppler ultrasound was administered that revealed a deep venous
15 thrombosis in the left calf.

16 K. On or about November 12, 2010, patient M.E. was seen by respondent’s
17 P.A. and was noted to have moderate swelling of the left calf and knee and deep venous
18 thrombosis in the left calf.

19 L. On a chart note dated November 13, 2010, respondent wrote “Dr. D.N.
20 available” on a hand written chart note of one of respondent’s P.A.s. There is no
21 indication on the chart note when this addition was made.

22 M. On or about November 19, 2010, patient M.E. underwent another Doppler
23 ultrasound that revealed a definite pseudoaneurysm at the level of the left femoral
24 condyle.

25 N. On or about November 24, 2010, Dr. M.S. performed surgery on patient
26 M.E. to repair the pseudoaneurysm.

27 O. Respondent committed repeated negligent acts in his care and treatment of
28 patient M.E. which included, but was not limited to, the following:

1 (i) Respondent either failed to discuss the need for and risks associated
2 with the right knee manipulation under anesthesia and injection or he failed to document
3 that he discussed the need for and risks associated with the right knee manipulation under
4 anesthesia and injection with patient M.E.;

5 (ii) Respondent relied on his P.A. to discuss the need for and risks
6 associated with the right knee manipulation under anesthesia with patient M.E.;

7 (iii) Respondent either failed to discuss the need for and risks associated
8 with the total left knee replacement operation or he failed to document that he discussed
9 the need for and risks associated with the total left knee replacement operation with
10 patient M.E.;

11 (iv) Respondent delayed the required co-signing of his P.A.'s chart
12 notes;

13 (v) Respondent failed to provide a functioning supervising orthopedic
14 surgeon in reasonable proximity to his P.A.s and/or failed to properly manage patient
15 M.E.'s postoperative complications.

16 (vi) Respondent made an addition to a medical record without
17 indicating the date and time of the addition.

18 **Patient D.E.**

19 P. On or about November 6, 2007, respondent performed right BHR
20 procedure on patient D.E. During the procedure, exposure of patient D.E.'s right hip was
21 difficult necessitating a limited gluteus release.

22 Q. On or about November 6, 2007, respondent noted patient D.E.'s blood loss
23 to be 500cc. During the BHR procedure patient D.E. experienced a blood pressure drop
24 from 110/60 to 70/50. Dr. E.K. noted patient D.E.'s blood loss during the BHR procedure
25 to be 1800cc. Dr. E.K. administered 2 units of packed red blood cells and 5000 ml of
26 crystalloid fluids during surgery.

1 R. On or about November 6, 2007, respondent sought an intraoperative
2 consult with vascular surgeon, Dr. M.S. Dr. M.S. noted that patient D.E.'s blood loss
3 most likely came from the femoral artery or vein branch.

4 S. Respondent committed repeated negligent acts in his care and treatment of
5 patient D.E. which included, but was not limited to, the following:

6 (i) Respondent either failed to properly place the retractor or
7 improperly utilized the capsular scissors around the anterior or inferior aspect of the
8 acetabulum resulting in significant blood vessel lacerations.

9 **THIRD CAUSE FOR DISCIPLINE**

10 (Dishonesty or Corruption)

11 11. Respondent has further subjected his Physician's and Surgeon's Certificate
12 No. G 78677 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
13 subdivision (e), of the Code, in that he has committed an act or acts of dishonesty or corruption,
14 as more particularly alleged hereinafter:

15 A. On or about October 16, 2007, in the case entitled *People of the State of*
16 *California v. David J. Chao*, Superior Court of California, County of San Diego, Case No.
17 M015404, respondent was convicted, upon his plea of guilty, of one count of violating
18 California Vehicle Code section 23152(b) (driving a motor vehicle with .08% or more, by
19 weight of alcohol in his blood), a misdemeanor. As a result of this conviction, respondent
20 was sentenced to summary probation for 5 years under terms and conditions that included,
21 among other things, that he pay a fine of \$1,784.00, enroll in and complete a First
22 Conviction Program, participate in the MADD program as directed by the assessor, and
23 not operate a motor vehicle without a valid drivers license and liability insurance.

24 B. On or about March 2, 2009, respondent submitted a Reappointment
25 Application in order to renew his hospital privileges at Scripps Mercy and Scripps
26 Memorial Hospitals. In response to question #9 on the application which inquired
27 whether respondent had ever been convicted of a crime (other than a minor traffic
28 violation), respondent checked the "no." box, thus falsely representing that he had not been

1 convicted of a crime when, in truth of fact, he had been, as described in paragraph 10A
2 above.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 (Failure to Maintain Adequate and Accurate Medical Records)

5 12. Respondent has further subjected his Physician and Surgeon's Certificate
6 Number G78677 to disciplinary action under section 2227 and 2234, as defined in section 2266,
7 of the Code, in that he failed to maintain adequate and accurate records in connection with his
8 care and treatment of patients M.C., M.E., E.A., and D.K., as more particularly alleged
9 hereinafter.

10 A. Paragraphs 9 through 10, above, are hereby incorporated by reference and
11 realleged as if fully set forth herein.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 (General Unprofessional Conduct)

14 13. Respondent has further subjected his Physician's and Surgeon's Certificate
15 No. G78677 to disciplinary action under sections 2227 and 2234 of the Code, in that he has
16 engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct
17 which is unbecoming to a member in good standing of the medical profession, and which
18 demonstrates an unfitness to practice medicine, as more particularly alleged hereinafter:

19 A. On or about June 20, 2011, Scripps Hospitals' Medical Executive
20 Committee (MEC) requested that respondent provide an explanation regarding
21 discrepancies between respondent's reappointment application and litigation documents
22 obtained by the MEC. Respondent did not respond.

23 B. On or about July 18, 2011, Scripps Hospitals' MEC again requested that
24 respondent provide an explanation regarding discrepancies between respondent's
25 reappointment application and litigation documents obtained by the MEC. Respondent
26 did not respond.

1 C. On or about September 2, 2011, Scripps Hospitals' MEC again requested
2 that respondent provide an explanation regarding discrepancies between respondent's
3 reappointment application and litigation documents obtained by the MEC.

4 D. On or about September 20, 2011, respondent sent a letter to the MEC
5 requesting a meeting to discuss the MEC's request.

6 E. On or about October 10, 2011, Scripps Hospitals' MEC requested that
7 respondent provide medical and billing records for patient S.H. and a copy of an
8 arbitration award for patient K.A. Respondent did not respond.

9 F. On or about November 22, 2011, Scripps Hospitals' MEC again requested
10 that respondent provide medical and billing records for patient S.H. and a copy of the
11 arbitration award for patient K.A. Respondent did not respond.

12 G. On or about November 29, 2011, respondent sent a letter to the MEC
13 claiming he attempted to comply with the MEC's October 10, 2011, request. Respondent
14 attached documents to his letter that were nonresponsive to the MEC's request.

15 H. On or about January 10, 2012, Scripps Hospitals' MEC again requested
16 that respondent provide medical and billing records for patient S.H. and a copy of the
17 arbitration award for patient K.A. or, in the alternative, provide the MEC with an
18 authorization allowing direct contact with respondent's insurance carrier within seven (7)
19 days. Respondent failed to provide requested material or authorization within seven (7)
20 days.

21 I. On or about March 6, 2012, Scripps Hospitals' MEC again requested that
22 respondent provide medical and billing records for patient S.H. and a copy of all
23 settlement documents and agreements associated with patient K.A.'s civil case or, in the
24 alternative, provide the MEC with an authorization allowing direct contact with
25 respondent's insurance carrier within ten (10) days. Respondent failed to provide the
26 requested material or authorization within ten (10) days.

27 J. Respondent's failure to cooperate with the MEC, as alleged in paragraphs
28 12A, 12B, 12C, 12D, 12E, 12F, 12G, 12H and 12I, above, constitutes general

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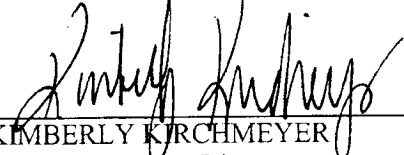
unprofessional conduct in that it is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine.

PRAYER

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 G78677, heretofore issued to respondent DAVID JEE WEI CHAO, M.D.;
- 2. Revoking, suspending or denying approval of respondent DAVID JEE WEI CHAO, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
- 3. Ordering respondent DAVID JEE WEI CHAO, M.D. to pay the Board, if placed on probation, the costs of probation monitoring; and
- 4. Taking such other and further action as deemed necessary and proper.

DATED: August 26, 3013



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

EXHIBIT A

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

In the Matter of the Accusation Against:

DAVID JEE WEI CHAO, M.D.

Respondent.

Case No. 10-2007-187749

OAH No. 2010020241

DECISION AFTER NON-ADOPTION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on July 6, 7, 8, 11 and 12, 2011.

Matthew M. Davis, Deputy Attorney General, represented Linda K. Whitney, Executive Director, Medical Board of California (Board), Department of Consumer Affairs.

Robert F. Frank, Esq., of the law firm of Neil, Dymot, Frank, McFall & Trexler, represented Respondent, who was present during the hearing.

The matter was submitted on July 12, 2011. Panel A of the Board declined to adopt the proposed decision, and issued an Order of Non-Adoption on November 28, 2011. Having determined that the Order of November 2011 was flawed, the Panel then issued an amended Order on January 12, 2012 and subsequently fixed the date for Oral Argument on February 2, 2012. The matter was postponed, and the Board, pursuant to the provisions of section 11517 of the Government Code, issued an order delaying the decision.

On May 3, 2012, both Respondent and Complainant presented oral argument to Panel A, and written argument was received from both parties, and Panel members Duruisseau, Bishop, Carreon, Diego, Salomonson, and Yaroslavsky were present. Having considered the record, including the transcripts, and having received both written and oral argument, and the time for submitting argument having elapsed, Panel

A of the Board hereby makes and enters this decision as its decision in the above-captioned matter:

FACTUAL FINDINGS

1. Linda K. Whitney (Complainant) filed First Amended Accusation¹, dated December 10, 2010, Case No. 10-2007-187749, against David Jee Wei Chao, M.D. (Respondent) in her official capacity as Executive Director, Medical Board of California, Department of Consumer Affairs (Medical Board).

Respondent filed a Notice of Defense, dated December 30, 2009.

2. On April 20, 1994, the Medical Board issued Physician's and Surgeon's Certificate Number G78677 to Respondent. At all times relevant herein said Physician's and Surgeon's Certificate was in full force and effect and will expire on March 31, 2012, unless renewed.

3. Respondent is an orthopaedic surgeon, specializing in sports medicine, primarily knee and shoulder injuries, in San Diego.

He obtained his undergraduate degree from Harvard University in 1982 and his medical degree from Northwestern University School of Medicine in 1985. He completed a residency in orthopaedic surgery at Northwestern Memorial Hospital in 1994 and thereafter completed a fellowship at Minneapolis Sports Medicine Center in 1995.

In addition to California, he is licensed in the states of Illinois and Minnesota. Respondent is a board certified in orthopaedic surgery with a subspecialty certification in orthopaedic sports medicine.

Respondent is a clinical instructor at the University of California, San Diego and the Fellowship Director of OASIS Sports Medicine Fellowship Program. Respondent is the team physician for the San Diego Chargers, Medical Director for the International Rugby Board Sevens Tour, Chief Medical Officer for ESPN Summer/Winter X-Games, Team Physician for USA Rugby Team, Staff Physician for Worldwide Wrestling Entertainment, Team Physician for San Diego Spirit (WUSA), Head Team Physician for San Diego Riptide (Arena Football) and Host Physician for U.S. Olympic Pursuit, 2005, International Sports Invitational.

Respondent is a member of a variety of organizations and professional societies. Between 1994 and 2008, he made numerous presentations related to orthopaedic/sports medicine. He has done research and has been the author or co-author of numerous publications.

¹ The First Amended Accusation supersedes the Accusation, filed on December 14, 2009.

Respondent is active in the community. Among other things, he volunteers as the physician that covers sports team games for high school and colleges in the community. In addition, he is active in a sports medicine foundation that provides services for students who suffer injuries while participating in sports but cannot afford to obtain medical care for these injuries.

4. In the First Amended Accusation, it is alleged that Respondent has been convicted of a crime that is substantially related to the qualifications, functions or duties of a physician and surgeon, based on the facts set forth in the following subparagraphs.

- A. On August 31, 2006, at approximately 0037, while driving a marked black and white California Highway Patrol (CHP) vehicle, CHP Officer Michael Mazon (Officer Mazon) observed a 2002 Lexus (Lexus) travelling westbound on I-8 at approximately 65 miles per hour; Officer Mazon was approximately five car lengths to the rear of the Lexus. The Lexus weaved from side to side in the #2 lane. The Lexus drifted to the left and its left side wheels crossed over approximately one foot into the #1 lane. The Lexus swerved back to the right and continued weaving in the #2 lane. The Lexus slowly drifted to the right and its right side wheels were riding on the Botts Dots dividing the #2 and the #3 lanes for approximately five seconds. The Lexus drifted back towards the left and continued weaving from side to side in the #2 lane for approximately one-half mile.
- B. Officer Mazon activated the patrol vehicle's forward red lights and initiated a traffic stop of the Lexus. The driver of the Lexus did not respond to the CHP vehicle's red light and continued in the #2 lane. Then, Officer Mazon activated the CHP vehicle's Code 3 emergency lights and siren; using the patrol vehicle's public address system, he instructed the driver of the Lexus to exit the freeway on the Taylor Street ramp. The driver of the Lexus did not respond to the patrol vehicle's emergency lights, siren and public address system and continued to travel in the #2 lane.
- C. As the Lexus passed the Taylor Street off-ramp, the Lexus slowly started to yield towards the right. Officer Mazon instructed the driver of the Lexus to exit the freeway on Morena Boulevard and to park his vehicle in the parking lot located at the intersection of Morena Boulevard and Linda Vista Road. The Lexus came to a stop in the southwest corner of the parking lot as instructed.

- D. Officer Mazon exited the CHP vehicle, contacted the driver of the Lexus and motioned for the driver to lower the passenger side window. As soon as the window was lowered, Officer Mazon smelled the odor of an alcoholic beverage emitting from inside the Lexus. Officer Mazon advised the driver of the reason for the stop and asked for his driver's license, registration and insurance. Officer Mazon asked the driver why he was weaving. The driver stated that he was talking on his cell phone and apologized. The driver handed Officer Mazon his California driver's license that identified Respondent as the driver. Officer Mazon asked Respondent if he had consumed any alcoholic beverages; Respondent stated, "I am not trying to cause any trouble, I was just helping a friend out."
- E. Officer Mazon instructed Respondent to meet him along the right side of the patrol vehicle. As Respondent walked slowly towards Officer Mazon, Respondent was swaying from side-to-side. Officer Mazon asked Respondent to stand with his feet together and to keep his arms at his sides. Respondent was unable to maintain his balance and stood with his feet approximately eight to ten inches apart.
- F. Officer Mazon asked Respondent how much alcohol he had consumed. Respondent stated that he is the team doctor for the San Diego Chargers, that he had one glass of wine at the banquet at the Chargers facility on Murphy Canyon Road and then went to McGregor's near Qualcomm Stadium where he had one shot of tequila. Respondent stated that the only reason he was driving was because a friend needed a ride from McGregor's.
- G. Officer Mazon began to ask Respondent a series of Pre-Field Sobriety Test questions. As he was talking to Respondent, he could smell the strong odor of an alcoholic beverage emitting from his breath. In addition, Respondent's eyes were red and watery; his speech was slurred, and he was swaying from front to back as he answered the questions. Respondent was unable to perform the Pre-Field Sobriety Test as explained and demonstrated.
- H. Based on the facts in subparagraphs A through G, Officer Mazon formed the opinion that Respondent was driving under the influence of an alcoholic beverage. He arrested Respondent and transported him to the San Diego CHP area office for a breath test. However, Respondent was unable to provide a sufficient breath sample on six attempts.

Respondent agreed to take a blood test and was transported to the San Diego County Jail. At approximately 0215, two vials of blood were drawn from Respondent; and, he was booked into the San Diego County Jail.

- I. On October 16, 2007, in the Superior Court of the State of California, County of San Diego, in the case entitled *People of the State of California v. David Jiwi Chao, aka David J. Chao*, Case No. M015404, on his plea of guilty, Respondent was convicted of violating California Vehicle Code section 23152, subdivision (b) (driving a motor vehicle with .08 percent or more by weight of alcohol in his blood), a misdemeanor. As a consequence of this conviction, the Court sentenced Respondent to summary probation for five years on terms and conditions that included, among other things, that he pay a fine of \$1,784, enroll in and complete a First Conviction Program, participate in the MADD program as directed by the assessor and not operate a motor vehicle without a valid driver's license and liability insurance.

5. There is no evidence that, as a consequence of Respondent driving under the influence of alcohol, he had an accident, caused property damage or injured himself or another. There is no evidence that, on August 31, 2006, when Officer Mazon stopped Respondent, that Respondent was on duty or on call as a physician. Nevertheless, based on the facts in Finding 4, it was established that Respondent used alcohol to an extent or in such a manner to be dangerous to himself, to another person and to the public, by reason of Finding 4.

6. Following the 2007 conviction and/or the filing of the Accusation in this case, the Well Being Committee (WBC) of three different hospitals evaluated Respondent to determine if he had an alcohol abuse problem and/or was an impaired physician.

Following his 2007 conviction after the filing of a complaint with the Medical Board, Respondent received a communication from Chief of Staff of Scripps Memorial Hospital (Scripps Memorial). At the suggestion of the Chief of Staff, Respondent contacted the Scripps Memorial WBC. Thereafter Respondent was evaluated by the Scripps Well Being Committee (Scripps Memorial WBC). At the suggestion of the Scripps Memorial WBC, Respondent obtained an evaluation by Steven V. Sobel, M.D. (Dr. Sobel), a psychiatrist.

After the Accusation was filed in this case, Respondent was contacted by the administration of University of California – San Diego and Scripps Mercy hospitals. In a manner similar to that described in the foregoing paragraphs, the WBC of these hospitals evaluated Respondent as well. Respondent testified that he explained the

facts and circumstances underlying the conviction and obtained an updated evaluation by Dr. Sobel (in 2010).²

In all three cases, Respondent was allowed to continue with unrestricted hospital privileges and without a monitor.

7. Respondent provided evidence of rehabilitation.

- The incident that resulted in his conviction occurred more than five years ago, and his conviction occurred almost four years ago. He has complied with the terms and conditions of probation. According to Respondent, the Court terminated probation early in his criminal case. However, he could not recall the date and offered no documentary evidence in support of his testimony.
- He expressed remorse for his misconduct and has learned from the experience. He admitted his prior conviction for drinking and driving in 1995. He testified that he was young at the time, did not take the incident as seriously as he should have and did not learn from the experience at that time. However, since his most recent incident in 2006, he has learned. He no longer drinks any alcohol before driving a vehicle. He drinks alcohol occasionally. Now he plans if he will do so away from home. He will arrange for another driver or a ride home.
- There is no evidence that, since his conviction, Respondent has driven under the influence of alcohol, has used alcohol to an extent or in a manner dangerous to himself, to any other person or to the public, or has been convicted of any other crime.
- Evaluated by three different hospitals, no hospital restricted his privileges to practice as a consequence of his conviction.
- Dr. Sobel evaluated Respondent on two separate occasions to determine if he abused alcohol or was an impaired physician. Upon completion of his evaluations, he issued reports. In addition, he testified as a witness in this proceeding.

Dr. Sobel described his education, training and experience. Since 1986 he has had a solo outpatient practice treating adolescents and adults with mood disorders and anxiety; in addition he evaluates and treats patients with alcohol and substance abuse issues. Among other things, he has served as an expert reviewer for the Medical Board. On behalf of the Medical Board, hospital

² Dr. Sobel's findings are described in Finding 9.

well being committees and others, he has evaluated physicians to determine if the physicians were impaired.

Dr. Sobel described his evaluation of Respondent. He had five sessions (between December 13, 2007 and February 14, 2008) and three sessions (between March 1, 2010 and March 15, 2010) with Respondent. During these evaluations, Dr. Sobel obtained information regarding Respondent's current practice, his psychiatric status, past medical and psychiatric histories, social and personal histories. In his opinion, Respondent was honest and forthcoming during his evaluations. In his reports, Dr. Sobel explained that there are a number of factors that can cause a physician to be impaired and applied those factors to Respondent's case. In addition, he administered the Beck Anxiety and Depression Inventories plus the Zung Depression Inventory to gather additional information regarding current symptoms and functioning. Scores on all three instruments were within normal limits.

Based on the information he obtained, Dr. Sobel concluded that Respondent does not and has not suffered from any psychiatric disorder, including alcohol abuse; he is not and never has been an impaired physician.

- There is no evidence that, while under the influence of alcohol, Respondent has practiced or caused patient harm.

8. Complainant alleged that Respondent committed an act or acts of dishonesty or corruption based on the facts set forth in the following subparagraphs.

- A. On April 11, 2006, Respondent signed an application under penalty of perjury for reappointment as a Qualified Medical Evaluator (QME) for the Division of Worker's Compensation. Respondent certified, under penalty of perjury, that he would notify the Industrial Medical Council (IMC) of any future convictions related to the conduct of his practice and upon being placed on any court ordered probation. Respondent failed to notify the IMC of his October 16, 2007 conviction and probation (Finding 3(I)).
- B. On April 11, 2008, Respondent signed an application, under penalty of perjury, for reappointment as a QME for the Division of Worker's Compensation. Respondent certified, under penalty of perjury, that he had not committed a misdemeanor or felony related to his practice and that he was not on court ordered probation. Further, Respondent certified, under penalty of perjury, that he would notify the IMC of any future convictions related to the conduct of his practice or upon being placed on any court ordered probation. Respondent did not disclose his

conviction or notify the IMC of his October 16, 2007 conviction and probation (Finding 3(I)).

- C. On April 14, 2010, Respondent signed an application, under penalty of perjury for reappointment as a QME for the Division of Worker's Compensation. Respondent certified, under penalty of perjury, that he had not committed a misdemeanor or felony related to his practice. Respondent did not disclose his October 16, 2007 conviction and probation (Finding 3(I)).

9. Respondent denied that he committed an act or acts of dishonesty or corruption based on the facts in Finding 8 and explained.

He did not remember reviewing the applications. Over the years, in his office/medical practice, there has been a credentials specialist who prepares, completes and reviews a variety of and numerous documents on his behalf. These documents include, but are not limited to, insurance forms, peer reference forms, professional society forms, grant applications, research applications, work status and patient forms, operative reports, infection control forms, pathology forms and physical therapy forms. They are bundled and brought to Respondent as a package by the office manager or credentials specialist. She flags boxes for initials and signature lines or any area that needs to be completed, initialed and signed. The credentials specialist meets with Respondent, on at least a weekly basis, and presents the documents. Respondent asks questions if he has any, provides any necessary information and initials and signs the documents. He admits that he does not review the documents closely.

Respondent completed the 2006 application prior to the 2007 conviction. Respondent did not review the applications but simply signed. However, even after reading the documents, Respondent did not understand the wording of the application required that he disclose either conviction; the acts underlying the conviction occurred in a social setting, not while he was on duty as a physician or treating a patient. Therefore he did not understand that his crime related to the practice of medicine. Further, he did not understand that his conviction constituted a crime of moral turpitude. Finally, his license to practice medicine had not been disciplined by the Medical Board.

Respondent completed the most recent application on April 14, 2010. By this time, the Medical Board had filed the Accusation against him, and Respondent had been in communication with the Medical Board about the conviction. Respondent testified that he believed that once the Medical Board understood that he was not under the influence while on duty and/or providing patient care that the Accusation would be dismissed.

Respondent testified that, when he completed the QME applications, had he understood he would have disclosed the conviction; he did not intentionally try to

deceive; he considers himself to be a forthright individual. At the time of the conviction, his criminal attorney did not explain his obligation to disclose the conviction in documents such as the QME application. His practice as a QME provides minimal financial benefit in that it constitutes one percent of his practice.

However, Respondent testified that he received a copy of the "Misdemeanor Traffic Judgment Minutes" and acknowledged that this form did indicate that probation was granted by the Criminal Court. (Reporter's Transcript (RT), July 11, 2001, pages 126-128.) Respondent also testified that he was released from probation early. (RT, July 11, 2011, page 52-53.)

The Panel found that Respondent's limited economic involvement in the QME program was not sufficient mitigation for failing to make the necessary disclosures and notifications to the appropriate state agencies. The Panel determined that dealing with a plethora of forms (and some of them certainly complex) in a busy practice did not obviate the responsibility of Respondent to make all the necessary disclosures.

Respondent understands that it was his responsibility, not his credentials clerk or anyone else, to review the applications and question, if necessary, before signing. He testified that he has learned from his mistake; now and in the future, he reviews/will review these and other documents more closely. Completion of a medical recordkeeping course will reinforce Respondent's dedication to a more thorough review of these types of documents.

10. There is no dispute that Respondent did not disclose his conviction in the 2008 and 2010 QME applications, and that he did not notify the IMC after his conviction in 2007. The Panel found that Respondent's explanation for his failure to do so was not credible. Respondent cannot have it both ways: He cannot claim that he did not review the forms and claim that the forms were confusing, for to determine that a form or document is confusing necessarily means it was reviewed. The questions on the applications were sufficiently clear and further refined in 2010. Despite his busy practice, Respondent was obligated to answer questions truthfully and to investigate further if he had questions. Therefore, it was established that Respondent's failure to disclose his conviction in the QME applications constituted acts of dishonesty or corruption.

A. Panel A found that Respondent's explanation was insufficient to warrant his non-disclosure of the conviction and probation on the QME forms and his failure to notify the IMC of his conviction. Respondent bore the obligation to accurately, and truthfully complete the QME forms. A busy schedule, coupled with the use administrative personnel, is not a shield from that responsibility. With regard to the 2008 QME application and the non-disclosure of "court ordered probation", Respondent's explanation on this issue is strained, because even if his criminal attorney did not fully advise him of all repercussions flowing from his plea, there can be no doubt that he was on criminal probation in 2008.

11. Complainant alleged that Respondent engaged in conduct which breaches the rules or ethical conduct of the medical profession or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, based on the facts in Findings 4, 5 and 8.

While the Administrative Law Judge found that no evidence was offered to establish the rules or ethical code of the medical profession or that the facts of this case constitute conduct which is unbecoming a member in good standing of the medical profession, with respect to Finding 8, the Panel must disagree. Respondent had a palpable obligation to disclose the conviction and his court ordered probation on the QME forms and to the IMC. Therefore, it was established that, based on the facts in this case (Findings 9 and 10), Respondent breached the rules or ethical conduct of the medical profession or conduct which is unbecoming to a member in good standing of the medical profession and demonstrates an unfitness to practice medicine. It must be remembered that the forms in question are not forms unrelated to medical practice, as the forms relate to a physician's qualifications to perform medical reviews and prepare medical reports in the worker's compensation arena. Physicians can easily recognize that failing to accurately and truthfully complete a state agency form that allows them to participate in a medical program is improper conduct.

12. By way of aggravation, the evidence established that, in 1995, Respondent has been convicted of a wet reckless arising out of his driving a motor vehicle while under the influence of alcohol.

By letter, dated April 11, 2008, Respondent disclosed this conviction to the Medical Board. At the time of the traffic stop, Respondent was returning from volunteering at a high school football game. There is no evidence that, at the time of the incident that resulted in his 1995 conviction, he had an accident, that anyone suffered physical injury or property damage. There is no evidence that Respondent has been stopped, arrested or charged with driving a motor vehicle while under the influence of alcohol between 1995 and August 31, 2006.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving charges by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This requires that he present evidence "of such convincing force that it demonstrates, in contrast to the opposing evidence, a probability of truth" of the charges (BAJI 2.62) and "so clear as to leave no substantial doubt." (*In re Angelia P.* (1981) 28 Cal.3d 908, 919; *In re David C.* (1984) 152 Cal.App.3d 1189, 1208.) If the totality of the evidence serves only to raise concerns, suspicion or conjecture, the standard is not met.

2. For constitutional reasons, a professional license may be disciplined only if the conduct upon which the discipline is based relates to the practice of the particular

profession and thereby demonstrates an unfitness to practice such profession. Whether this requirement tying the conduct to the fitness or competence to practice a profession is termed a "nexus" or a "relationship," the inherent meaning is the same. There must be a logical connection of licensees' conduct to their fitness or competence to practice the profession or to the qualifications, functions, or duties of the profession in question. (*Clare v. California State Bd. of Accountancy* (1992) 10 Cal.App.4th 294, 302.)

3. A conviction alone will not support the imposition of license discipline, unless the crime substantially relates to the qualifications, functions, or duties of the profession in question. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

4. In *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, the Medical Board sought to impose discipline against Dr. Griffith's license for three misdemeanor convictions involving the use and consumption of alcoholic beverages, the last two of which occurred while Dr. Griffiths was on probation for earlier offenses. The disciplinary action was taken under Business and Professions Code section 2239, subdivision (a), which provided that "more than one misdemeanor ... involving the use, consumption, or self-administration of [alcoholic beverages] ... constitutes unprofessional conduct."

In *Griffiths*, the Court of Appeal concluded that convictions involving alcohol consumption have a logical connection to a physician's fitness to practice medicine and stated:

"Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician's fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens public safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions and distance. [Citation]

Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society. Moreover, Griffiths' December 20, 1989, arrest violated his 36-month probation ordered on August 20, 1987, and Griffiths' November 24, 1991, arrest violated his 36-month probation ordered on April 3, 1990. Knowledge of such repeated conduct by a physician, and particularly of its propensity to endanger members of the

public, tends to undermine public confidence in and respect for the medical profession. [Citation.] Repeated convictions involving alcohol use, two of which violated Griffiths' probation, reflect poorly on Griffiths' common sense and professional judgment, which are essential to the practice of medicine, and tend to undermine public confidence in and respect for the medical profession." (*Griffiths*, supra, 96 Cal.App.4th at pp. 770-771.)

Finally, the Court noted that Griffith's three alcohol-related convictions are indications of alcohol abuse that affects his private life; it is not necessary to wait until his alcohol abuse problem begins to affect his practice of medicine.

5. The *Griffiths* case involved a physician who suffered three convictions for driving under the influence. However, *Watson v. Superior Court* (2009) involved a physician who had four incidents of driving under the influence of alcohol and no convictions. In addition to affirming the Court's findings in *Griffiths*, the Court held that Business and Professions Code section 2239, subdivision (a) authorizes discipline of a physician for the use of alcoholic beverages "to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public." (§ 2239, subd. (a).) Discipline is authorized where the use of alcoholic beverages is "to an extent" or "in such a manner" as to pose a danger to the physician or others. The court in *Watson* said there could be no doubt that petitioner's driving after consuming alcoholic beverages on four occasions posed a danger to him and others.

6. Considering the facts and the law, discipline of Respondent for engaging in conduct that involved the consumption of alcohol, in his personal life, to an extent, or in a manner, that posed a danger to himself or the public has a logical connection/nexus to Respondent's fitness to practice as a physician and surgeon.

7. Cause exists to discipline Respondent's physician's and surgeon's certificate for unprofessional conduct under Business and Professions Code sections 2227 and 2234, as defined by Business and Professions Code section 2236, subdivision (a); Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of a physician and surgeon, by reason of Finding 4.

8. Cause exists to discipline Respondent's physician's and surgeon's certificate for unprofessional conduct under Business and Professions Code sections 2227 and 2234, as defined by Business and Professions Code section 2239, subdivision (a); Respondent used alcohol in a manner dangerous or injurious to himself or to the public, by reason of Findings 4 and 5.

9. Cause exists to discipline Respondent for unprofessional conduct under Business and Professions Code section 2227 and 2234, as defined by 2234, subdivision (e) of the Code; Respondent did commit an act or acts of dishonesty and corruption, by reason of Findings 9 and 10.

10. Sufficient evidence was offered to establish that cause exists to discipline Respondent for unprofessional conduct under Business and Professions Code section 2227 and 2234, as defined by 2234, subdivision (e) of the Code; it was established that Respondent has engaged in conduct which breaches the rules or ethical code of the medical profession or which is unbecoming to a member in good standing of the medical profession and which demonstrates an unfitness to practice medicine, by reason of Finding 11.

11. In determining the appropriate discipline, consideration has been given to the legislative intent that the purpose of the statutory scheme to license and discipline physicians and surgeons is to protect the public interest, rather than punish a wrongdoer. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810.)

12. Considering the facts, the evidence of rehabilitation, the law and the violations committed by Respondent, an order of discipline must be issued that protects the public, rather than punishes Respondent. In exercising disciplinary authority, the Panel shall take action calculated to aid in the rehabilitation of the licensee. (See Bus. & Prof. Code, § 2229, subd. (b).) A professionalism (ethics) course will assist Respondent in this regard.

The Medical Board issued a physician's and surgeon's certificate to Respondent more than 17 years ago. There is no evidence of prior discipline by the Medical Board. For purposes of discipline, Respondent has suffered two alcohol related offenses, one 16 years ago and the other seven years ago. He provided evidence of rehabilitation. He has been evaluated by three different hospitals and allowed to practice with unrestricted privileges. Most significantly a qualified psychiatrist evaluated Respondent on two separate occasions (in 2008 and again in 2010) and determined that Respondent does not abuse alcohol and that he is not an impaired physician. As such, it was not established that Respondent is unfit to practice as a physician and surgeon. The public will be adequately protected by the issuance of a public reprimand and Respondent's completion of two educational courses – ethics (professionalism) and medical recordkeeping -- as authorized by subdivision (a)(4) of section 2227 of the Business and Professions Code.

13. Any factual and/or legal argument not addressed herein is determined not to be relevant and/or unsupported by the evidence and therefore rejected.

ORDER

Respondent David Jee Wei Chao is publicly reprimanded. Additionally, within one hundred twenty (120) of the effective days of this decision, Respondent shall:

- A. Enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education

Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision. Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

- B. Enroll in a professionalism program (ethics course), that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision. Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the

program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

The failure to complete these educational courses within the specified timeframe shall constitute unprofessional conduct.

This Decision shall become effective on June 8, 2012.

IT IS SO ORDERED this 9th day of May, 2012.



Shelton Duruisseau, Ph. D.
Chair, Panel A

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

In the Matter of the Accusation Against:)	
)	
DAVID JEE WEI CHAO, M.D.)	MBC No.: 10-2007-187749
)	
Physician's and Surgeon's)	OAH No: 2010020241
Certificate No. G 78677)	
)	
_____ Respondent.)	

ORDER DELAYING DECISION

Pursuant to Business & Professions Code section 2335 and section 11517 of the Government Code, the Medical Board of California, finding that a further delay is required by special circumstances, hereby issues this order delaying the decision for no more than 30 days from April 12, 2012, (when the 100 day period expires) to May 12, 2012.

The reason for the delay is as follows: This case is on the agenda for the Panel's meeting on May 3, 2012. Therefore, the Panel needs additional time to discuss and consider written and oral arguments by the parties, re-draft the decision and to serve the parties.

DATED: April 2, 2012

By: *A. Renee Threadgill*
A. Renee Threadgill
Chief of Enforcement

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

In the Matter of the Accusation Against:)	Case No. 10-2007-187749
)	
DAVID JEE WEI CHAO, M.D.)	OAH No. 2010020241
)	
Physician's & Surgeon's)	
Certificate No. G 78677)	
)	
Respondent.)	

**ORDER NUNC PRO TUNC CORRECTING PREVIOUS ORDER OF
NON-ADOPTION OF PROPOSED DECISION**

The Medical Board of California, having determined that clerical error has occurred, which resulted in the previously issued Order of Non-Adoption in the above-entitled matter being incomplete and unclear, hereby issues this corrected Order of Non-Adoption, as follows:

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Board will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit, including but not limited to any argument directed at whether the Proposed Order should be revised to be consistent with the provisions of subdivision (a)(4) of section 2227 of the Business and Professions Code and whether cause for discipline may be found regarding Respondent's applications for reappointment as a Qualified Medical Evaluator. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Kelli Norden Reporting Agency at 11726 San Vincente Blvd., Suite 205, Los Angeles, CA 90049. The telephone number is (310) 820-7733.

To order a copy of the exhibits, please submit a written request to this Board.

In addition to written argument, oral argument will be scheduled if any party files with the Board within 20 days from the date of this notice a written request for oral argument. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
(916) 263-2451
Attention: Kelly Montalbano

Dated: January 12, 2012



Shelton Duruisseau, Ph.D., Panel A
Chairperson

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

In the Matter of the Accusation Against:)	Case No. 10-2007-187749
)	
DAVID JEE WEI CHAO, M.D.)	OAH No. 2010020241
)	
Physician's & Surgeon's)	
Certificate No. G 78677)	
)	
_____ Respondent.)	

**ORDER OF NON-ADOPTION
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit, including a request to change Public Reapproval to Public Reprimand. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Kelli Norden Reporting Agency at 11726 San Vicente Blvd., Suite 205, Los Angeles, CA 90049. The telephone number is (310) 820-7733.


To order a copy of the exhibits, please submit a written request to this Board.

In addition to written argument, oral argument will be scheduled if any party files with the Board within 20 days from the date of this notice a written request for oral argument. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
(916) 263-2451
Attention: Kelly Montalbano

Dated: November 28, 2011



Shelton Duruisseau, Ph.D., Panel A Chairperson

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

In the Matter of the Accusation Against:

DAVID JEE WEI CHAO, M.D.

Respondent.

Case No. 10-2007-187749

OAH No. 2010020241

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on July 6, 7, 8, 11 and 12, 2011.

Matthew M. Davis, Deputy Attorney General, represented Linda K. Whitney, Executive Director, Medical Board of California, Department of Consumer Affairs.

Robert F. Frank, Esq., of the law firm of Neil, Dymot, Frank, McFall & Trexler, represented Respondent, who was present during the hearing.

The matter was submitted on July 12, 2011.

FACTUAL FINDINGS

1. Linda K. Whitney (Complainant) filed First Amended Accusation¹, dated December 10, 2010, Case No. 10-2007-187749, against David Jee Wei Chao, M.D. (Respondent) in her official capacity as Executive Director, Medical Board of California, Department of Consumer Affairs (Medical Board).

Respondent filed a Notice of Defense, dated December 30, 2009.

2. On April 20, 1994, the Medical Board issued Physician's and Surgeon's Certificate Number G78677 to Respondent. At all times relevant herein said Physician's and

¹ The First Amended Accusation supersedes the Accusation, filed on December 14, 2009.

Surgeon's Certificate was in full force and effect and will expire on March 31, 2012, unless renewed.

3. Respondent is an orthopaedic surgeon, specializing in sports medicine, primarily knee and shoulder injuries, in San Diego.

He obtained his undergraduate degree from Harvard University in 1982 and his medical degree from Northwestern University School of Medicine in 1985. He completed a residency in orthopaedic surgery at Northwestern Memorial Hospital in 1994 and thereafter completed a fellowship at Minneapolis Sports Medicine Center in 1995.

In addition to California, he is licensed in the states of Illinois and Minnesota. Respondent is a board certified in orthopaedic surgery with a subspecialty certification in orthopaedic sports medicine.

Respondent is a clinical instructor at the University of California, San Diego and the Fellowship Director of OASIS Sports Medicine Fellowship Program. Respondent is the team physician for the San Diego Chargers, Medical Director for the International Rugby Board Sevens Tour, Chief Medical Officer for ESPN Summer/Winter X-Games, Team Physician for USA Rugby Team, Staff Physician for Worldwide Wrestling Entertainment, Team Physician for San Diego Spirit (WUSA), Head Team Physician for San Diego Riptide (Arena Football) and Host Physician for U.S. Olympic Pursuit, 2005, International Sports Invitational.

Respondent is a member of a variety of organizations and professional societies. Between 1994 and 2008, he made numerous presentations related to orthopaedic/sports medicine. He has done research and has been the author or co-author of numerous publications.

Respondent is active in the community. Among other things, he volunteers as the physician that covers sports team games for high school and colleges in the community. In addition, he is active in a sports medicine foundation that provides services for students who suffer injuries while participating in sports but cannot afford to obtain medical care for these injuries.

4. In the First Amended Accusation, it is alleged that Respondent has been convicted of a crime that is substantially related to the qualifications, functions or duties of a physician and surgeon, based on the facts set forth in the following subparagraphs.

A. On August 31, 2006, at approximately 0037, while driving a marked black and white California Highway Patrol (CHP) vehicle, CHP Officer Michael Mazon (Officer Mazon) observed a 2002 Lexus (Lexus) travelling westbound on I-8 at approximately 65 miles per hour; Officer Mazon was approximately five car lengths to the rear of the Lexus. The Lexus weaved from side to side in the #2 lane. The Lexus drifted to the left and its left side wheels crossed over

approximately one foot into the #1 lane. The Lexus swerved back to the right and continued weaving in the #2 lane. The Lexus slowly drifted to the right and its right side wheels were riding on the Botts Dots dividing the #2 and the #3 lanes for approximately five seconds. The Lexus drifted back towards the left and continued weaving from side to side in the #2 lane for approximately one-half mile.

- B. Officer Mazon activated the patrol vehicle's forward red lights and initiated a traffic stop of the Lexus. The driver of the Lexus did not respond to the CHP vehicle's red light and continued in the #2 lane. Then, Officer Mazon activated the CHP vehicle's Code 3 emergency lights and siren; using the patrol vehicle's public address system, he instructed the driver of the Lexus to exit the freeway on the Taylor Street ramp. The driver of the Lexus did not respond to the patrol vehicle's emergency lights, siren and public address system and continued to travel in the #2 lane.
- C. As the Lexus passed the Taylor Street off-ramp, the Lexus slowly started to yield towards the right. Officer Mazon instructed the driver of the Lexus to exit the freeway on Morena Boulevard and to park his vehicle in the parking lot located at the intersection of Morena Boulevard and Linda Vista Road. The Lexus came to a stop in the southwest corner of the parking lot as instructed.
- D. Officer Mazon exited the CHP vehicle, contacted the driver of the Lexus and motioned for the driver to lower the passenger side window. As soon as the window was lowered, Officer Mazon smelled the odor of an alcoholic beverage emitting from inside the Lexus. Officer Mazon advised the driver of the reason for the stop and asked for his driver's license, registration and insurance. Officer Mazon asked the driver why he was weaving. The driver stated that he was talking on his cell phone and apologized. The driver handed Officer Mazon his California driver's license that identified Respondent as the driver. Officer Mazon asked Respondent if he had consumed any alcoholic beverages; Respondent stated, "I am not trying to cause any trouble, I was just helping a friend out."
- E. Officer Mazon instructed Respondent to meet him along the right side of the patrol vehicle. As Respondent walked slowly towards Officer Mazon, Respondent was swaying from side-to-side. Officer Mazon asked Respondent to stand with his feet together and to keep his arms at his sides. Respondent was unable to maintain his balance and stood with his feet approximately eight to ten inches apart.
- F. Officer Mazon asked Respondent how much alcohol he had consumed. Respondent stated that he is the team doctor for the San Diego Chargers, that he had one glass of wine at the banquet at the Chargers facility on Murphy

Canyon Road and then went to McGregor's near Qualcomm Stadium where he had one shot of tequila. Respondent stated that the only reason he was driving was because a friend needed a ride from McGregor's.

G. Officer Mazon began to ask Respondent a series of Pre-Field Sobriety Test questions. As he was talking to Respondent, he could smell the strong odor of an alcoholic beverage emitting from his breath. In addition, Respondent's eyes were red and watery; his speech was slurred, and he was swaying from front to back as he answered the questions. Respondent was unable to perform the Pre-Field Sobriety Test as explained and demonstrated.

H. Based on the facts in subparagraphs A through G, Officer Mazon formed the opinion that Respondent was driving under the influence of an alcoholic beverage. He arrested Respondent and transported him to the San Diego CHP area office for a breath test. However, Respondent was unable to provide a sufficient breath sample on six attempts. Respondent agreed to take a blood test and was transported to the San Diego County Jail. At approximately 0215, two vials of blood were drawn from Respondent; and, he was booked into the San Diego County Jail.

I. On October 16, 2007, in the Superior Court of the State of California, County of San Diego, in the case entitled *People of the State of California v. David Jiwi Chao, aka David J. Chao*, Case No. M015404, on his plea of guilty, Respondent was convicted of violating California Vehicle Code section 23152, subdivision (b) (driving a motor vehicle with .08 percent or more by weight of alcohol in his blood), a misdemeanor. As a consequence of this conviction, the Court sentenced Respondent to summary probation for five years on terms and conditions that included, among other things, that he pay a fine of \$1,784, enroll in and complete a First Conviction Program, participate in the MADD program as directed by the assessor and not operate a motor vehicle without a valid driver's license and liability insurance.

5. There is no evidence that, as a consequence of Respondent driving under the influence of alcohol, he had an accident, caused property damage or injured himself or another. There is no evidence that, on August 31, 2006, when Officer Mazon stopped Respondent, that Respondent was on duty or on call as a physician. Nevertheless, based on the facts in Finding 4, it was established that Respondent used alcohol to an extent or in such a manner to be dangerous to himself, to another person and to the public, by reason of Finding 4.

6. Following the 2007 conviction and/or the filing of the Accusation in this case, the Well Being Committee (WBC) of three different hospitals evaluated Respondent to determine if he had an alcohol abuse problem and/or was an impaired physician.

Following his 2007 conviction after the filing of a complaint with the Medical Board, Respondent received a communication from Chief of Staff of Scripps Memorial Hospital (Scripps Memorial). At the suggestion of the Chief of Staff, Respondent contacted the Scripps Memorial WBC. Thereafter Respondent was evaluated by the Scripps Well Being Committee (Scripps Memorial WBC). At the suggestion of the Scripps Memorial WBC, Respondent obtained an evaluation by Steven V. Sobel, M.D. (Dr. Sobel), a psychiatrist.

After the Accusation was filed in this case, Respondent was contacted by the administration of University of California – San Diego and Scripps Mercy hospitals. In a manner similar to that described in the foregoing paragraphs, the WBC of these hospitals evaluated Respondent as well. Respondent testified that he explained the facts and circumstances underlying the conviction and obtained an updated evaluation by Dr. Sobel (in 2010).²

In all three cases, Respondent was allowed to continue with unrestricted hospital privileges and without a monitor.

7. Respondent provided evidence of rehabilitation.

- The incident that resulted in his conviction occurred more than five years ago, and his conviction occurred almost four years ago. He has complied with the terms and conditions of probation. According to Respondent, the Court terminated probation early in his criminal case. However, he could not recall the date and offered no documentary evidence in support of his testimony.
- He expressed remorse for his misconduct and has learned from the experience. He admitted his prior conviction for drinking and driving in 1995. He testified that he was young at the time, did not take the incident as seriously as he should have and did not learn from the experience at that time. However, since his most recent incident in 2006, he has learned. He no longer drinks any alcohol before driving a vehicle. He drinks alcohol occasionally. Now he plans if he will do so away from home. He will arrange for another driver or a ride home.
- There is no evidence that, since his conviction, Respondent has driven under the influence of alcohol, has used alcohol to an extent or in a manner dangerous to himself, to any other person or to the public, or has been convicted of any other crime.
- Evaluated by three different hospitals, no hospital restricted his privileges to practice as a consequence of his conviction.

² Dr. Sobel's findings are described in Finding 9.

- Dr. Sobel evaluated Respondent on two separate occasions to determine if he abused alcohol or was an impaired physician. Upon completion of his evaluations, he issued reports. In addition, he testified as a witness in this proceeding.

Dr. Sobel described his education, training and experience. Since 1986 he has had a solo outpatient practice treating adolescents and adults with mood disorders and anxiety; in addition he evaluates and treats patients with alcohol and substance abuse issues. Among other things, he has served as an expert reviewer for the Medical Board. On behalf of the Medical Board, hospital well being committees and others, he has evaluated physicians to determine if the physicians were impaired.

Dr. Sobel described his evaluation of Respondent. He had five sessions (between December 13, 2007 and February 14, 2008) and three sessions (between March 1, 2010 and March 15, 2010) with Respondent. During these evaluations, Dr. Sobel obtained information regarding Respondent's current practice, his psychiatric status, past medical and psychiatric histories, social and personal histories. In his opinion, Respondent was honest and forthcoming during his evaluations. In his reports, Dr. Sobel explained that there are a number of factors that can cause a physician to be impaired and applied those factors to Respondent's case. In addition, he administered the Beck Anxiety and Depression Inventories plus the Zung Depression Inventory to gather additional information regarding current symptoms and functioning. Scores on all three instruments were within normal limits.

Based on the information he obtained, Dr. Sobel concluded that Respondent does not and has not suffered from any psychiatric disorder, including alcohol abuse; he is not and never has been an impaired physician.

- There is no evidence that, while under the influence of alcohol, Respondent has practiced or caused patient harm.

8. Complainant alleged that Respondent committed an act or acts of dishonesty or corruption based on the facts set forth in the following subparagraphs.

- A. On April 11, 2006, Respondent signed an application under penalty of perjury for reappointment as a Qualified Medical Evaluator (QME) for the Division of Worker's Compensation. Respondent certified, under penalty of perjury, that he would notify the Industrial Medical Council (IMC) of any future convictions related to the conduct of his practice

and upon being placed on any court ordered probation. Respondent failed to notify the IMC of his October 16, 2007 conviction and probation (Finding 3(I)).

- B. On April 11, 2008, Respondent signed an application, under penalty of perjury, for reappointment as a QME for the Division of Worker's Compensation. Respondent certified, under penalty of perjury, that he had not committed a misdemeanor or felony related to his practice and that he was not on court ordered probation. Further, Respondent certified, under penalty of perjury, that he would notify the IMC of any future convictions related to the conduct of his practice or upon being placed on any court ordered probation. Respondent did not disclose his conviction or notify the IMC of his October 16, 2007 conviction and probation (Finding 3(I)).
- C. On April 14, 2010, Respondent signed an application, under penalty of perjury for reappointment as a QME for the Division of Worker's Compensation. Respondent certified, under penalty of perjury, that he had not committed a misdemeanor or felony related to his practice. Respondent did not disclose his October 16, 2007 conviction and probation (Finding 3(I)).

9. Respondent denied that he committed an act or acts of dishonesty or corruption based on the facts in Finding 8 and explained.

He did not remember reviewing the applications. Over the years, in his office/medical practice, there has been a credentials specialist who prepares, completes and reviews a variety of and numerous documents on his behalf. These documents include, but are not limited to, insurance forms, peer reference forms, professional society forms, grant applications, research applications, work status and patient forms, operative reports, infection control forms, pathology forms and physical therapy forms. They are bundled and brought to Respondent as a package by the office manager or credentials specialist. She flags boxes for initials and signature lines or any area that needs to be completed, initialed and signed. The credentials specialist meets with Respondent, on at least a weekly basis, and presents the documents. Respondent asks questions if he has any, provides any necessary information and initials and signs the documents. He admits that he does not review the documents closely.

Respondent completed the 2006 application prior to the 2007 conviction. Respondent did not review the applications but simply signed. However, even after reading the documents, Respondent did not understand the wording of the application required that he disclose either conviction; the acts underlying the conviction occurred in a social setting, not while he was on duty as a physician or treating a patient. Therefore he did not understand that his crime related to the practice of medicine. Further, he did not understand that his

conviction constituted a crime of moral turpitude. Finally, his license to practice medicine had not been disciplined by the Medical Board.

Respondent completed the most recent application on April 14, 2010. By this time, the Medical Board had filed the Accusation against him, and Respondent had been in communication with the Medical Board about the conviction. Respondent testified that he believed that once the Medical Board understood that he was not under the influence while on duty and/or providing patient care that the Accusation would be dismissed.

Respondent testified that, when he completed the QME applications, had he understood he would have disclosed the conviction; he did not intentionally try to deceive; he considers himself to be a forthright individual. At the time of the conviction, his criminal attorney did not explain his obligation to disclose the conviction in documents such as the QME application. His practice as a QME provides minimal financial benefit in that it constitutes one percent of his practice.

Respondent understands that it was his responsibility, not his credentials clerk or anyone else, to review the applications and question, if necessary, before signing. He testified that he has learned from his mistake; now and in the future, he reviews/will review these and other documents more closely.

10. There is no dispute that Respondent did not disclose his conviction in the 2008 and 2010 QME applications, and that he did not notify the IMC after his conviction in 2007. Respondent's explanation for his failure to do so was credible. The question on the applications was unclear, even after the modification in 2010. Despite his busy practice, Respondent was obligated to answer questions truthfully and to investigate further if he had questions. However, his acts, at best, were negligent, not intentional. Therefore, it was not established that Respondent's failure to disclose his conviction in the QME applications constituted acts of dishonesty or corruption.

11. Complainant alleged that Respondent engaged in conduct which breaches the rules or ethical conduct of the medical profession or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, based on the facts in Findings 4, 5 and 8.

No evidence was offered to establish the rules or ethical code of the medical profession or that the facts of this case constitute conduct which is unbecoming a member in good standing of the medical profession. Therefore it was not established that, based on the facts in this case (Findings 4 and 5), Respondent breached the rules or ethical conduct of the medical profession or conduct which is unbecoming to a member in good standing of the medical profession and demonstrates an unfitness to practice medicine.

12. By way of aggravation, the evidence established that, in 1995, Respondent has been convicted of a wet reckless arising out of his driving a motor vehicle while under the influence of alcohol.

By letter, dated April 11, 2008, Respondent disclosed this conviction to the Medical Board. At the time of the traffic stop, Respondent was returning from volunteering at a high school football game. There is no evidence that, at the time of the incident that resulted in his 1995 conviction, he had an accident, that anyone suffered physical injury or property damage. There is no evidence that Respondent has been stopped, arrested or charged with driving a motor vehicle while under the influence of alcohol between 1995 and August 31, 2006.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving charges by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This requires that he present evidence “of such convincing force that it demonstrates, in contrast to the opposing evidence, a probability of truth” of the charges (BAJI 2.62) and “so clear as to leave no substantial doubt.” (*In re Angelia P.* (1981) 28 Cal.3d 908, 919; *In re David C.* (1984) 152 Cal.App.3d 1189, 1208.) If the totality of the evidence serves only to raise concerns, suspicion or conjecture, the standard is not met.

2. For constitutional reasons, a professional license may be disciplined only if the conduct upon which the discipline is based relates to the practice of the particular profession and thereby demonstrates an unfitness to practice such profession. Whether this requirement tying the conduct to the fitness or competence to practice a profession is termed a “nexus” or a “relationship,” the inherent meaning is the same. There must be a logical connection of licensees’ conduct to their fitness or competence to practice the profession or to the qualifications, functions, or duties of the profession in question. (*Clare v. California State Bd. of Accountancy* (1992) 10 Cal.App.4th 294, 302.)

3. A conviction alone will not support the imposition of license discipline, unless the crime substantially relates to the qualifications, functions, or duties of the profession in question. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

4. In *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, the Medical Board sought to impose discipline against Dr. Griffith’s license for three misdemeanor convictions involving the use and consumption of alcoholic beverages, the last two of which occurred while Dr. Griffiths was on probation for earlier offenses. The disciplinary action was taken under Business and Professions Code section 2239, subdivision (a), which provided that “more than one misdemeanor ... involving the use, consumption, or self-administration of [alcoholic beverages] ... constitutes unprofessional conduct.”

In *Griffiths*, the Court of Appeal concluded that convictions involving alcohol consumption have a logical connection to a physician’s fitness to practice medicine and stated:

“Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician’s fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens public safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions and distance. [Citation]

Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society. Moreover, Griffiths’ December 20, 1989, arrest violated his 36-month probation ordered on August 20, 1987, and Griffiths’ November 24, 1991, arrest violated his 36-month probation ordered on April 3, 1990. Knowledge of such repeated conduct by a physician, and particularly of its propensity to endanger members of the public, tends to undermine public confidence in and respect for the medical profession. [Citation.] Repeated convictions involving alcohol use, two of which violated Griffiths’ probation, reflect poorly on Griffiths’ common sense and professional judgment, which are essential to the practice of medicine, and tend to undermine public confidence in and respect for the medical profession.” (*Griffiths, supra*, 96 Cal.App.4th at pp. 770-771.)

Finally, the Court noted that Griffith’s three alcohol-related convictions are indications of alcohol abuse that affects his private life; it is not necessary to wait until his alcohol abuse problem begins to affect his practice of medicine.

5. The *Griffiths* case involved a physician who suffered three convictions for driving under the influence. However, *Watson v. Superior Court* (2009) involved a physician who had four incidents of driving under the influence of alcohol and no convictions. In addition to affirming the Court’s findings in *Griffiths*, the Court held that Business and Professions Code section 2239, subdivision (a) authorizes discipline of a physician for the use of alcoholic beverages “to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public.” (§ 2239, subd. (a).) Discipline is authorized where the use of alcoholic beverages is “to an extent” or “in such a manner” as to pose a danger to the physician or others. The court in *Watson* said there could be no doubt that petitioner’s driving after consuming alcoholic beverages on four occasions posed a danger to him and others.

6. Considering the facts and the law, discipline of Respondent for engaging in conduct that involved the consumption of alcohol, in his personal life, to an extent, or in a manner, that posed a danger to himself or the public has a logical connection/nexus to Respondent’s fitness to practice as a physician and surgeon.

7. Cause exists to discipline Respondent's physician's and surgeon's certificate for unprofessional conduct under Business and Professions Code sections 2227 and 2234, as defined by Business and Professions Code section 2236, subdivision (a); Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of a physician and surgeon, by reason of Finding 4.

8. Cause exists to discipline Respondent's physician's and surgeon's certificate for unprofessional conduct under Business and Professions Code sections 2227 and 2234, as defined by Business and Professions Code section 2239, subdivision (a); Respondent used alcohol in a manner dangerous or injurious to himself or to the public, by reason of Findings 4 and 5.

9. Insufficient evidence was offered to establish that cause exists to discipline Respondent for unprofessional conduct under Business and Professions Code section 2227 and 2234, as defined by 2234, subdivision (e) of the Code; Respondent did not commit an act or acts of dishonesty and corruption, by reason of Findings 9 and 10.

10. Insufficient evidence was offered to establish that cause exists to discipline Respondent for unprofessional conduct under Business and Professions Code section 2227 and 2234, as defined by 2234, subdivision (e) of the Code; it was not established that Respondent has engaged in conduct which breaches the rules or ethical code of the medical profession or which is unbecoming to a member in good standing of the medical profession and which demonstrates an unfitness to practice medicine, by reason of Finding 11.

11. In determining the appropriate discipline, consideration has been given to the legislative intent that the purpose of the statutory scheme to license and discipline physicians and surgeons is to protect the public interest, rather than punish a wrongdoer. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810.)

12. Considering the facts, the evidence of rehabilitation, the law and the violations committed by Respondent, an order of discipline must be issued that protects the public, rather than punishes Respondent.

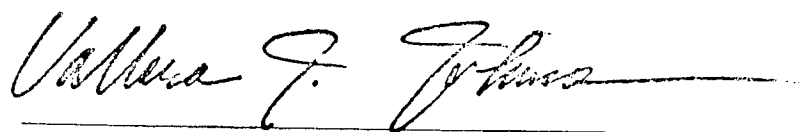
The Medical Board issued a physician's and surgeon's certificate to Respondent more than 17 years ago. There is no evidence of prior discipline by the Medical Board. For purposes of discipline, Respondent has suffered two alcohol related offenses, one 16 years ago and the other seven years ago. He provided evidence of rehabilitation. He has been evaluated by three different hospitals and allowed to practice with unrestricted privileges. Most significantly a qualified psychiatrist evaluated Respondent on two separate occasions (in 2008 and again in 2010) and determined that Respondent does not abuse alcohol and that he is not an impaired physician. As such, it was not established that Respondent is unfit to practice as a physician and surgeon. The public will be adequately protected by the issuance of public reproof as authorized by Business and Professions Code section 495.

13. Any factual and/or legal argument not addressed herein is determined not to be relevant and/or unsupported by the evidence and therefore rejected.

ORDER

Respondent David Jee Wei Chao is publicly reprovved.

DATED: September 21, 2011

A handwritten signature in black ink, appearing to read "Vallera J. Johnson", written over a horizontal line.

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings