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

In the Matter of the Accusation )
Against: )
) ) Case No. 8002015017698
DAVID LEE SPIVEY, M.D. )
) Physician's and Surgeon's
Certificate No. A 39233 )
) Respondent
)

DECISION AND ORDER

The attached Stipulated Surrender of License and 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 September 16, 2016.

IT IS SO ORDERED September 6, 2016.

MEDICAL BOARD OF CALIFORNIA

By: Kimberly Kirchmeyer
Executive Director
BEFORE THE 
MEDICAL BOARD OF CALIFORNIA 
DEPARTMENT OF CONSUMER AFFAIRS 
STATE OF CALIFORNIA 

In the Matter of the Accusation Against: 

DAVID LEE SPIVEY, M.D. 
2912 Maplewood Avenue 
Winston Salem, NC 27103 
Physician's and Surgeon's Certificate No. A39233 

Respondent. 

Case No. 800-2015-017698 
OAH No. 2016040421 

STIPULATED SURRENDER OF LICENSE AND ORDER 

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

PARTIES 
1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, via Joshua M. Templet, Deputy Attorney General. 
2. David Lee Spivey, M.D. (Respondent) is represented in this proceeding by attorney Cameron Cobden, 1000 G Street, Suite 200, Sacramento, CA 95814. 
3. On or about October 25, 1982, the Medical Board of California issued Physician's and Surgeon's Certificate No. A39233 to David Lee Spivey, M.D. (Respondent). The certificate
was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-017698.

        JURISDICTION

4. Accusation No. 800-2015-017698 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 4, 2016. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2015-017698 is attached as Exhibit A and incorporated by reference.

        ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-017698. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

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

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

        CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. 800-2015-017698, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.
9. Respondent lives and practices in North Carolina and has no plans to relocate to California. Based exclusively on action taken by the North Carolina Medical Board, as alleged in the Accusation, and not on any conduct that occurred in California, for the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

**CONTINGENCY**

11. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

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ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A39233, issued to Respondent David Lee Spivey, M.D., is surrendered and accepted by the Medical Board of California.

1. The surrender of Respondent’s Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent’s license history with the Medical Board of California.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board’s Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If he ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 800-2015-017698 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 800-2015-017698 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Cameron Cobden. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of
License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
Decision and Order of the Medical Board of California.

DATED: 8-2-15

DAVID LEE SPIVEY, M.D.
Respondent

I have read and fully discussed with Respondent David Lee Spivey, M.D. the terms and
conditions and other matters contained in this Stipulated Surrender of License and Order 1
approve its form and content.

DATED: 8/3/16

CAMERON COBDEN
Attorney for Respondent

ENDORSEMENT

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

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California

JANE ZACK SIMON
Supervising Deputy Attorney General

JOSHUA M. TEMPLE
Deputy Attorney General
Attorney for Complainant
License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
Decision and Order of the Medical Board of California.

DATED: ____________________________________________________________________________

DAVID LEE SPIVEY, M.D.  
Respondent

I have read and fully discussed with Respondent David Lee Spivey, M.D. the terms and
conditions and other matters contained in this Stipulated Surrender of License and Order. I
approve its form and content.

DATED: ____________________________________________________________________________

CAMERON COBDEN  
Attorney for Respondent

ENDORSEMENT

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

Dated: 8/3/2016

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California

JANE ZACK SIMON  
Supervising Deputy Attorney General

JOSHUA M. TEMPLET  
Deputy Attorney General

Attorneys for Complainant
Exhibit A

Accusation No. 800-2015-017698
BEFORE THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

David Lee Spivey, M.D.
2912 Maplewood Avenue
Winston Salem, NC 27103

Physician's and Surgeon's Certificate
No. A39233,

Respondent.

Complainant alleges:

PARTIES

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

2. On or about October 25, 1982, the Medical Board issued Physician's and Surgeon's
Certificate Number A39233 to David Lee Spivey, M.D. (Respondent). The Physician's and
Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
herein and will expire on March 31, 2016, unless renewed.

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(DAVID LEE SPIVEY, M.D.) ACCUSATION NO. 800-2015-017698
JURISDICTION

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

4. Section 2004 of the Code provides that the Medical Board shall have the responsibility for the enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

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

6. Section 141 of the Code states:

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

7. Section 2305 of the Code states:

The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter [Chapter 5, the Medical Practice Act] shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

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CAUSE FOR DISCIPLINE
(Discipline, Restriction or Limitation Imposed by another State)

8. On September 11, 2015, the North Carolina Medical Board ("North Carolina Board") entered a Consent Order disciplining Respondent’s license to practice medicine in North Carolina. A copy of the Consent Order (Order) is attached as Exhibit A and incorporated herein.

9. The Order finds and Respondent admits a history of substance abuse, including intermittent use of opioids and alcohol. The Order further finds that Respondent self-reported to the North Carolina Physicians Health Program, and that he completed 28-days of in-patient treatment.

10. The Order concludes and Respondent admits that “when abusing alcohol or opioids he is unable to practice medicine with reasonable skill and safety . . . and grounds exist for the Board to suspend, revoke or limit [Respondent’s] license or to deny any application he might make in the future.”

11. The Order indefinitely suspended Respondent’s license to practice medicine in North Carolina, stayed such suspension, and imposed the following restrictions:

- Respondent must maintain and abide by the terms of his five-year monitoring contract with the North Carolina Physicians Health Program.

- “Unless lawfully prescribed for [Respondent] by someone other than himself, [Respondent] shall refrain from the use or possession of alcohol and all other mind- or mood-altering substances and all controlled substances including but not limited to, sedatives, stimulants, and pain medication.”

- “Upon request by the Board, [Respondent] shall supply urine, blood, hair or any bodily fluid or tissue sample the Board might reasonably require for the purposes of analysis to determine if he has consumed any of the substances mentioned above.”

12. Respondent’s conduct and the action of the North Carolina Board as set forth above constitute unprofessional conduct within the meaning of section 2305 and conduct subject to discipline within the meaning of section 141(a).
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 A39233, issued to David Lee Spivey, M.D.;

2. Revoking, suspending or denying approval of David Lee Spivey, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering David Lee Spivey, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: March 4, 2016

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

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