

**BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA**

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In the Matter of Charges and Complaint

Case No. 25-47823-1

FILED

Against:

DAVID JAMES SMITH, M.D.,

MAR 16 2026

Respondent.

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: _____

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-entitled matter came on regularly for decision before the Nevada State Board of Medical Examiners (Board), on March 6, 2026, at the Board's office located at 325 E Warm Springs Road, Suite 225, Las Vegas, NV 89119, on the Complaint filed herein. David James Smith, M.D., (Respondent), who was duly served with notice of the adjudication, was present and represented by his counsel, Lyn E. Beggs, Esq. The adjudicating members of the Board participating in these Findings of Fact, Conclusions of Law, and Order (FOFCOL) were: Nick M. Spirtos, M.D., F.A.C.O.G., Ms. Maggie Arias-Petrel, Chowdhury H. Ahsan, M.D., Ph.D., FACC, Ms. Pamela J. Beal, Hugh L. Bassewitz, M.D., FAAOS, Apeksha Desai, M.D., MBA, and Ms. Kathleen A. Conaboy. Rosalie M. Bordelove, Esq., Chief Deputy Attorney General, served as legal counsel to the Board.

The Board, having received and read the Complaint and exhibits admitted in the matter and filed into the record in this case, the "Findings and Recommendations" prepared by the Hearing Officer, Charles Burcham, Esq., who presided over the hearing, and the transcript of the hearing, proceeded to make a decision pursuant to the provisions of Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code (NAC) Chapter 630 (collectively, the Medical Practice Act), NRS Chapter 622A, and NRS Chapter 233B, as applicable.

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1 The Board, after due consideration of the record, evidence and law, and being fully
2 advised in the premises, makes its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
3 ORDER in this matter, as follows:

4 **FINDINGS OF FACT**

5 **I.**

6 Respondent held a license to practice medicine in the State of Nevada issued by the Board
7 at all relevant times.

8 **II.**

9 On June 24, 2025, the Investigative Committee (IC) of the Board filed its formal
10 Complaint in Case No. 25-47823-1 alleging Respondent violated the Medical Practice Act.
11 Respondent was served with the Complaint through his counsel on June 26, 2025. The Complaint
12 alleged one (1) violation of the Nevada Medical Practice Act, including: one (1) violation of
13 NRS 630.301(3), Disciplinary Action by Another State Medical Board (Count I). Respondent
14 filed an answer in response to the allegations set forth in the Complaint on July 22, 2025.

15 **III.**

16 An Order was filed on July 28, 2025, scheduling the Early Case Conference (ECC) for the
17 pending matter for July 30, 2025. This Order was served upon Respondent's counsel by email
18 and U.S. Certified Mail. The Early Case Conference was held at the scheduled time wherein all
19 parties appeared telephonically. As a result of the ECC, a Scheduling Order was issued and filed
20 August 6, 2025, setting dates for prehearing and hearing. The Prehearing Conference was
21 scheduled for October 13, 2025, and a hearing date was set for November 13, 2025. Respondent's
22 counsel was served a copy of the Scheduling Order by email and U.S. Certified Mail. At the time
23 fixed for the Prehearing Conference, legal counsel for the IC, Donald K. White, Senior Deputy
24 General Counsel, appeared, as well as the Hearing Officer, Charles Burcham, Esq. and counsel for
25 Respondent, Lyn E. Beggs, Esq. At the Prehearing Conference, counsel for the IC and
26 Respondent provided the Hearing Officer with the mandated Prehearing Conference Disclosures
27 and had copies of both the Prehearing Conference Statement and the mandated Prehearing
28 Disclosures available for the parties. Respondent was timely and properly served with the

1 Prehearing Conference Statement and the mandated Prehearing Disclosures in accord with
2 NRS and NAC Chapters 630, NRS Chapters 241, 622A and 233B, and the requirements of due
3 process.

4 **IV.**

5 On November 13, 2025, a contested case hearing was held before the Hearing Officer to
6 receive evidence and to hear arguments. The Hearing Officer received the complete Record of
7 Proceedings, including the transcript of the testimony received and the exhibits admitted. Upon
8 receipt of the Record of Proceedings, the hearing was closed. The Hearing Officer filed the
9 Findings and Recommendations on January 14, 2026. The Hearing Officer recommended that the
10 Board find violations pertaining to Count I as alleged in the Complaint. Respondent was served
11 with the Hearing Officer’s Findings and Recommendations via U.S. Certified Mail, with a copy
12 by email on January 14, 2026. The matter was scheduled for final adjudication on March 6, 2026,
13 at a regularly scheduled Board meeting. The notice of the adjudication was mailed to Respondent
14 on January 14, 2026, via U.S. Certified Mail, and Respondent was given a copy of the
15 Investigative Committee’s Memorandum of Costs and Disbursements and Attorneys’ Fees and a
16 packet of the adjudication materials to be presented at the scheduled Board meeting.

17 **V.**

18 Pursuant to NRS 622A.300(5)(a), the Findings and Recommendations of the Hearing
19 Officer are hereby approved by the Board in their entirety, and are hereby specifically
20 incorporated and made part of this Order by reference. *See Exhibit 1.*

21 **VI.**

22 In accord with the Findings and Recommendations, the Board hereby finds that all counts
23 set forth in the Complaint, as recapitulated in Paragraph II above, have been established by a
24 preponderance of the evidence.

25 **VII.**

26 If any of the foregoing Findings of Fact is more properly deemed a Conclusion of Law, it
27 may be so construed.

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1 CONCLUSIONS OF LAW

2 I.

3 The Board has jurisdiction over Respondent and the Complaint, and an adjudication of this
4 matter by the Board members as set forth herein is proper.

5 II.

6 Respondent was timely and properly served with the Complaint, and all notices and orders
7 in advance of the hearing and adjudication thereon, in accord with NRS and NAC Chapters 630,
8 NRS Chapters 241, 622A and 233B, and the requirements of due process.

9 III.

10 With respect to the allegations of the Complaint, the Board concludes that Respondent has
11 violated NRS 630.301(3), Disciplinary Action by Another State Medical Board (Count I).
12 Accordingly, Respondent is subject to discipline pursuant to NRS 630.352.

13 IV.

14 The Board finds that, pursuant to NRS 622.400, it may recover from Respondent
15 reasonable attorneys' fees and costs incurred by the Board as part of its investigative,
16 administrative and disciplinary proceedings against Respondent as it hereby enters this Findings
17 of Fact, Conclusions of Law, and Order finding that Respondent has violated the Medical Practice
18 Act, which the Board has the authority to enforce.

19 V.

20 The Board has reviewed the Investigative Committee's Memorandum of Costs and
21 Disbursements and Attorneys' Fees, and the Board finds them to be the actual fees and costs
22 incurred by the Board as part of its investigative, administrative and disciplinary proceedings
23 against Respondent, and finds them to be reasonable based on: (1) the abilities, training,
24 education, experience, professional standing and skill demonstrated by Board staff and attorneys;
25 (2) the character of the work done, its difficulty, its intricacy, its importance, the time and skill
26 required, the responsibility imposed and the prominence and character of the parties where, as in
27 this case, they affected the importance of the litigation; (3) the work actually performed by the
28 Board's attorneys and staff, and the skill, time and attention given to that work; and (4) the

1 product of the work and benefits to the Board and the people of Nevada that were derived
2 therefrom.

3 **VI.**

4 If any of the foregoing Conclusions of Law is more properly deemed a Finding of Fact, it
5 may be so construed.

6 **ORDER**

7 Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause
8 appearing therefore,

9 IT IS HEREBY ORDERED that pursuant to NRS 630.352, NRS 622A.410, and
10 NRS 622.400:

11 1. Respondent's license to practice medicine shall be immediately revoked for a
12 period of five (5) years from the date of the Board's Order, with this revocation stayed pending
13 completion of a five (5) year probationary period. During the term of probation, Respondent shall
14 comply with the following:

15 a. Respondent shall be restricted from management of intrathecal pumps for a
16 period of five (5) years from the date of this Order.

17 2. Respondent shall pay a fine in the amount of two thousand five hundred dollars
18 (\$2,500) within one hundred twenty (120) days from the date of this Board Order;

19 3. Respondent shall reimburse the Board the reasonable costs and expenses actually
20 incurred in the investigation and prosecution of this case in the amount of thirteen thousand nine
21 hundred and four dollars and seventy-seven cents (\$13,904.77) within one hundred twenty (120)
22 days from the date of this Board Order;

23 4. Respondent shall be issued a Public Letter of Reprimand; and

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OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521
(775) 688-2559


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5. Respondent's discipline shall be reported to the appropriate entities, including the National Practitioner Data Bank (NPDB).

IT IS SO ORDERED.

DATED this 16th day of March, 2026.

NEVADA STATE BOARD OF MEDICAL EXAMINERS



NICK M. SPIRTOS, M.D., F.A.C.O.G.
President of the Board

OFFICE OF THE GENERAL COUNSEL
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CERTIFICATION

I certify that the foregoing is the full and true original **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** on file in the office of the Board of Medical Examiners in the matter of David James Smith, Case No. 25-47823-1.

I further certify that Nick M. Spirtos, M.D., F.A.C.O.G., is the President of the Nevada State Board of Medical Examiners and that full force and credit is due to his official acts as such; and that the signature to the foregoing **ORDER** is the signature of said Nick M. Spirtos, M.D., F.A.C.O.G.

IN WITNESS THEREOF, I have hereunto set my hand in my official capacity as Secretary-Treasurer of the Nevada State Board of Medical Examiners.

DATED this 16th day of March, 2026.

NEVADA STATE BOARD OF MEDICAL EXAMINERS



MAGGIE ARIAS-PETREL
Secretary-Treasurer and Public Member of the Board

EXHIBIT 1

EXHIBIT 1

1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**
2 **OF THE STATE OF NEVADA**

3 * * * * *

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5 **In the Matter of Charges and**
6 **Complaint Against:**
7 **DAVID JAMES SMITH, M.D.,**
8 **Respondent.**

Case No. 25-47823-1

FILED

JAN 14 2026

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

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10 **SYNOPSIS OF RECORD/FINDINGS AND RECOMMENDATIONS**

11 **I. INTRODUCTION**

12 This case involves a Nevada physician, Respondent David James Smith, M.D., (“Dr.
13 Smith” or “Respondent”) who had his medical license in California *revoked* in 2024 by the Medical
14 Board of California (“California Medical Board.”) The ultimate issue in this case is not whether
15 Respondent is subject to a disciplinary action before the Nevada State Board of Medical Examiners
16 (“NSBME”); rather, as stated by Respondent’s counsel in her opening statements, the ultimate issue
17 is “what the appropriate discipline might be at the time of adjudication in this case.” Transcript
18 (“TR”) 17:4-6. Respondent’s counsel also noted “that the context and the timeline of this case is
19 germane and salient to the full decision that is going to be made in this case.” TR 17:7-9.

20 During the course of the formal hearing in this matter, the undersigned Hearing Officer
21 received evidence (and argument) regarding Respondent’s disciplinary history with not only the
22 California Medical Board, but also with this Board. This history is lengthy, convoluted and in
23 California, contentious.

24 The California disciplinary history involves three (3) separate sets of accusations against
25 Respondent that resulted in four (4) separate multi-day hearings and four (4) separate decisions from
26 the California Medical Board, adopting four (4) separate Administrative Law Judge (“ALJ”)
27 proposed decisions. It also resulted in Respondent filing three (3) separate Superior Court writ
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1 applications challenging the California Medical Board's decisions, one (1) of which was (partially)
2 successful on procedural grounds while the other two (2) were not.

3 The NSBME disciplinary history involves one (1) prior case. On June 9, 2022, the
4 Investigative Committee of the Nevada State Board of Medical Examiners ("IC") filed its formal
5 charging document against Respondent in Case No. 22-47823-1. This charging document alleged
6 five (5) counts against Respondent including: (i) Obtaining a License by Fraud and
7 Misrepresentation; (ii) Disciplinary Action by Another State Medical Board; (iii) Failure to Report
8 Disciplinary Action by Another State Medical Board; (iv) Disciplinary Action by Another State
9 Medical Board; and (v) Failure to Report Disciplinary Action by Another State Medical Board. The
10 complaint included as exhibits two (2) of the California Medical Board's disciplinary decisions
11 against Respondent, one (1) of which spanned **88 pages** and the other of which totaled **100 pages**.¹

12 As will become immediately clear, the focus of the California Medical Board's disciplinary
13 actions against Respondent centered on his use of a specific pain management treatment modality
14 involving intrathecal ("IT") pumps. Respondent's IT pump therapy practice is the common
15 denominator binding together the various California disciplinary cases against Respondent.

16 **II. ALLEGATIONS and DEFENSES**

17 The formal charging document ("Complaint") in this matter alleges one (1) count against
18 Respondent: **NRS 630.301(3)-Disciplinary Action by Another State Medical Board**. The
19 statutory authority for this count is NRS 630.301(3) which generally provides that discipline taken
20 against a Nevada licensee by another state's medical licensing board "is grounds for initiating
21 disciplinary action against that licensee." In turn, the decision revoking Respondent's medical license
22 by the California Medical Board that is Exhibit 1 to the Complaint is the disciplinary action by
23 another state's medical board statutorily justifying the IC's Complaint under NRS 630.301(3). IC
24 formal hearing Exhibit 1 is a certified copy of that decision.

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28 ¹ To be clear, this prior Nevada disciplinary case is only relevant to this instant matter for history and context. The prior case resulted in a settlement agreement that was accepted and approved by this Board on June 7, 2024, and there is no evidence or argument that Respondent is not complying with the settlement terms thereunder.

1 In his Answer and Notice of Defense, Respondent admits the factual allegations of the
2 Complaint, which are again simple. Respondent therefore acknowledges, as he must, that his
3 California medical license was *revoked* effective August 23, 2024.

4 There is no question that the IC is legally and factually justified in bringing this case against
5 Respondent, and again as noted by Respondent's counsel at the formal hearing, the ultimate issue is
6 what the appropriate discipline might be at the time of adjudication. This synopsis of the record will
7 detail Respondent's California Medical Board disciplinary history based on the evidence presented,
8 including most prominently IC's formal hearing Exhibit 1, which is the disciplinary action from the
9 California Medical Board that revoked Respondent's medical license. Understanding the history is
10 key when considering what discipline might be appropriately dispensed by the NSBME adjudicating
11 members.

12 **III. FORMAL HEARING EVIDENCE, WITNESSES AND TESTIMONY**

13 The formal hearing in this matter occurred on November 13, 2025. Present in the Reno office
14 of the Nevada State Board of Medical Examiners were Donald K. White, Esq. on behalf of the IC,
15 Respondent David James Smith, M.D., Respondent's attorney Lyn Beggs, Esq., and the undersigned
16 Hearing Officer, together with the certified court reporter.

17 IC witness Ernesto Diaz, Chief of Investigations for the Board, as well as Respondent
18 appeared and testified in person. Respondent's witness Matthew Rifat, Esq., testified remotely by
19 video conferencing through a cloud-based application, Zoom. All witnesses were sworn in prior to
20 testifying and the rule of exclusion was invoked by both parties.

21 IC's Exhibits 1 and 2 were offered and admitted into evidence prior to testimony, without
22 objection. Exhibit 1 is a *certified copy* of the July 25, 2024, **DECISION** from the California Medical
23 Board (the "**2024 California Medical Board Decision**") revoking Respondent's medical license and
24 Exhibit 2 is the transmittal of that decision to the IC's counsel "in accordance with" NRS
25 630.306(1)(k).

26 The case before this Board is legally and factually simple. There is no dispute that
27 Respondent's medical license in California was *revoked* by virtue of the 2024 California Medical
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1 Board Decision, IC Exhibit 1. Therefore, there is no dispute that the IC is statutorily authorized to
2 bring this case.

3 The testimony at the formal hearing will be summarized below. That said, such testimony
4 provides little insight into *why* Respondent found himself in disciplinary trouble with the California
5 Medical Board. IC's Exhibit 1 provides the answer to that question. As noted, Respondent's
6 disciplinary history with the California Medical Board is lengthy, convoluted and contentious.
7 Understanding that history addresses the relevant timeline of Respondent's California disciplinary
8 history and provides context for such discipline and license revocation.

9 Accordingly, IC Exhibit 1, the 2024 California Medical Board Decision, will be analyzed
10 initially, and then the hearing testimony will be summarized. The initial focus will be on the
11 procedural history of Respondent's various disciplinary cases before the California Medical Board, as
12 well as a summary of the reasoning and the conclusions found in the California Administrative Law
13 Judge's "Proposed Decision" that was adopted by the California Medical Board in the 2024
14 California Medical Board Decision. After that, attention will turn to the testimony at the formal
15 hearing, then to findings and recommendations.

16 **1. Analysis of the 2024 California Board Decision and the ALJ's findings and reasoning.**

17 IC's Exhibit 1, the 2024 California Medical Board Decision in Case No. 800-2021-081615,
18 adopted the "Proposed Decision" that was issued by ALJ Alan R. Alvord ("ALJ Alvord"), on July 2,
19 2024. NSBME 001-41. This followed a three (3) day administrative hearing in California with
20 subsequent written final arguments and rebuttal arguments.

21 The 2024 California Medical Board Decision, based upon ALJ Alvord's Proposed Decision,
22 was entered in Case No. 800-2021-081615, which are the "2023 accusations" against Respondent
23 that were filed on July 11, 2023. These 2023 accusations were styled: "Petition to Revoke
24 Probation." NSBME 004. The decision discusses in great detail the procedural and substantive
25 history of Respondent's prior disciplinary cases before the California Medical Board as well as
26 evidence supporting the 2023 accusations. Those 2023 accusations focused on Respondent's IT
27 pump treatment of three (3) patients in 2022, as well as certain disclosures Respondent made to
28 patients regarding his disciplinary status.

1 The 2024 California Medical Board Decision on the 2023 accusations was entered in the *third*
2 California disciplinary action against Respondent, all of which again dealt with IT pump therapy.
3 Understanding what transpired in those other two (2) disciplinary cases is essential to understanding
4 the basis of the 2024 California Medical Board Decision that revoked Respondent’s California
5 medical license, and what, if any, disciplinary action should be taken by this Board.

6 ***A. Disciplinary History: California Medical Board Case No. 800-2015-012651 and the***
7 ***2020 Board Decision resulting in Writ I***

8 The California Medical Board *first* issued disciplinary accusations against Respondent on
9 April 27, 2018, California case no. 800-2015-012651. These “**2018 accusations**” were based on
10 Respondent’s care and treatment of five (5) patients using IT pumps between 2004 and 2017. The
11 case went to formal hearing in September and October 2019 and January 2020.² On August 25,
12 2020, the California Medical Board adopted the ALJ’s proposed decision and found that Respondent
13 Dr. Smith committed gross negligence (as to four of five patients); repeated negligent acts (as to all
14 five patients); incompetence (as to one of five patients); prescribed excessive drugs (as to three of the
15 five patients); failed to maintain adequate and accurate records (as to all five patients); and engaged
16 in unprofessional conduct (as to all five patients.) Respondent’s “certificate” (i.e. medical license)
17 was *revoked*, with the revocation *stayed* subject to a probationary period of seven (7) years and
18 various other conditions, restrictions and requirements. NSBME 006-007. This will be referred to as
19 the “**2020 California Medical Board Decision**” and was effective on September 24, 2020. It is also
20 Exhibit 1 in the NSBME case no. 22-47823-1 (100 pages long, and extremely detailed).

21 On November 13, 2020, Respondent filed a writ petition in Superior Court challenging the
22 2020 Board Decision. (“**Writ I.**”) Well over a year later, on January 24, 2022, the Superior Court
23 partially granted Writ I, thereby overturning the 2020 California Medical Board’s Decision. NSBME
24 007. More on this below.

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28 ² This consumed 12 days of hearing time: September 16, 17, 18, 23, 24, 25, 26, 27; October 2 and 3; January 3 and 30.

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***B. Disciplinary History: Medical Board of California case
No. 800-2018-042234 and 2022 Board Decision resulting in Writ II***

On December 22, 2020, shortly after Writ I was filed concerning the 2020 California Medical Board Decision in case No. 800-2015-012651, the California Medical Board filed its *second* disciplinary accusations against Respondent, which were assigned case No. 800-2018-042234. This case again involved IT pump treatment and three (3) additional patients. That case went to hearing in October 2021. NSBME 007. These will be referred to as the “**2020 accusations.**”

By the time the 2020 accusations went to hearing in October 2021 (still during the pendency of the Writ I proceedings on the 2020 California Medical Board Decision on the 2018 accusations), Respondent had completed certain terms of his discipline imposed under the 2020 California Medical Board Decision concerning a clinical competency assessment that was required before he resumed prescribing controlled substances and performing IT pump therapy. Accordingly, on October 19, 2021, the California Medical Board’s probation manager issued a letter to Respondent *lifting* the IT pump therapy restrictions that had been imposed in the 2020 Board Decision. NSBME 008.

The six (6) day hearing on the 2020 accusations occurred on October 4 through 8 and 11, 2021. As noted, that hearing occurred during the pendency of the Writ I California Superior Court case regarding the 2020 California Board Decision on the 2018 accusations. One of the factual findings by the ALJ regarding the 2020 accusations (factual finding 235) was that: *Respondent stated he has completed the clinical competency assessment course and can now perform the surgical procedures related to intrathecal pumps.* NSBME 009.³ Factual finding 235 was contained in the ALJ’s proposed decision on the 2020 accusations which was adopted by the California Medical Board on December 22, 2021, effective January 21, 2022 (“**2022 California Medical Board Decision.**”) It is also Exhibit 2 in Nevada Case No. 22-47823-1 (88 pages long, and again extremely detailed).

The 2022 California Medical Board Decision was also issued during the pendency of the Writ I Superior Court case regarding the 2020 California Medical Board Decision on the 2018 accusations.

³ Note that Respondent’s testimony giving rise to factual finding 235 occurred *prior to* the October 19, 2021, letter from Respondent’s probation manager lifting Respondent’s IT pump practice restriction under the 2020 California Board Decision. Thus, when this testimony was given by Respondent regarding his ability to perform IT treatment it was inaccurate and misstated his disciplinary status.

1 In the 2022 California Medical Board Decision, the California Medical Board found that
2 Respondent's misconduct with two (2) patients was serious and exposed them to harm. NSMBE
3 009. The Board's remedy took into account Respondent's two years of probation compliance and
4 completion of a required clinical competency assessment. The remedy again *revoked* Respondent's
5 physician's certificate, with the revocation *stayed* and probation from the 2020 California Medical
6 Board Decision reinstated together with an additional term *prohibiting* Respondent from engaging in
7 IT pump therapy for the duration of the probation. NSBME 010. This means that between October
8 19, 2021, and January 21, 2022, Respondent was permitted to engage in IT pump therapy. NSMBE
9 010-011.

10 It is the practice restrictions in the 2022 California Medical Board Decision that resulted in
11 the *third* set of accusations against Respondent that will be discussed below. These are the 2023
12 accusations, and form the basis for IC's Exhibit I, the 2024 California Medical Board Decision.

13 On February 17, 2022, Respondent filed a writ petition in Superior Court challenging the
14 2022 California Medical Board Decision. ("Writ II.") Writ II was eventually *denied*, and the 2022
15 California Medical Board Decision was upheld in a judgment entered February 5, 2024. NSBME
16 011. The denial of Writ II will be discussed further below.

17 ***C. Disciplinary History: Respondent is partially successful in Writ I***

18 On January 22, 2022 (one (1) day after the effective date of the 2022 California Medical
19 Board Decision) the Superior Court *partially granted* Writ I in favor of Respondent, with a
20 subsequent judgment dated February 28, 2022. The Superior Court found that the ALJ's ruling in the
21 2020 California Medical Board Decision excluding Respondent's proposed expert witness testimony
22 regarding *three (3) of the five (5) patients* at issue was erroneous. The Court also noted that its ruling
23 *did not impact* the Board's decision regarding the two (2) other patients, identified as patients B and
24 E. Judgement was entered in favor of Respondent on February 28, 2022, setting aside the 2020
25 California Medical Board Decision. Accordingly, as of February 28, 2022, Respondent was no
26 longer under probation established by the 2020 California Medical Board Decision but was still under
27 the single probationary term under the 2022 California Medical Board Decision relating to the
28 *prohibition* on IT pump therapy. NSBME 011-013. The 2022 California Medical Board Decision

1 was under review in the Writ II proceeding at the time, with the same having been filed 11 days
2 before the Writ I judgment was entered.

3 ***D. Disciplinary History: California Medical Board Remand Decision in Case No. 800-***
4 ***2015-012651 and Writ III***

5 Following the Superior Court's Writ I decision, on June 9, 2022, the California Medical
6 Board set aside its 2020 decision that was the subject of the Writ I case in Case No. 800-2015-
7 012651 and noticed oral argument for July 22, 2022, focusing on determining the level of discipline
8 related to the two (2) patients not covered by the writ decision (Patients B and E.) This hearing was
9 before a different ALJ, with Respondent testifying. Respondent testified that his probation officer
10 had told him that as far as she was concerned and the people in Sacramento are concerned, nothing
11 had changed. NSBME 013.

12 On August 11, 2022, the California Medical Board issued its decision after remand ("**2022**
13 **California Board Remand Decision**") that was effective immediately and retroactive to September
14 24, 2020. In this decision, Respondent's physician's certificate was placed on probation for 5 years
15 retroactive to September 24, 2020, and further all probationary terms from the 2020 California
16 Medical Board Decision were reinstated except patient notification requirements. Respondent was
17 also given credit for the clinical competency assessment course and the October 19, 2021, letter
18 lifting the restriction on IT therapy. NSBME 014.

19 Respondent filed a writ petition as to the 2022 California Board Remand Decision on August
20 26, 2022. ("**Writ III**"). On January 2, 2024, the California Superior Court hearing Writ III denied
21 same, thereby *upholding* the 2022 California Medical Board Remand Decision. NSMBE 014.

22 ***E. History: Legal dispute over accuracy of disclosures and Respondent's***
23 ***void ab initio argument regarding the 2022 California Board Decision***

24 The 2022 California Medical Board Remand Decision sparked a legal dispute between the
25 board and Respondent's legal counsel in addition to the Writ III litigation (Writ II was still pending at
26 the time as well). Respondent's counsel, Matthew Rifat, Esq., who did testify as a witness in this
27 NSBME matter and whose testimony will be discussed below, argued that the California Medical
28 Board's proposed website disclosure regarding Respondent (that included language that Respondent

1 was prohibited from performing IT pump care or treatment) was “inadequate and incomplete” and
2 “false and misleading.” He also asserted that the 2022 California Board Decision (that included the
3 IT pump practice preclusion) was “void as a matter of law” and proposed different language for the
4 website disclosure that removed any mention of IT pump treatment. This legal argument was
5 *rejected* by the California Medical Board. NSBME 014-015.

6 As noted, Writ II was eventually denied, and the 2022 California Board Decision was upheld
7 in a judgment entered February 5, 2024. During the litigation of Writ II, Respondent argued that the
8 2022 California Medical Board Decision was “void” because it was tied to the 2020 California
9 Medical Board Decision that had been overturned in the Writ I proceeding. The Writ II Superior
10 Court *rejected* that argument, labeling it “defective” and determining that the 2022 California
11 Medical Board Decision was “stand alone” placing Respondent on probation with an IT pump
12 restriction despite the Writ I Superior Court having overturned the 2020 California Medical Board
13 Decision. NSBME 016.

14 During the time that the Writ II proceedings were pending, from August 25, 2022, to
15 November 22, 2022, Respondent started once again treating IT pump patients. It is the IT pump
16 treatment of three (3) patients during that time that was the focus of the 2023 accusations, and which
17 resulted in the 2024 California Medical Board Decision (revoking Respondent’s California medical
18 license) that is the subject of this proceeding. (IC’s Exhibit 1). NSBME 016.

19 ***F. Disciplinary History: Medical Board of California case No. 800-2021-081615, the***
20 ***2023 accusations and the California Decision that is the subject of this NSBME***
21 ***proceeding***

22 The 2024 California Medical Board Decision that is the subject of this Nevada disciplinary
23 proceeding was entered in case No. 800-2021-081615, following a three (3) day hearing and the
24 adoption of ALJ Alvord’s “proposed decision” dated July 2, 2024.

25 According to the 2024 California Medical Board Decision, Respondent’s treatment of three
26 (3) IT pump patients occurred between August 25, 2022, and November 22, 2022. ALJ Alvord then
27 detailed such treatment and the medical process of IT pump care. NSBME 017. This is described as
28 “an intensive pain management modality.” The California Medical Board’s expert witness and

1 Respondent's expert witness in the case both went so far as to testify that "an IT pump physician
2 must be prepared to 'marry the patient.'" *Id.*

3 On pages 15-18 of the 2024 California Medical Board Decision, NSBME 016-019, ALJ
4 Alvord detailed the treatment of the three (3) patients at issue in the case. This included: (i) IT pump
5 explant and follow up care with patient A that occurred in September, 2022 which was also the
6 subject of a civil suit against Respondent; (ii) surgical pump replacement, reprogram of IT pump and
7 medication refill as to Patient B that occurred in August-October, 2022; and (iii) pump surgical pump
8 access, aspiration, telemetry and analysis as to Patient C that occurred in October, 2022.

9 On page 19 of the 2024 California Medical Board Decision, NSBME 020, ALJ Alvord
10 discussed facts surrounding Respondent's refusal to answer certain questions regarding his patient IT
11 pump treatment posed by his probation officer on September 9, 2022, based on 5th Amendment
12 grounds. According to ALJ Alvord, Respondent testified that he exercised his 5th Amendment
13 privilege on advice of counsel because there was a federal indictment against him pending at the
14 time. Respondent also testified that the federal charges against him were "later dismissed." On
15 cross-examination, however, Respondent acknowledged that the charges were *not dismissed* but
16 rather that he pled guilty to one (1) misdemeanor charge. The ALJ made it clear that Respondent's
17 federal charges were not grounds for discipline in the case; rather the discussion of the federal
18 charges was to provide context to Respondent's exercise of his 5th Amendment rights.

19 Next, ALJ Alvord found that Respondent was prohibited from performing IT pump treatment
20 when he treated Patients A, B and C. In so finding, he noted that Respondent's legal arguments that
21 there was no IT pump restriction in place at the time of the treatment (with such restriction being
22 "void as a matter of law") had been *rejected* by the Superior Court in Writ II as "defective."
23 According to ALJ Alvord: **"The 2022 Board Decision's stand-alone IT pump prohibition was in
24 effect on August 25, 2022, when respondent began treating Patients A, B and C; the IT pump
25 prohibition remained effective throughout his treatment of the three patients in this case."**
26 NSBME 022.

27 After determining that there was an IT pump treatment prohibition in place when Respondent
28 treated Patients A, B, and C, ALJ Alvord then turned to the question of whether such treatment

1 violated such prohibition. He first summarized the California Medical Board's expert witness
2 testimony. Such testimony was that Respondent's treatment of the three (3) patients "constituted care
3 or treatment with patients involving the use, management, or surgical procedure related to IT
4 pumps." NSBME 022-023.

5 ALJ Alvord then summarized Respondent's testimony at the hearing. Respondent testified
6 that he treated Patient A on September 1, 2022, because the 2020 California Medical Board Decision
7 had been set aside and that he believed that the 2022 Board Decision was "void as a matter of law."
8 Respondent also testified that the treatment he rendered to Patients A, B, and C was not really IT
9 pump treatment for a variety of reasons. NSBME 023-024.

10 **ALJ Alvord specifically found that Respondent's treatment of Patients A, B and C**
11 **violated the IT pump practice restriction, accepting the Board's expert witness testimony and**
12 **rejecting Respondent's testimony.** NSBME 024-025.

13 The focus of ALJ Alvord then turned to the issue of the "disclosures" that Respondent had
14 Patients A, B and C sign. Those disclosures, drafted by Respondent's counsel Mr. Rifat, set forth a
15 history of Respondent's discipline and also contained a reference to the Superior Court's decision on
16 Writ I, stating that the Board's disciplinary order of August 25, 2020, had been set aside, "concluding
17 that the Medical Board had violated my due process rights." ALJ Alvord noted that these disclosures
18 were signed while Respondent was subject to a practice restriction prohibiting him from IT pump
19 treatment. NSBME 025-206.

20 ALJ Alvord determined that the disclosures contained *misleading information* and that the
21 "violation of my due process rights" language was inaccurate and gave patients the false impression
22 that Respondent had been completely exonerated by the Writ I decision, "when he was not." He also
23 found that the disclosures misled patients into believing that Respondent's IT pump treatment
24 restriction had been lifted. ALJ Alvord then focused on a dispute between counsel regarding the
25 scope of the Writ I decision, which included Respondent counsel's contention that the 2022
26 California Medical Board Decision was "*de jure void*," an argument that the ALJ noted the Writ II
27 Superior Court rejected as being "defective." NSBME 026-027. *Ultimately, ALJ Alvord found that*
28 *the disclosure contained inaccurate, false and misleading statements to patients, and accordingly*

1 *constituted unprofessional conduct that was substantially related to the qualifications, functions or*
2 *duties of a physician. NSBME 028.*

3 Importantly, ALJ Alvord also detailed Respondent’s testimony and his compliance with
4 probation terms. He noted that Respondent’s probation manager indicated that Respondent was
5 compliant and cooperative with her, had submitted required reports and logs, and had completed the
6 required training and education including the clinical competency evaluation. Further, ALJ Alvord
7 noted that Respondent testified that he made changes to his practice based on his understanding of
8 criticisms found in the 2020 California Medical Board Decision, at one time sold his practice to
9 another physician (a transaction that apparently did not work out), used nurse practitioners and other
10 physicians to provide IT pump care to patients and did not “touch” controlled substances or IT pump
11 treatment until his right to do so was restored. NSBME 028-030.

12 ALJ Alvord addressed Respondent’s **credibility** at the hearing as follows:

13 87. Respondent’s testimony that he was confused by the complex procedural
14 history of his disciplinary cases and was misled by the board was not credible. His
15 answers to questions were evasive and self-serving. He misrepresented the status of
16 his federal criminal conviction. On one hand, he testified that he was trying to
17 comply with his probation. On the other hand, he chose to treat the 2022 Board
18 Decision’s IT pump practice prohibition as if it was void while he knew that the board
19 did not agree with that position.

20 NSBME 030.

21 ALJ Alvord then set forth his “Evaluation of Disciplinary Remedy.” The undersigned
22 Hearing Officer is summarizing a California ALJ’s findings below and defers to them since they have
23 not been challenged and are not the subject of any writ or other legal challenge. ALJ Alvord focused
24 on the following:

- 25 ■ Respondent acted on a “void as a matter of law” position that was *without*
26 *justification.*

27 ///

28 ///

- 1 ■ Respondent *refused* to answer questions posed by his probation officer regarding
2 IT pump practice, adopting a legal position that had not been resolved and that the
3 board opposed.
- 4 ■ Respondent *violated* the IT therapy restriction on *multiple occasions* in *direct*
5 *violation* of the 2022 California Medical Board Decision.
- 6 ■ Respondent’s patient disclosure form given to patients was *false* and *misleading*.
- 7 ■ At the hearing, Respondent “took two inconsistent but equally untenable
8 positions” regarding the IT pump practice restriction.
- 9 ■ At no time did the California Medical Board mislead Respondent regarding the
10 effect of its 2022 decision. Respondent’s probation officer *did not corroborate*
11 Respondent’s testimony that she told Respondent that IT treatment was in a “gray
12 area” and that in any event, Respondent was *not justified* in relying on any such
13 purported statement given other case facts.
- 14 ■ The “void” issue was litigated in the Writ II proceeding and the Superior Court
15 ultimately characterized Respondent’s “void as a matter of law” position as
16 *defective* and confirmed the 2022 California Medical Board Decision was a
17 “stand-alone” disciplinary order that was still in effect.
- 18 ■ Respondent *never acknowledged his mistake* in treating patients based on his
19 mistaken “void as a matter of law” position or for misleading patients. He
20 showed “*no remorse*” for his conduct or empathy for his patients.
- 21 ■ *Respondent did not make an innocent mistake. He did not reasonably rely on*
22 *legal advice. He is a highly educated professional who made his own decisions*
23 *with full knowledge of the consequences. He made a conscious bad faith choice*
24 *to ignore a legitimate board order and treat patients in violation of the board’s*
25 *discipline. Despite complying with other probation terms, Respondent had been*
26 *“cavalier” and “recalcitrant” in complying with the one condition most*
27 *important to public protection—the restriction on IT pump treatment.*

28 NSBME 030-032 (Italics added for emphasis).

1 ALJ Alvord then set forth his various “**Legal Conclusions,**” which are found at Exhibit 1,
2 NSBME 033-036. Those include the conclusion that although the California Medical Board bore the
3 burden to prove its case by a preponderance of the evidence, the allegations against Respondent were
4 proven by *clear and convincing evidence*. He focused on the patient disclosure letter Respondent’s
5 attorney prepared, which he had previously determined to contain inaccurate, false and misleading
6 statements to patients, thereby constituting unprofessional conduct that was substantially related to
7 the qualifications, functions or duties of a physician. Among other things, he determined that a
8 professional is not immune from license discipline simply because he or she consulted an attorney,
9 received, and relied on legal advice. NSBME 035.

10 ALJ Alvord then determined that “**Cause to Revoke Probation**” was established. The
11 reasons were twofold. First, cause was established to revoke probation based on Respondent’s
12 **violation** of the 2022 California Medical Board Decision’s probationary restriction on providing care
13 or treatment involving the use, management, or surgical procedures regarding IT pumps. Second,
14 cause was established to revoke probation by Respondent **falsely misrepresenting** his disciplinary
15 status to patients in his written disclosures. Respondent’s conduct constituted **dishonesty** or
16 **corruption**. Respondent **falsely represented** the existence of a state of facts concerning his
17 disciplinary status. NSBME 038.

18 Finally, in light of the probation revocation determination, ALJ Alvord addressed the
19 **disciplinary remedy** to impose on Respondent under board guidelines.

20 ALJ Alvord did note that at the time Respondent had treated the three (3) patients at issue in
21 the case, he had: (i) completed two (2) years of a five year probation; (ii) had complied with many
22 probation requirements; (iii) had a practice monitor; (iv) submitted required reports; (v) refrained
23 from prescribing controlled substances and IT pump therapy until he completed the competency
24 assessment program; (vi) met with his probation monitor and was cooperative, transparent, and
25 honest; and (vii) had completed additional education hours.

26 That said, ALJ Alvord found Respondent’s position that he was “confused” about the IT
27 pump treatment restriction to be “*completely untrue.*” After asking some rhetorical questions
28 regarding why Respondent would act as he did given his long running history of discipline by the

1 board, he found that “Respondent’s testimony in this case was full of a lot of excuses, but no
2 explanation.” NSBME 039. His reliance on his attorney’s advice was “not credible.” He had “no
3 satisfactory answer” for the question of why he chose to go down the path of probation violation.
4 After defining the terms “recalcitrant” and “cavalier,” ALJ Alvord wrote: “*The only conclusion one
5 can reach from the evidence is that respondent was recalcitrant and cavalier in his dealings with the
6 board and with his professional duty to disclose accurate information to his patients when seeking
7 their informed consent to treat them.* NSBME 040.

8 Finally, ALJ Alvord determined that the only remedy that protects the public is the
9 **revocation** of respondent’s probation, removing the probationary stay of his revocation, and **the**
10 **revocation** of his certificate. NSBME 040.

11 Specifically, ALJ Alvord’s **ORDER** states:

12 The probation granted to respondent David James Smith in Case No. 800-
13 2028-042234, is hereby revoked. The stay of the disciplinary order is lifted.
14 Respondent’s Physician’s and Surgeon’s Certificate No. G 66777 is revoked.

15 DATE: July 2, 2024.

16 Alan R. Alvord
Administrative Law Judge
Office of Administrative Hearings

17 NSMBE 041

18 The California Medical Board’s **DECISION** adopting ALJ Alvord’s proposed decision
19 states:

20 The attached Proposed Decision is hereby adopted as the Decision and Order
21 of the Medical Board of California, Department of Consumer Affairs, State of
22 California.

23 This Decision shall become effective at 5:00 p.m. on **August 23, 2024.**

24 **IT IS SO ORDERED: July 25, 2024.**

25 **MEDICAL BOARD OF CALIFORNIA**

26 _____
27 **Richard E. Thorpe, M.D., Chair**
28 **Panel B**

NSBME 001.

1 **2. Formal Hearing Testimony Synopsis**

2 There were three (3) witnesses who testified at the formal hearing. All witnesses were sworn
3 in prior to testifying.

4 **A. IC's Witness Ernesto Diaz**

5 The IC's first witness was Ernesto Diaz. Mr. Diaz is the Chief of Investigations for the
6 Nevada State Board of Medical Examiners. TR 18:17. This witness explained that while generally,
7 an allegation letter is sent to a licensee, that was not done in this case because Respondent's attorney
8 indicated that one was not needed in order to expedite the process. TR 19:3-5. Mr. Diaz then
9 explained the process he undertook to obtain a certified copy of the 2024 California Medical Board
10 Decision (IC's Exhibit 1) and the background of IC's Exhibit 2, which is the letter from
11 Respondent's counsel Ms. Beggs notifying the Board of that decision. TR 20:18-22:22.

12 Mr. Diaz further testified on cross examination that he is not personally involved in
13 monitoring a licensee's probation. TR 23:3-7.

14 Following the testimony of Mr. Diaz, a discussion was held with counsel, off the record,
15 regarding how best to handle the rest of the hearing's witnesses and testimony. It was agreed that the
16 IC would rest and then Respondent could present his case with IC counsel having full opportunity to
17 question Respondent as if he was testifying on direct examination. TR 23:20-24:5.

18 **B. Respondent David James Smith, M.D.**

19 ***Direct examination***

20 Respondent testified that he has been a physician since 1989 and currently works at "Las
21 Vegas Injury Pain Center" focusing on "interventional pain." TR 25:13-19. He acknowledged that
22 his California physician's license has been revoked. TR 25:24-25.

23 Respondent acknowledged as well that he is currently on probation with the Nevada State
24 Board of Medical Examiners and that he is "100 percent" in compliance with that probation. TR
25 26:3-9. He also testified that prior to 2018 he had never faced any disciplinary action. TR 26:15-17.

26 Respondent testified that in 2018, the California Medical Board initiated a disciplinary action
27 against him that was, at least in part, related to treatment of patients with IT pumps. TR 26:21-27:1.
28

1 He acknowledged that a hearing occurred on those accusations⁴ and that he was placed on probation
2 pursuant to the decision in that case. TR 27:6-13. There were a variety of conditions on his
3 probation including: (i) establishing with a probation officer; (ii) site visits to his clinics; (iii) having a
4 practice monitor; (iv) completing multiple CME's and courses in record keeping, ethics, prescribing
5 pain management and opiate prescribing; and (v) completion of a three (3) day KSTAR program
6 where his clinical skills were assessed. This program also assessed Respondent's cognitive abilities
7 and his psychological, mental and physical status. He completed the course and passed. TR 28:13-
8 29:17.

9 Respondent testified that while he was complying with the terms of probation, he was also
10 appealing (through a writ proceeding) the underlying 2020 California Medical Board Decision on the
11 2018 accusations. He further testified that on February 28, 2022, the Superior Court overturned that
12 decision, but acknowledged that while that writ case was pending, the California Medical Board filed
13 second accusations against him on December 2020.⁵ TR 29:18-30:19.

14 According to Respondent, the 2020 accusations were similar to the 2018 accusations, and that
15 the 2020 accusations went to hearing in October 2021. TR 31:1-7. He testified that by October
16 2021, he had completed the KSTAR program and the restrictions on him providing care and
17 treatment with IT pumps had been removed by the California Medical Board. TR 31:19-32:2. He
18 also stated that by October 2021, he was able to provide care and treatment to patients using IT
19 pumps and also that the other restrictions on his practice had been lifted. TR 32:3-8.

20 Respondent testified that the decision on the 2020 accusations was issued in late 2021 with an
21 effective date in January 2022. This 2022 California Medical Board Decision reapplied the previous
22 restriction on IT pump care. TR 32:9-19. This decision was also challenged on appeal (writ) and
23 initially Respondent testified that he could not recall the outcome of that writ but ultimately
24 acknowledged, after prompting, that "I think it was denied." TR 32:20-33:2.

25 Respondent then testified that after the court ruling in the 2020 California Medical Decision
26 writ case, California Medical Board held a second hearing in *that same case* in the summer of 2022.
27 TR 33:11-22. As a result of that hearing, another decision was rendered by the California Medical
28

⁴ These would be the "2018 accusations."

⁵ These would be the "2020 accusations."

1 Board in August 2022 (months after the 2022 California Medical Board Decision) that according to
2 Respondent, made probation retroactive to 2020, cut the duration of probation from seven (7) years to
3 five (5) years, and reiterated that the IT pump restriction would be lifted if the KSTAR program was
4 completed. TR 33:24-34:8.⁶

5 Respondent testified that after the 2022 California Medical Decision had been rendered, he
6 provided IT pump care to three (3) patients in late 2022. Before doing that, Respondent explained
7 that he asked for his legal counsel's advice and was "told by my counsel that because of the
8 retroactive to 2020, as a matter of law, that the IT restriction was no longer in place." TR 34:18-35:2.

9 Finally, Respondent testified that in July 2023, the California Medical Board filed a petition
10 to revoke probation, taking the position that he was not in compliance with his probation terms,
11 which was surprising to him because he believed that he was in compliance with his probation terms
12 "as a matter of law...." TR 35:8-24. The decision in that case is the 2024 California Medical Board
13 Decision, IC Exhibit 1 in this matter that was rendered in July 2024, effective August 23, 2024. TR
14 36:13-14.

15 *Cross-examination*

16 Initially, IC counsel made it clear on the record that Respondent was not charged with the
17 failure to report the California discipline. (That reporting is IC Exhibit 2.)

18 Next, Respondent was asked about the California Medical Board hearing in the summer of
19 2022 which he believed was a rehearing of the writ that overturned the 2020 California Medical
20 Board Decision, together with the results of that hearing. TR 37:17-39:10.

21 Respondent was then asked about the "surprise" he felt when the California Medical Board
22 took steps to revoke his probation in 2023, and he reiterated that he felt he was in compliance with
23 probation terms as a matter of law based upon advice from his attorney, Mr. Rifat. TR 40:1-9.

24 Respondent was then asked about his interactions with his California probation officer,
25 Virginia Addis. He testified that he met with her quarterly, and that there were discussions about IT
26 pump therapy, which he stated was in a "gray matter" and uncertain, according to Ms. Addis.⁷

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28 ⁶ This would be the "2022 California Medical Board Remand Decision."

⁷ Please note that ALJ Alvord found that Ms. Addis did not corroborate this "gray area" testimony regarding Respondent's IT pump practice. NSMBE 031.

1 Nevertheless, when Ms. Addis would ask: “Are you doing any IT care?” he would respond: “Well,
2 occasionally I’m helping out, yes.” He made it clear that this was “after the writ” and that: “So to be
3 clear, I didn’t do anything until I was—after the Superior Court issued their writ and overturned the
4 case.” TR 40:10-41:22.

5 Respondent acknowledged that his license to practice medicine in California has been
6 revoked. TR 42:8-9. Further, his California clinics are closed, and he is not working (in medicine) in
7 California. TR 42:15-43:4.

8 Respondent was then questioned about why he “took the Fifth” and refused to answer his
9 probation officer’s questions regarding IT pump treatment in September 2022 as referenced in IC
10 Exhibit 1, page 19, paragraph 56. NSBME 020. He responded that he was under federal indictment
11 with 64 felony counts against him and that “I was counseled by my counsel to take the Fifth so I
12 wouldn’t self-incriminate....” TR 45:13-16.

13 Respondent was then asked further questions about advice he had received from his legal
14 counsel, Mr. Rifat, who also told him that he could use IT pumps again as a matter of law. TR 46:19-
15 22. He was also referred to IC Exhibit 1, page 22, paragraph 68, NSBME 023, where ALJ Alvord
16 noted that Respondent testified he treated one patient with IT pump on September 1, 2022, because
17 he believed that after the ruling in Writ I, the 2022 California Medical Board Decision (with the IT
18 pump practice restriction) was void as a matter of law based on attorney Rifat’s advice. TR 47:2-10.

19 Next, Respondent was asked about the patient disclosure letter he provided to patients as it
20 was discussed by ALJ Alvord in IC Exhibit 1, NSBME 025-026. Respondent testified that the
21 disclosure letter was written by his lawyer, and that it stated that he had been advised by counsel that
22 as a matter of law the 2022 California Medical Board Decision was set aside and that this was true
23 and not misleading. TR 47:11-48:6.

24 ***Re-direct examination***

25 Respondent was again asked about the patient disclosure letter he provided to patients and
26 again testified that he thought the facts stated therein were accurate at the time it was written by Mr.
27 Rifat. TR 19:5-14.⁸

28

⁸ Obviously, the California Medical Board disagreed.

1 Respondent then read into the record a portion of ALJ Alvord's paragraph 56 from the IC
2 Exhibit 1 (NSBME 020) where it was noted that Respondent's probation officer, Ms. Addis, testified
3 that when Respondent "took the fifth" it was the only time she recalled that Respondent refused to
4 give her information that she requested. TR 50:4-14. Otherwise, his relationship with Ms. Addis was
5 "very good" and that this instance was an outlier. TR 50:15-23.

6 Finally, Respondent testified that he referred to legal counsel on legal matters and that the
7 procedural history of the California Medical Board cases was "extremely convoluted and confusing."
8 TR 51:1-10.

9 ***Re-cross examination***

10 Respondent read into the record certain *findings* from ALJ Alvord including: (i) The duty of
11 a physician is to give patients all information relative to their treatment decisions; (ii) Respondent
12 violated that duty; (iii) Respondent's reliance on advice of counsel does not insulate him; and (iv) that
13 a professional is not immune from license discipline simply because an attorney was consulted and
14 the advice was relied upon. TR 52: 6-24.

15 ***Further re-direct examination***

16 Respondent testified that he did not agree with the conclusions of the ALJ Alvord. TR 54:1-
17 8.⁹

18 ***Hearing officer questions***

19 The undersigned Hearing Officer asked Respondent several questions. First, Respondent
20 testified that there was no writ action regarding the 2024 California Medical Board Decision, which
21 is the basis of this matter. Next, Respondent acknowledged that the federal charges against him were
22 resolved by a misdemeanor plea deal. TR 54:14-56:3.¹⁰

23 **C. Respondent's witness Matthew Rifat, Esq.**

24 ***Direct examination***

25 Mr. Rifat is a California attorney who represented Respondent in 2018 and thereafter
26 regarding the accusations brought by the California Medical Board, including the hearing that
27 occurred on the first (2018) accusations. TR 61:5-16. That hearing was a multi-day hearing that was
28

⁹ Again, Respondent did not challenge the 2024 California Medical Board Decision by a writ.

¹⁰ Respondent also clarified that the federal charges were fully adjudicated and resolved by April 2024. TR 57:13-14.

1 done in two (2) phases. TR 62:2-6. He described the substance of the ALJ's decision in that case, as
2 well as the terms of probation. TR 62:11-63:9. He also testified that such decision was challenged by
3 a writ proceeding with the Superior Court, and that during the pendency of the writ proceeding,
4 which was decided in January 2022, Respondent was compliant with the terms of probation. TR
5 64:3-65:9.

6 Mr. Rifat testified that between the 2020 California Medical Board Decision date and the date
7 that the writ order setting aside that decision in 2022, the California Medical Board filed its second
8 set of accusations (the 2020 accusations) against Respondent, which he referred to as the "backstop
9 accusation" that "basically stereotyped or mimicked the original accusation" and in his opinion
10 "served no proper regulatory purpose."¹¹ TR 66:6-24. Mr. Rifat represented Respondent in the
11 hearing on the 2020 allegations which occurred in early October 2021. TR 67:11-17. He also
12 testified that shortly after that hearing, the California Medical Board lifted the IT treatment and care
13 restriction for Respondent, so that he could then again provide such care to patients. TR 68:4-12.

14 Following this, Mr. Rifat explained his understanding of the 2023 California Medical Board's
15 Decision on the 2020 accusations, acknowledging that it was a "procedurally convoluted case." TR
16 68:19-29. Mr. Rifat also testified that in his opinion, any IT pump restriction placed on Respondent
17 in the 2022 California Medical Board's decision on the 2020 accusations (effective January 2022)
18 was "ameliorated" by the earlier October 2021 restoration of such privileges. TR 69:10-70:8.

19 Mr. Rifat then gave a very long narrative on his understanding of what happened *after* the
20 Superior Court writ decision on the 2018 accusations. This included what he characterized as an
21 "invented" new proceeding that "excised" two (2) patients from the original accusations about whom
22 Respondent had been prevented from presenting expert testimony and essentially reconsidered the
23 other three (3) patients. He characterized the California Medical Board's decision on the
24 reconsideration issue "bizarre."¹² TR 70:16-73:2.

25 Mr. Rifat then went on to testify as to his understanding regarding the 2022 California Board
26 Remand Decision, and as far as he was concerned, there was no restriction on Respondent regarding

27
28 ¹¹ The California Medical Board obviously disagreed, and the writ challenge to these so-called "backstop accusations" failed, vindicating that board's ultimate decision.

¹² It is again noted that the writ challenge to this so-called "bizarre" action failed, again vindicating the California Medical Board's position and decision.

1 IT care and treatment.¹³ TR 73:7-22. He then acknowledged that in July 2023, the California
2 Medical Board filed a petition to revoke Respondent's probation and that the reasons for such petition
3 included Respondent providing IT care to patients when he was prohibited from doing so, as well as
4 issues related to the patient disclosure letter and the accuracy of same. TR 74:5-75:2.

5 Mr. Rifat then testified that Respondent's discipline was quite a "political case." He also
6 testified that in his "legal assessment," the patient disclosure "was sufficient." He testified that in his
7 "legal opinion" Respondent was able to provide IT treatment to patients after the IT restriction was
8 lifted in October 2021. TR 75:5-76:6. According to Mr. Rifat, Respondent listened to Mr. Rifat's
9 advice (that he could provide IT care) and indicated that while he (Mr. Rifat) might be "legally
10 correct," he (Respondent) would "self-restrict" to avoid potential issues, and that he would only
11 provide IT pump treatment if necessary or under urgent emergent situations. TR 76:6-19. Mr. Rifat
12 then acknowledged that the hearing on the 2023 accusations resulted in the ALJ (Alvord) disagreeing
13 with his legal position and issuing a recommendation for revocation that the California Medical
14 Board adopted. TR 76:20-77:12. Therefore, Mr. Rifat testified that Respondent does not currently
15 hold a license to practice medicine in California but that "when the time comes around" he will apply
16 for restoration of his license. TR 77:13-17.

17 *Cross-examination*

18 The initial portion of the IC's cross examination ended up being a legal argument regarding
19 the relevance of Mr. Rifat's legal representation of Respondent when he first applied for licensure in
20 Nevada in 2018. Eventually, after the various arguments were made for the record, IC counsel was
21 asked to "move forward" onto relevant matters, with the record being clear that Mr. Rifat had
22 represented Respondent for a long period of time, not just in California but also in Nevada. TR 78:9-
23 83:18.

24 Next, Mr. Rifat was asked about his interactions with Respondent's probation officer,
25 Virginia Addis. He stated that he regularly communicated with Ms. Addis, who "seemed to have
26 affection and respect for Dr. Smith." TR 84:8-20. He also had constant contact with the Deputy
27 Attorney General ("DAG") handling the case against Respondent, Joe McKenna. He does not recall

28

¹³ The California Medical Board obviously disagreed, and its position ultimately prevailed when Respondent's writ challenge (Writ III) failed.

1 DAG Mckenna telling him that Respondent could treat patients with IT pumps in the latter part of
2 2022. TR 84:24-85:23.

3 Mr. Rifat then described the process of restoration of Respondent's California license and the
4 reconsideration proceedings that occurred in California. He continued to maintain that the
5 "reconsideration" hearing that occurred after the successful writ proceeding was "procedurally
6 improper and extralegal."¹⁴ TR 86:5-87:9.

7 ***Re-direct examination***

8 Mr. Rifat was again asked about the "reconsideration" process and hearing after the writ
9 decision. He maintained that the 2022 California Medical Board Remand Decision simply deleted
10 reference to two patients from the original order, which Mr. Rifat testified that this did not remedy
11 the fair trial issue because "you can't just redact out a couple of patients and cure the problem of
12 having excluded the expert." TR 88:7-89:5.¹⁵

13 **D. Witness credibility assessment**

14 There were no issues with the credibility of IC witness Ernesto Diaz, who mainly testified
15 about his efforts to obtain a certified copy of the California disciplinary order.

16 The veracity and credibility of Respondent Dr. Smith must be judged against the overall
17 backdrop of this case, and most importantly, his very long and contentious disciplinary history with
18 the California Medical Board.

19 Respondent's testimony at the formal hearing relatively straightforward, which makes sense
20 given the reality that this case is not a re-litigation of his prior California disciplinary cases. He
21 acknowledged his basic disciplinary history before the California Medical Board and acknowledged
22 (as he must) that his California medical license has been revoked. He was respectful and pleasant to
23 all participants at the formal hearing. Nothing he testified to leads this Hearing Officer to believe that
24 he was being less than candid; however, his testimony did show that he has trouble accepting the
25 adverse outcomes of his various California disciplinary cases as well as the reasons therefor.

26 It bears repeating that ALJ Alvord, who recommended the revocation of Respondent's
27 California medical license in IC Exhibit 1, assessed his credibility as follows:

28

¹⁴ Once again, and not to unduly belabor the point, Mr. Rifat's legal position in this regard did not prevail.
¹⁵ The writ petition challenging the 2022 California Board Remand Decision was denied.

1 **Respondent's Credibility**

2 87. Respondent's testimony that he was confused by the complex procedural history
3 of his disciplinary cases and was misled by the board was not credible. His
4 answers to questions were evasive and self-serving. He misrepresented the status of
5 his federal criminal conviction. On the one hand, he testified that he was trying to
6 comply with his probation. On the other hand, he chose to treat the 2022 Board
7 Decision's IT pump practice prohibition as if it was void while he knew the board did
8 not agree with that position.

9 NSBME 030.

10 Since the 2024 California Medical Board Decision at issue in this Nevada matter incorporated
11 ALJ Alvord's recommendation for license revocation, the undersigned Hearing Officer submits that
12 this Board should give **significant weight** to the credibility assessment found in ALJ Alvord's
13 analysis and findings quoted above.

14 The veracity and credibility of attorney Mr. Rifat must take into consideration the fact that
15 this Nevada matter, and the formal hearing, is not a re-litigation of the substantive disciplinary issues
16 that were before the California Medical Board in the various cases discussed in IC Exhibit 1. Similar
17 to Respondent, Mr. Rifat appears to have a difficult time accepting the fact that with the exception of
18 partial (procedural) success on Writ I, Respondent's factual and legal position on matters in
19 contention have been *rejected* by various ALJs, the California Medical Board and the California
20 Superior Court judges considering the various writ applications.

21 Nevertheless, Mr. Rifat continued to characterize the California Medical Board's disciplinary
22 actions and processes as being invented, procedurally improper, extrajudicial and serving no
23 regulatory purpose. Continuing to pound this drum is utterly irrelevant to whether Respondent had
24 his medical license revoked in the 2024 California Medical Board Decision, which is the *only issue*
25 that the IC must establish to prove its case that Respondent is subject to a Nevada disciplinary case
26 through this Board.

27 **IV. FINDINGS and RECOMMENDATION**

28 **1. Findings.**

 As noted previously, the case before the NSBME is not a re-litigation of the cases against
 Respondent brought by the California Medical Board. Additionally, it is important to again note the

1 comments of Respondent’s Nevada attorney, Ms. Beggs, at the beginning of the formal hearing that
2 the ultimate issue is “what the appropriate discipline might be at the time of adjudication in this
3 case.”

4 With this in mind, the complaint herein alleges a single count:

5 **Count I: NRS 630.301(3)—Disciplinary Action by Another State Medical Board.**

6 The single count in this matter is based upon NRS 630.301(3) which provides that any
7 disciplinary action, including, without limitation, the revocation, suspension, modification or
8 limitation of a license to practice any type of medicine, taken by another state, is grounds for
9 initiating disciplinary actions against a licensee.

10 The IC has obviously proven its case by a preponderance of the evidence by virtue of the
11 2024 California Medical Board Decision, IC Exhibit 1. That decision, unchallenged by any writ
12 proceeding, *revokes* Respondent’s California medical license, and is the disciplinary action by
13 another state medical board that is the basis of this Nevada disciplinary proceeding.

14 **2. Recommendations.**

15 As noted previously, the ultimate issue in this case is not whether Respondent is subject to a
16 disciplinary action before this Board; rather, as stated by Respondent’s counsel, the ultimate issue is
17 “what the appropriate discipline might be at the time of adjudication in this case.”

18 In that regard, this Hearing Officer notes that in the 2024 California Medical Board Decision,
19 ALJ Alvord found that the California Medical Board had proven its case against Respondent not just
20 by a preponderance of the evidence but that “[e]ven if the required standard of proof were clear and
21 convincing evidence, which it is not, the evidence in this case meets that higher standard.” NSBME
22 034.

23 There is no question that Respondent is a highly educated professional who has been a
24 licensed physician since the late 1980’s. There is no evidence that prior to 2018, Respondent had any
25 disciplinary issues with the California Medical Board. The evidence is clear (and convincing),
26 however, that beginning in 2018, Respondent and the California Medical Board engaged in numerous
27 disciplinary matters, **all of which centered on Respondent’s IT pump treatment practice.** These
28 matters ultimately culminated with the *revocation* of Respondent’s California medical license.

1 As noted, during his testimony at the formal hearing, Respondent had trouble accepting the
2 adverse outcomes of his various California disciplinary cases as well as the reasons therefor.
3 Specifically, he had a hard time accepting the findings of the ALJs in several of his California
4 disciplinary cases that he *violated probation restrictions* under the California Medical Board's
5 various orders regarding IT pump care and treatment. He continued to justify his actions based on
6 the advice he received from legal counsel Rifat, even though if he had read the actual ALJ orders he
7 would have learned that advice of legal counsel is *not a defense* to the disciplinary charges and would
8 have also learned that the Writ II California Superior Court judge labeled Mr. Rifat's legal arguments
9 "defective."

10 Based upon the foregoing, it is respectfully recommended that this Board determine the
11 appropriate discipline warranted under these circumstances, up to and including license *revocation*
12 which mirrors the 2024 California Medical Board Decision, taking into consideration Respondent's
13 long and contentious disciplinary history before the California Medical Board which led to the
14 *revocation* of his California medical license, together with the reasons for such revocation.

15 DATED this 13 day of January, 2026.

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18 CHARLES BURCHAM
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20 Tel: (775) 750-2998
21 *Hearing Officer*

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CERTIFICATE OF SERVICE

I hereby certify that I am employed by the Nevada State Board of Medical Examiners and that on the 14th day of January, 2026, I served a file-stamped copy of the foregoing SYNOPSIS OF RECORD/FINDINGS AND RECOMMENDATIONS, via USPS Certified Mail, postage pre-paid, to the following parties:

DAVID JAMES SMITH, M.D.
c/o Lyn E. Beggs, Esq.
316 California Ave., #863
Reno, NV 89509
Attorney for Respondent

Tracking No.: 9489 0178 9820 3045 5242 77

With courtesy copy by email to:

Lyn E. Beggs, Esq., at [lyn@lbeggslaw.com]
Don K. White, Senior Deputy General Counsel [dwhite@medboard.nv.gov]

DATED this 14th day of January, 2026.



MEG BYRD
Legal Assistant
Nevada State Board of Medical Examiners