

FILED

JUL 16 2018

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

In the Matter of the Amended Accusation Against:

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

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

Respondent

Case No. 900-2014-000044

OAH No. 2017021020

DECISION AND ORDER

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

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

It is so ORDERED 7/16/2018.



**JOSEPH A. ZAMMUTO, D.O., PRESIDENT
FOR THE OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS**

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

11 In the Matter of the Amended Accusation
12 Against:

13 **HOWARD P. LEVY, D.O.**
14 **57370 29 Palms Highway, Suite 203**
Yucca Valley, CA 92284

15 **Osteopathic Physician's and Surgeon's**
16 **Certificate No. 20A 4148,**

17 Respondent.

Case No. 900-2014-000044

OAH No. 2017021020

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

21 **PARTIES**

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

26 2. Respondent Howard P. Levy, D.O. is represented in this proceeding by attorney
27 Jeffrey G. Keane, Esq., whose address is: 74770 Highway 111, Suite 201, Indian Wells, CA
28 92210.

1 Accusation No. 900-2014-000044, if proven at a hearing, constitute cause for imposing
2 discipline.

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

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

10 CONTINGENCY

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

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

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

27 DISCIPLINARY ORDER

28 **IT IS HEREBY ORDERED** that Osteopathic Physician's and Surgeon's Certificate No.

1 20A 4148 issued to Respondent Howard P. Levy, D.O. is revoked. However, the revocation is
2 stayed and Respondent is placed on probation for five (5) years on the following terms and
3 conditions.

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

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

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

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

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

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

27 6. **License Surrender.** Following the effective date of this decision, if Respondent
28 ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the terms and

1 conditions of probation, Respondent may voluntarily tender his certificate to the Board. The
2 Board reserves the right to evaluate the Respondent's request and to exercise its discretion
3 whether to grant the request, or to take any other action deemed appropriate and reasonable under
4 the circumstances. Upon formal acceptance of the tendered license, Respondent will no longer be
5 subject to the terms and conditions of probation.

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

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

23 **9. Controlled Drugs - Partial Restriction.** Respondent shall not prescribe, administer,
24 dispense, order, or possess any Schedule II and III controlled substances as defined by the
25 California Uniform Controlled Substances Act, except for ordering or possessing medications
26 lawfully prescribed to Respondent for a bona fide illness or condition by another practitioner,
27 until Respondent completes a pharmacology course approved in advance by the Board or its
28 designee, and has been so notified by the Board in writing.

1 10. **Controlled Drugs - Maintain Record.** Respondent shall maintain a record of all
2 controlled substances prescribed, dispensed or administered by Respondent during probation,
3 showing all the following: (1) the name and address of the patient, (2) the date, (3) the character
4 and quantity of controlled substances involved and (4) the pathology and purpose for which the
5 controlled substance was furnished.

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

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

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

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

27 14. **Monitoring – Practice.** Within ninety (90) days of the effective date of this decision,
28 Respondent shall contract with Affiliated Monitors, Inc. Respondent shall pay all monitoring

1 costs.

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

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

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

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

24 If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar
25 days of such resignation or unavailability, submit to the Board or its designee, for prior approval,
26 as a replacement monitor, the name and qualifications of one or more licensed physicians and
27 surgeons whose licenses are valid and in good standing, and who are preferably American Board
28 of Medical Specialties certified or certified by the American Osteopathic Association. A monitor

1 shall have no prior or current business or personal relationship with Respondent, or other
2 relationship that could reasonably be expected to compromise the ability of the monitor to render
3 fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be
4 in Respondent's field of practice, and must agree to serve as Respondent's monitor.

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

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

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

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ACCEPTANCE


I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jeffrey G. Keane, Esq. I understand the stipulation and the effect it will have on my Osteopathic Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Osteopathic Medical Board of California.

DATED: 5/10/18


HOWARD P. LEVY, D.O.
Respondent

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

DATED: 5-10-18


JEFFREY G. KEANE, ESQ.
Attorney for Respondent

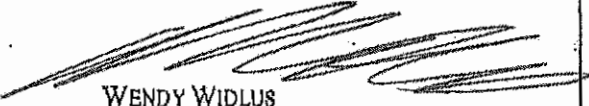
ENDORSEMENT

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

Dated: May 10, 2018

Respectfully submitted,

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


WENDY WIDLUS
Deputy Attorney General
Attorneys for Complainant

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