

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

In the Matter of the Accusation and Petition  
to Revoke Probation Against:

D. ANTHONY JACKSON, M.D.

Physician's & Surgeon's  
Certificate No. G33174

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Respondent

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) MBC No. D1-2000114681  
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**DENIAL BY OPERATION OF LAW  
PETITION FOR RECONSIDERATION**

No action having been taken on the petition for reconsideration, filed by D. Anthony Jackson, M.D. and the time for action having expired at 5 p.m. on April 9, 2014, the petition is deemed denied by operation of law.

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

In the Matter of the Accusation and  
Petition to Revoke Probation Against:

Case No. D1-2000-114681

D. ANTHONY JACKSON, M.D.

OAH No. 2010060145

Physician and Surgeon's  
Certificate No. G 33174

Respondent.

**DECISION AFTER SUPERIOR COURT REMAND**

This matter was originally heard by Humberto Flores, Administrative Law Judge (ALJ), Office of Administrative Hearings, on May 16, 17 and 18, 2011, in Los Angeles, California.

Deputy Attorney General Albert Y. Muratsuchi represented complainant, the Medical Board of California (Board).

Justin H. Sanders, Attorney at Law, represented D. Anthony Jackson, M.D., (respondent) who was present during the hearing.

Evidence was received and the matter was submitted. The ALJ issued a proposed decision on July 5, 2011. The Board adopted the decision on July 22, 2011, and the effective date was set for August 19, 2011. Respondent filed his Verified Petition for Writ of Administrative Mandate on August 12, 2011 with the Sacramento County Superior Court. The Petition for Writ of Administrative Mandate was heard on November 16, 2012. On January 31, 2013, the Court issued a *Ruling on Submitted Matter: Petition for Writ of Administrative Mandate* (attached). The Court granted in part and denied in part the Petition for Writ of Administrative Mandate.

The Court ruled that the petition was granted with regard to the Board's findings that respondent was subject to discipline based on the July 29, 2008 DUI conviction and on his use of alcohol on September 17, 2007. The Court held that the weight of the evidence did not support those findings, and it issued a writ of mandate. Specifically, the Court noted that the court that handled the DUI criminal case against respondent had granted a petition for writ of habeas corpus on November 15, 2011, which had the effect of setting aside the conviction. On May 2, 2012, the

criminal court subsequently dismissed the case for lack of prosecution. The Court took judicial notice of the criminal court records and deemed them admissible pursuant to Code of Civil Procedure Section 1094.5(e), as evidence that could not have been produced at the hearing before the ALJ in the exercise of reasonable diligence.

The Court denied respondent's Petition for Writ of Administrative Mandate with regard to the Board's findings relating to respondent's commission of acts of dishonesty or corruption within the meaning of Business and Professions Code section 2234(e), possession and use of a counterfeit driver's license, and failing to make required disclosures on quarterly declarations in accordance to the terms of his probation.

The Court found that there was "real doubt" whether the Board would have entered the same disciplinary order based on only the findings that were sustained or were unchallenged, because the disciplinary order did not indicate that the Board would have ordered respondent's license revoked based on less than all of the findings in the decision, or on the probation violations alone. Accordingly, the Court required the Board to reconsider the penalty in light of its decision.

Oral argument was requested by respondent, and was heard by Panel A of the Board on February 5, 2014. At the hearing, respondent represented himself, and complainant was represented by Margaret J. Phe, Deputy Attorney General. Written argument was submitted by both parties. Panel A members Bishop, Diego, Lewis, Serrano Sewell, Wright, Yaroslavsky, and Yip were present. In accordance with the Superior Court decision, the members disregarded the factual findings relating to respondent's alcohol use and the DUI conviction that was later set aside. Having heard oral argument and considered written argument, Panel A of the Board hereby makes and enters this decision.

### FACTUAL FINDINGS

1. Barbara Johnston made and filed the Accusation in her official capacity as Executive Director of the Medical Board of California, Department of Consumer Affairs. Linda K. Whitney (complainant) made and filed the First and Second Amended Accusations in her official capacity as Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On October 15, 1976, the Medical Board of California issued Physician and Surgeon's Certificate No. G 33174 to respondent.

3. Effective September 5, 2005, pursuant to a Stipulated Settlement and Disciplinary Order in Case No. 18-2000-114681, respondent's license was revoked.<sup>1</sup> The revocation was stayed and respondent was placed on probation for seven years under certain conditions, including a

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<sup>1</sup> The Stipulated Settlement and Disciplinary Order contains a "Culpability" section, which states in pertinent part: "Respondent understands and agrees that the charges and allegations in Accusation No. 18-2000-114681, if proven at hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate. Respondent agrees that the Division has a factual basis for the charges in the Accusation based upon the investigation conducted by the Board. . . . Nothing in this Stipulated Settlement and Disciplinary Order constitutes an admission of wrongdoing."

suspension from the practice of medicine for a period of 240 days. In addition, Probation Condition number 10 stated:

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

4. On May 20, 2009, in the Superior Court of California, County of Los Angeles, respondent was convicted on his plea of nolo contendere of violating Vehicle Code section 14610, subdivision (a)(1), an unlawful use of a driver's license, a misdemeanor. The facts underlying the conviction occurred on November 4, 2008, when respondent presented a counterfeit driver's license to a Transportation Security Administration (TSA) official at the Los Angeles Airport in an attempt to board a flight to Atlanta, Georgia. Respondent had purchased the counterfeit driver's license in downtown Los Angeles for \$80.00. Respondent was arrested for violating Penal Code section 529.5, possession of a false driver's license, a misdemeanor. This false driver's license was made to look exactly like an official driver's license issued by the California Department of Motor Vehicles (DMV). The face of the card included a replica of the DMV logo. The identifying information on the card, including name, address and birth date, was accurate.

5. Respondent presented evidence of mitigation. Prior to the incident at the Los Angeles airport, he went to Athens, Georgia, to visit his ailing mother who was near death at the time. At some point during the return flight or shortly thereafter, respondent lost his valid driver's license. Approximately one week later, respondent's mother passed away. Respondent then purchased airline tickets to fly back to Georgia to make arrangements for his mother's cremation and subsequent memorial service. Respondent believed that he would not be able to obtain a valid driver's license or photo ID from DMV in time for his scheduled flight. So he purchased the counterfeit driver's license for the purpose of presenting it to airline representatives and TSA officials in an effort to board the flight to Atlanta.

6. Respondent contends that he did not intend to deceive when he presented the counterfeit driver's license to the TSA official because the identifying information contained on the license was correct. Respondent's contention is not persuasive. The act of presenting a counterfeit driver's license to a TSA official with the intent to pass it off as an official DMV issued driver's license for the purpose of boarding a commercial airline is an act of dishonesty. In mitigation, respondent's misconduct was not done for monetary gain or at the expense of another. Rather, in respondent's mind this was an act of desperation in order to attend his mother's memorial service.

7. Condition No. 11 of respondent's probation, as set forth in the above referenced Stipulated Settlement and Disciplinary Order, requires respondent to submit quarterly declarations to the Board, signed under penalty of perjury, to allow the Board to determine whether respondent is in compliance with probation. Respondent submitted the following declarations which contained false information:

(a) Respondent submitted such a declaration, signed by respondent on October 1, 2007, and covering the period July 1, 2007 through September 30, 2007. Question No. 5 of the form declaration asks, "Since the last Quarterly Declaration, have you ever been arrested, charged or convicted of any Federal or State offense, of any county or city laws, rules or regulations (exclude parking tickets)?" Respondent answered "No," despite having been arrested for driving under the influence of alcohol in September 2007. Respondent testified that he answered "no" to the

question because he had not been “charged” when he signed the declaration. Respondent’s testimony does not provide mitigation. He knew he had been arrested for driving under the influence of alcohol at the time he signed the declaration. His arrest occurred only five days before he signed the declaration. This was not a minor incident. On the night of his arrest, respondent was involved in an accident, was given field sobriety tests, taken to a hospital for a blood test to measure alcohol, then taken to the Norwalk Sheriff’s Office where he was formally arrested and booked for DUI.<sup>2</sup>

(b) Respondent submitted a quarterly declaration covering the period October 1, 2008 through December 31, 2008. In this declaration, respondent again answered “No” to Question No. 5 despite having been arrested for the possession of a counterfeit driver’s license on November 4, 2008. Respondent testified that he answered “no” to the question because he was under the impression that he had not been arrested because he had not been given his Miranda rights. Respondent’s testimony is not persuasive. The arresting officer’s police report states that respondent was taken into custody and arrested for violating Penal Code section 529.5 (possession of a fraudulent I.D.) and was booked for a probation violation.

(c) Respondent submitted another quarterly declaration covering the period April 1, 2009 through June 30, 2009. In this declaration, respondent again answered “No” to Question No. 5 despite having been convicted for the unlawful use of a driver’s license on May 20, 2009. Respondent testified that although he answered “no” this question, he wrote a footnote at the bottom of the declaration which alluded to his May 2009 interview with the Board’s investigator, and that subsequent transcripts of that interview would shed light on his arrest and conviction. Again, respondent’s testimony is not persuasive. The footnote refers to respondent’s DUI conviction, not to his conviction for unlawful use of a driver’s license.

### STANDARD OF PROOF

1. The standard of proof which must be met to establish the charging allegations in an accusation is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.). However, the standard of proof for establishing a violation of probation is preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437.). Complainant has met both standards in this case.

### LEGAL CONCLUSIONS

#### Accusation

1. Cause exists to suspend or revoke respondent’s physician and surgeon’s certificate for unprofessional conduct under Business and Professions Code section 2234, subdivision (e), for committing dishonest acts, as set forth in Factual Findings 4 through 7(a) – (e).

2. Cause exists to suspend or revoke respondent’s physician and surgeon’s certificate under Business and Professions Code sections 490, 2227 and 2236, and under California Code of

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<sup>2</sup> Respondent’s conviction for this DUI was set aside in 2011, but at the time he completed his quarterly declarations, he was required to disclose the arrest.

Regulations, title 16, section 1360, for the conviction and the underlying conduct, as set forth in Factual Findings 4 through 6.

### Petition to Revoke Probation

3. Cause exists to revoke the probation imposed on respondent's physicians and surgeon's certificate in Case No. 18-2000-114681 for violating condition number 10 of his probation by failing to obey all laws as set forth in Factual Findings 4 through 7(a) – (e).

### DISCUSSION

1. The purpose of a professional license disciplinary proceeding is to ensure public protection, not to punish an individual licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d, 161). In this case, respondent committed a criminal offense involving dishonesty in that respondent purchased and then presented a counterfeit driver's license to a TSA official. Respondent then compounded his misconduct by failing to disclose all arrests and convictions in his quarterly declarations. Further, in his May 5, 2009 interview with the Board, respondent stated that he had only been "detained" at the Los Angeles airport. In fact, by the time of respondent's May 2009 interview, he had been charged and was in the middle of court proceedings for presenting the counterfeit driver's license to TSA officials.

2. Although there were mitigating circumstances surrounding respondent's possession of the counterfeit driver's license and his presentation of that license to a TSA agent, these acts show remarkably poor judgment. Moreover, simply possessing the counterfeit driver's license demonstrated intentional dishonesty. Significantly, this was not the first time respondent had been caught with a counterfeit driver's license; one was confiscated at the time of his DUI arrest in 2007. Respondent did not take responsibility for these acts, and did not show remorse, arguing that the Board's disciplinary actions taken against him were "vigilante justice." Additionally, respondent's written and oral arguments relating to why he did not fully disclose his arrests and convictions on his quarterly declarations are without merit, and are further evidence of poor judgment and dishonesty.

3. Respondent's actions call into question his ability to make sound clinical judgments, and to conduct himself with integrity in a medical practice. The role of a physician is arguably the most trusted of any other profession. A physician's ability through training and experience to make life and death decisions for people is a power that must be grounded in ethics that are beyond reproach. The Board "has the right to require that those licensed to practice medicine be of good moral character, reliable, trustworthy, and not given to deception of the public..." (*Fuller v. Board of Medical Examiners* (1936) 14 Cal. App.2d 734, 741-742.)

4. As identified above, even with setting aside the DUI conviction and the misuse of alcohol allegations, the Panel has several distinct grounds to revoke respondent's license. Nonetheless, the Panel recognizes that respondent had practiced without incident for approximately 27 years before the Board's first accusation was filed against him in 2003. The Panel has determined that under the unique facts and circumstances of this case, it is possible to protect the public without revoking respondent's license, by instituting substantial safeguards. Accordingly, the Order below is consistent with the Board's highest priority of public protection as well as with the goal of rehabilitating the licensee. (See Bus. & Prof. Code Sections 2001.1, 2229.)

The Order permits respondent to resume the practice of medicine with probationary terms and conditions upon a successful demonstration of sound medical judgment and clinical competency.

## ORDER

Physician's and Surgeon's Certificate No. G 33174 is revoked. However, the revocation is stayed and respondent is placed on probation for a period of five (5) years upon the following terms and conditions:

### 1. Clinical Training Program

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

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's area of practice in which respondent was alleged to be deficient, and at minimum, a 40 hour program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

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

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

Respondent shall not practice medicine until respondent has successfully completed the Program and has been so notified by the Board or its designee in writing, except that respondent may practice in a clinical training program approved by the Board or its designee. Respondent's practice of medicine shall be restricted only to that which is required by the approved training program.

### 2. Professionalism Program (Ethics Course)

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

Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision. Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

### 3. Solo Practice Prohibition

Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) respondent is the sole physician practitioner at that location.

If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the respondent's practice setting changes and the respondent is no longer practicing in a setting in compliance with this Decision, the respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The respondent shall not resume practice until an appropriate practice setting is established.

### 4. Monitoring -Practice

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

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt



of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation. If respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility. The monitor shall submit a quarterly written report to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of medicine, and whether respondent is practicing medicine safely. It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

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

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

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

## 5. Notification

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

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

6. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

7. Obey All Laws

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

8. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

9. General Probation Requirements

- a. Compliance with Probation Unit: Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.
- b. Address Changes: Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).
- c. Place of Practice: Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.
- d. License Renewal: Respondent shall maintain a current and renewed California physician's and surgeon's license.
- e. Travel or Residence Outside California: Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

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

#### 10. Interview with the Board or its Designee

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

#### 11. Non-practice While on Probation

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

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

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

#### 12. Completion of Probation

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

#### 13. Violation of Probation

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

#### 14. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his or her license. The Board reserves the right to evaluate

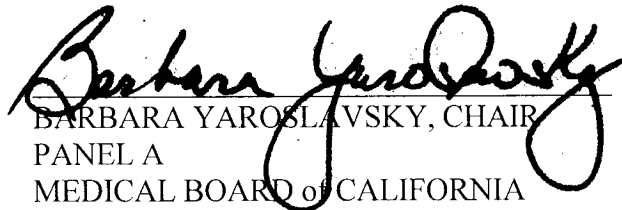
respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. Probation Monitoring Costs

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

This decision shall become effective at 5 p.m. on April 9, 2014.

IT IS SO ORDERED this 10th day of March, 2014.

  
BARBARA YAROSLAVSKY, CHAIR  
PANEL A  
MEDICAL BOARD OF CALIFORNIA

ORIGINAL

FILED/ENDORSED

ENT'D

NOV 26 2013

By S. Lee, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

**D. ANTHONY JACKSON, M.D.,**

Petitioner,

v.

**MEDICAL BOARD OF CALIFORNIA,**

Respondent.

Case No. 34-2011-80000933-CU-WM-GDS

**JUDGMENT GRANTING IN PART AND  
DENYING IN PART THE PETITION  
FOR WRIT OF MANDATE**

Date: November 16, 2012  
Dept: 31

The petition for writ of mandate in the above-entitled matter was heard in Department 31, on November 16, 2012, by the Honorable Michael P. Kenny, Judge Presiding. Petitioner D. Anthony Jackson, appeared by his former counsel Albert J. Garcia, Esq; Respondent, the Medical Board of California (Medical Board), appeared by its counsel, Kamala D. Harris, Attorney General of the State of California, by Margaret J. Phe, Deputy Attorney General. The record of the administrative proceedings, which was the subject matter of the within action, was received in evidence and read by the Court. The Court read all the pleadings on file in the action. The Court heard oral argument in this matter on November 16, 2012. Following the hearing, the Court ordered the parties to file supplemental briefs on the issue of whether the matter should be remanded to the Medical Board for redetermination of penalty if the Court were to determine that

1 some of the respondent's findings were not supported by the weight of the evidence. The parties  
2 filed supplemental briefs as directed by the Court, and the matter was taken under submission on  
3 December 14, 2012.

4 On January 31, 2013, the Court issued a Ruling on Submitted Matter: Petition for Writ of  
5 Administrative Mandate, ~~a copy of which is attached and incorporated herein~~ <sup>HPK</sup>. After exercising  
6 its independent judgment, the Court granted in part and denied in part the petition for writ of  
7 mandate and made the following rulings:

8 1. The petition is granted with regard to respondent's finding that petitioner is subject to  
9 discipline based on the July 29, 2008 DUI conviction and with regard to respondent's finding that  
10 petitioner is subject to discipline based on his use of alcohol on September 17, 2007. The weight  
11 of the evidence does not support those findings. A writ of mandate shall issue directing  
12 respondent to vacate those findings.

13 2. The petition is denied with regard to respondent's findings regarding petitioner's  
14 commission of acts of dishonesty or corruption within the meaning of Business and Professions  
15 Code section 2234(e), with regard to possession and use of a counterfeit driver's license and with  
16 regard to failing to make required disclosures on quarterly declarations. The weight of the  
17 evidence supports that finding.

18 3. The Court's ruling does not address, or disturb, respondent's finding that petitioner is  
19 subject to discipline on the basis of his conviction for possession and use of a counterfeit driver's  
20 license. The petition did not challenge that finding.

21 4. The Court's ruling does not address, or disturb, respondent's finding that cause exists  
22 to revoke petitioner's probation for violating the condition of probation requiring him to obey all  
23 laws. Petitioner's conviction for possession and use of a counterfeit driver's license, and the facts  
24 underlying that conviction, support that finding. Moreover, the petition did not challenge that  
25 finding.

26 5. The Court finds that there is real doubt whether respondent would have entered the  
27 same disciplinary order based on the findings that have been sustained or were unchallenged.  
28 The order of penalty appears to be based on all of the adverse findings taken together, and does not

1 make it clear that respondent would have ordered petitioner's license revoked based on less than  
2 all of the findings in the decision, or on the probation violation alone. The Court is not in a  
3 position to find that revocation is the only possible result the Board would reach if it were to  
4 reconsider the penalty.

5 Therefore, this Court hereby **ORDERS, ADJUDGES, AND DECREES** that:

6 *MPH* *Petition for writ of mandate*  
1. Judgment is granted in part and denied in part pursuant to the Order filed on October  
7 8, 2013.

8 2. Judgment is entered in favor of Petitioner D. Anthony Jackson, M.D., and against  
9 Respondent Medical Board of California.

10 3. A peremptory writ of mandate shall issue remanding Medical Board Case No. D1-  
11 2000-114681 to respondent Medical Board for reconsideration and redetermination of penalty  
12 based solely on the findings that the Court has found to be supported by the weight of the  
13 evidence and the findings that were not addressed or disturbed by the Court's ruling. This  
14 direction is not intended to control or restrict respondent's discretion in any other manner in its  
15 redetermination of penalty in this case.

16 2. Respondent shall make and file a return within 60 days after the issuance of the writ,  
17 setting forth what it has done to comply with the writ.

18 3. Each party shall bear his or its own costs.

19  
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21 Dated: *11/26/13*



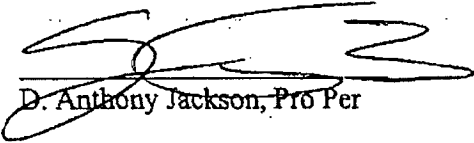
*[Signature]*  
HONORABLE MICHAEL P. KENNY  
JUDGE OF THE SUPERIOR COURT

1 Approved as to form:

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3 Dated: 10.31.13

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5 By:   
6 D. Anthony Jackson, Pro Per

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10 Respectfully submitted by:

11

12 KAMALA D. HARRIS  
13 Attorney General of California  
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23 *Attorneys for Respondent*  
24 *Medical Board of California*

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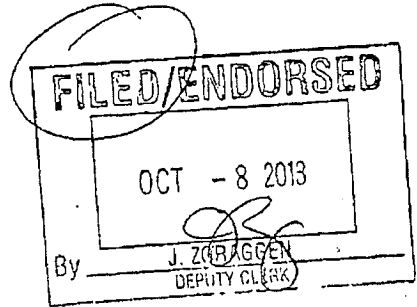
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ORIGINAL



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

D. ANTHONY JACKSON, M.D.,

Petitioner,

v.

MEDICAL BOARD OF CALIFORNIA,

Respondent.

Case No. 34-2011-80000933-CU-WM-GDS

**[PROPOSED] ORDER GRANTING IN  
PART AND DENYING IN PART THE  
PETITION FOR WRIT OF MANDATE**

Date: November 16, 2012  
Dept: 31

The petition for writ of mandate in the above-entitled matter was heard in Department 31, on November 16, 2012, by the Honorable Michael P. Kenny, Judge Presiding. Petitioner D. Anthony Jackson, appeared by his former counsel Albert J. Garcia, Esq; Respondent, the Medical Board of California (Medical Board), appeared by its counsel, Kamala D. Harris, Attorney General of the State of California, by Margaret J. Phe, Deputy Attorney General. The record of the administrative proceedings, which was the subject matter of the within action, was received in evidence and read by the Court. The Court read all the pleadings on file in the action. The Court heard oral argument in this matter on November 16, 2012. Following the hearing, the Court ordered the parties to file supplemental briefs on the issue of whether the matter should be remanded to the Medical Board for redetermination of penalty if the Court were to determine that

1 some of the respondent's findings were not supported by the weight of the evidence. The parties  
2 filed supplemental briefs as directed by the Court, and the matter was taken under submission on  
3 December 14, 2012.

4 On January 31, 2013, the Court issued a Ruling on Submitted Matter: Petition for Writ of  
5 Administrative Mandate, a copy of which is attached and incorporated herein. After exercising  
6 its independent judgment, the Court granted in part and denied in part the petition for writ of  
7 mandate and made the following rulings:

8 1. The petition is granted with regard to respondent's finding that petitioner is subject to  
9 discipline based on the July 29, 2008 DUI conviction and with regard to respondent's finding that  
10 petitioner is subject to discipline based on his use of alcohol on September 17, 2007. The weight  
11 of the evidence does not support those findings. A writ of mandate shall issue directing  
12 respondent to vacate those findings.

13 2. The petition is denied with regard to respondent's findings regarding petitioner's  
14 commission of acts of dishonesty or corruption within the meaning of Business and Professions  
15 Code section 2234(e), with regard to possession and use of a counterfeit driver's license and with  
16 regard to failing to make required disclosures on quarterly declarations. The weight of the  
17 evidence supports that finding.

18 3. The Court's ruling does not address, or disturb, respondent's finding that petitioner is  
19 subject to discipline on the basis of his conviction for possession and use of a counterfeit driver's  
20 license. The petition did not challenge that finding.

21 4. The Court's ruling does not address, or disturb, respondent's finding that cause exists  
22 to revoke petitioner's probation for violating the condition of probation requiring him to obey all  
23 laws. Petitioner's conviction for possession and use of a counterfeit driver's license, and the facts  
24 underlying that conviction, support that finding. Moreover, the petition did not challenge that  
25 finding.

26 5. The Court finds that there is real doubt whether respondent would have entered the  
27 same disciplinary order based on the findings that have been sustained or were unchallenged.  
28 The order of penalty appears to be based on all of the adverse findings taken together, and does not

1 make it clear that respondent would have ordered petitioner's license revoked based on less than  
2 all of the findings in the decision, or on the probation violation alone. The Court is not in a  
3 position to find that revocation is the only possible result the Board would reach if it were to  
4 reconsider the penalty.

5 Therefore, this Court hereby **ORDERS, ADJUDGES, AND DECREES** that:

6 1. A peremptory writ of mandate shall issue remanding Medical Board Case No. D1-  
7 2000-114681 to respondent Medical Board for reconsideration and redetermination of penalty  
8 based solely on the findings that the Court has found to be supported by the weight of the  
9 evidence and the findings that were not addressed or disturbed by the Court's ruling. This  
10 direction is not intended to control or restrict respondent's discretion in any other manner in its  
11 redetermination of penalty in this case.

12 2. Respondent shall make and file a return within 60 days after the issuance of the writ,  
13 setting forth what it has done to comply with the writ.

14 3. Each party shall bear his or its own costs.

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17 Dated: 10/8/13

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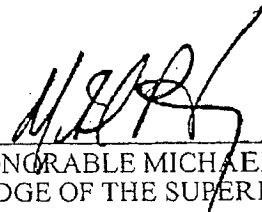
24 By: \_\_\_\_\_  
25 D. Anthony Jackson, Pro Per

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HONORABLE MICHAEL P. KENNY  
JUDGE OF THE SUPERIOR COURT

1 make it clear that respondent would have ordered petitioner's license revoked based on less than  
2 all of the findings in the decision, or on the probation violation alone. The Court is not in a  
3 position to find that revocation is the only possible result the Board would reach if it were to  
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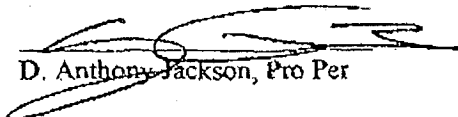
14 3. Each party shall bear his or its own costs.

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17 Dated:

HONORABLE MICHAEL P. KENNY  
JUDGE OF THE SUPERIOR COURT

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21 Approved as to form:

22 Dated: 09-13-13

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24 By:   
25 D. Anthony Jackson, Pro Per

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ENDORSED

JAN 31 2013

By S Lee, Deputy

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

D. ANTHONY JACKSON, M.D.,

Petitioner,

v.

MEDICAL BOARD OF CALIFORNIA,

Respondent.

Case No. 34-2011-80000933-CU-WM-GDS

RULING ON SUBMITTED MATTER:  
PETITION FOR WRIT OF  
ADMINISTRATIVE MANDATE

I. Introduction and Procedural Background

In this petition for writ of administrative mandate under Code of Civil Procedure section 1094.5, petitioner D. Anthony Jackson, M.D., challenges a decision of respondent Medical Board of California, entered after an evidentiary hearing, revoking his Physician's and Surgeon's Certificate.

Petitioner has been licensed by the Medical Board since 1976. He has been subject to one prior disciplinary order that is relevant to this proceeding. That order arose out of charges of gross negligence, repeated negligent acts, incompetence, excessive treatment, prescribing without good faith prior examination and medical indication, dishonest acts (including Medi-Cal fraud), and failure to maintain adequate and accurate records, involving 14 of petitioner's patients. On September 5, 2005, petitioner and respondent entered into a Stipulated Settlement and Disciplinary Order resolving those charges. The order revoked petitioner's license, stayed the revocation, suspended petitioner from the practice of medicine for 240 days, and placed him on probation for seven years on specified terms and conditions.

1 Probation Condition number 10 is of particular relevance in this proceeding. It stated:

2 OBEY ALL LAWS [Petitioner] shall obey all federal, state and local laws, all rules  
3 governing the practice of medicine in California, and remain in full compliance with any  
4 court ordered criminal probation, payments and other orders.<sup>1</sup>

4 Probation Condition number 17 is also relevant here. It stated:

5 VIOLATION OF PROBATION Failure to fully comply with any term or condition of  
6 probation is a violation of probation. If [petitioner] violates probation in any respect, the  
7 Division, after giving [petitioner] notice and opportunity to be heard, may revoke  
8 probation and carry out the disciplinary order that was stayed. If an Accusation, Petition  
9 to Revoke Probation, or an Interim Suspension Order is filed against [petitioner] during  
10 probation, the Division shall have continuing jurisdiction until the matter is final, and the  
11 period of probation shall be extended until the matter is final.<sup>2</sup>

9 As a result of events that occurred between 2007 and 2009, respondent served petitioner with an  
10 Accusation and Petition to Revoke Probation on December 22, 2009.<sup>3</sup> Respondent subsequently served a  
11 First Amended Accusation and Petition to Revoke Probation on September 5, 2010.<sup>4</sup>

12 The Amended Accusation stated three causes for discipline. The first cause for discipline was  
13 based on the allegation that petitioner had been convicted of two crimes that were substantially related to  
14 the qualifications, functions or duties of the medical profession: a 2008 conviction for driving under the  
15 influence of alcohol; and a 2009 conviction for unlawful use of a driver's license arising out of his  
16 possession and display of a counterfeit driver's license. The second cause for discipline alleged that  
17 petitioner had committed acts related to his convictions involving dishonesty or corruption which were  
18 substantially related to the qualifications, functions or duties of the medical profession. The third cause  
19 for discipline referred to the incident that led to petitioner's 2008 DUI conviction and alleged that  
20 petitioner had used alcoholic beverages to the extent, or in such a manner, as to be dangerous to himself or  
21 to any other person or the public.

22 The Amended Petition to Revoke Probation alleged that petitioner had violated Probation  
23 Condition number 10, the "Obey All Laws" condition, of his 2005 disciplinary order.  
24

25 <sup>1</sup> See, Administrative Record ("A.R."), Exhibit 7, page AG EXH 7 - 00010.

26 <sup>2</sup> See, A.R., Exhibit 7, page AG EXH 7 - 00012.

27 <sup>3</sup> See, A.R., Exhibit 2.

28 <sup>4</sup> See, A.R., Exhibit 4.

1 Respondent sought an order revoking petitioner's probation and imposing the stayed disciplinary  
2 order revoking petitioner's certificate.<sup>5</sup>

3 Respondent held an evidentiary hearing before an Administrative Law Judge on May 16-18, 2011.  
4 On July 5, 2011, the Administrative Law Judge issued a Proposed Decision.

5 The Proposed Decision made the following factual findings regarding petitioner's DUI conviction  
6 and use of alcohol:

7 4. On July 29, 2008, in the Superior Court of California, County of Los Angeles,  
8 [petitioner] was found guilty by a jury and was convicted of one count of driving under  
9 the influence of alcohol, a violation of Vehicle Code section 23152, subdivision (a); and  
10 of one count of driving with a blood alcohol level of .08% or more, in violation of Vehicle  
11 Code section 23152, subdivision (b). On August 29, 2008, [petitioner] filed a Notice of  
Appeal of his conviction. On September 21, 2010, the Appellate Division of the Superior  
Court issued an order dismissing [petitioner's] appeal as untimely. Therefore, the  
judgment of conviction is final.

12 5. The facts underlying [petitioner's] conviction occurred on September 17, 2007,  
13 when [petitioner], while under the influence of alcohol, drove his car on the freeway and  
14 collided with another vehicle. The California Highway Patrol Officer who arrived on the  
15 scene of the accident performed a field sobriety test on [petitioner] and determined that  
16 [petitioner] was under the influence of alcohol. At the hearing, [petitioner] denied that he  
17 was under the influence at the time of [the] accident and his arrest. He testified that he  
18 was unable to perform the field sobriety tests because he had fractured his hip during the  
19 accident and because he has an anatomical deformity in his foot which makes it difficult  
20 for him to stand on one foot. [Petitioner] asserted that he would not have been convicted  
21 of the offense had he not received what he claims was incompetent counsel during his  
22 trial. [Petitioner's] assertion is not persuasive. Even assuming that his counsel made  
23 tactical and strategic errors during [petitioner's] criminal trial, it would be speculative to  
24 conclude that a re-trial would produce not guilty verdicts on both counts.<sup>6</sup>

25 Based on these factual findings, the Proposed Decision concluded that cause existed to suspend or  
26 revoke petitioner's certificate based on petitioner's use of alcohol in a manner injurious to himself or the  
27 public, and on petitioner's conviction of a crime substantially related to the qualifications, functions or  
28 duties of the practice of medicine.<sup>7</sup>

The Proposed Decision made the following factual findings regarding petitioner's conviction for

25 <sup>5</sup> See, A.R., Exhibit 4, page AG EHX 4 - 0008.

26 <sup>6</sup> See, Proposed Decision, page 2, Factual Findings numbers 4-5. (The Proposed Decision is not in the administrative  
27 record lodged by petitioner in this proceeding, but both parties have attached copies to their memoranda of points and  
authorities.)

28 <sup>7</sup> See, Proposed Decision, page 5, Legal Conclusions numbers 1 and 3.

1 possession of a counterfeit driver's license and dishonesty in connection with such possession:

2 6. On May 20, 2009, in the Superior Court of California, County of Los Angeles,  
3 [petitioner] was convicted on his plea of nolo contendere of violating Vehicle Code  
4 section 14610, subdivision (a)(1), an unlawful use of a driver's license, a misdemeanor.  
5 The facts underlying the conviction occurred on November 4, 2008, when [petitioner]  
6 presented a counterfeit driver's license to a Transportation Security Administration (TSA)  
7 official at the Los Angeles Airport in an attempt to board a flight to Atlanta, Georgia.  
8 [Petitioner] had purchased the counterfeit driver's license in downtown Los Angeles for  
9 \$80.00. [Petitioner] was arrested for violating Penal Code section 529.5, possession of a  
10 false driver's license, a misdemeanor. This false driver's license was made to look exactly  
11 like an official driver's license issued by the California Department of Motor Vehicles  
12 (DMV). The face of the card included a replica of the DMV logo. The identifying  
13 information on the card, including name, address and birth date, was accurate.

14 7. [Petitioner] presented evidence of mitigation. Prior to the incident at the Los  
15 Angeles airport, he went to Athens, Georgia, to visit his ailing mother who was near death  
16 at the time. At some point during the return flight or shortly thereafter, [petitioner] lost his  
17 valid driver's license. Approximately one week later, [petitioner's] mother passed away.  
18 [Petitioner] then purchased airline tickets to fly back to Georgia to make arrangements for  
19 his mother's cremation and subsequent memorial service. [Petitioner] believed that he  
20 would not [be] able to obtain a valid driver's license or photo ID from DMV in time for  
21 his scheduled flight. So he purchased the counterfeit driver's license for the purpose of  
22 presenting it to airline representatives and TSA officials in an effort to board the flight to  
23 Atlanta.

24 8. [Petitioner] contends that he did not intend to deceive when he presented the  
25 counterfeit driver's license to the TSA official because the identifying information  
26 contained on the license was correct. [Petitioner's] contention is not persuasive. The act  
27 of presenting a counterfeit driver's license to a TSA official with the intent to pass it off as  
28 an official DMV issued driver's license for the purpose of boarding a commercial airline  
is an act of dishonesty. In mitigation, [petitioner's] misconduct was not done for  
monetary gain or at the expense of another. Rather, in [petitioner's] mind this was an act  
of desperation in order to attend his mother's memorial service.<sup>8</sup>

Based on these factual findings, the Proposed Decision concluded that cause existed to suspend or  
revoke petitioner's certificate based on petitioner's commission of dishonest acts, and based on the  
conviction itself.<sup>9</sup>

The Proposed Decision also made a factual finding that petitioner had submitted three quarterly  
declarations to respondent that contained false information. Petitioner's terms of probation required him  
to file quarterly declarations with respondent. The quarterly declaration forms directed petitioner to  
disclose whether he had been arrested, charged with, or convicted of any federal or state offense since the

<sup>8</sup> See, Proposed Decision, page 3, Factual Findings numbers 6-8.

<sup>9</sup> See, Proposed Decision, page 5, Legal Conclusions numbers 2 and 3.



1 date of the prior declaration. The Proposed Decision found that petitioner failed to disclose his September,  
2 2007 DUI arrest, his November, 2008 arrest for possession of a counterfeit driver's license, and his May,  
3 2009 conviction for unlawful use of a driver's license.<sup>10</sup>

4 Based on these factual findings, the Proposed Decision concluded that cause existed to suspend or  
5 revoke petitioner's certificate based on petitioner's commission of dishonest acts.<sup>11</sup>

6 With regard to the Amended Petition to Revoke Probation, the Proposed Decision found that cause  
7 existed to revoke the probation previously imposed on petitioner's certificate for violating condition  
8 number 10 of probation based on his failure to obey all laws.<sup>12</sup>

9 Based on the legal conclusions described above, the Proposed Decision made the following order:

10 1. The Petition to Revoke Probation previously imposed on [petitioner's]  
11 Physician's and Surgeon's Certificate No. G 33174 in Case No. 18-2000-114681 is  
12 granted.

13 2. Physician's and Surgeon's Certificate No. G 33174 issued to [petitioner] D.  
14 Anthony Jackson, M.D. is revoked.<sup>13</sup>

15 Respondent adopted the Proposed Decision as the Decision and Order of the Medical Board of  
16 California on July 22, 2011, effective August 19, 2011. Petitioner filed his Verified Petition for Writ of  
17 Administrative Mandate on August 12, 2011.

18 The Court heard oral argument in this matter on November 16, 2012. Following the hearing, the  
19 Court ordered the parties to file supplemental briefs on the issue of whether this matter should be  
20 remanded for redetermination of penalty if the Court were to determine that some of respondent's findings  
21 were not supported by the weight of the evidence. The parties filed their supplemental briefs as directed,  
22 and the Court took the matter under submission by minute order dated December 14, 2012.

## 23 II. Summary of Petitioner's Contentions

24 Petitioner presents evidence that his 2008 DUI conviction was set aside after respondent issued its

25 <sup>10</sup> See, Proposed Decision, pages 3-4, Factual Finding number 9.

26 <sup>11</sup> See, Proposed Decision, page 5, Legal Conclusion number 2.

27 <sup>12</sup> See, Proposed Decision, page 5, Legal Conclusion number 4.

28 <sup>13</sup> See, Proposed Decision, pages 5-6.

1 decision in this matter, and contends that findings based on that conviction are no longer supported by the  
2 evidence and must be vacated. Petitioner also contends that the finding that he misused alcohol in a  
3 manner injurious to himself or the public is not supported by the weight of the evidence.

4 Petitioner also challenges the findings related to dishonesty. He argues that the findings regarding  
5 his possession and use of a counterfeit driver's license do not establish dishonesty or corruption within the  
6 meaning of Business and Professions Code section 2234(e) because those findings establish that he did not  
7 intend to deceive anyone or obtain any benefit at the expense of another. He also argues that the weight of  
8 the evidence does not support the finding that he was dishonest in his responses to questions on his  
9 quarterly probationary declarations.

10 Finally, petitioner argues that the order of revocation was a clear abuse of discretion under the  
11 facts of this case, and that the matter should be remanded to respondent with directions to reconsider the  
12 penalty.

### 13 III. Standard of Review

14 Because a professional license is considered to be a vested right, the standard of review applicable  
15 to petitions for writ of mandate challenging the factual and legal conclusions in decisions of state licensing  
16 boards such as respondent Medical Board is independent judgment, which is synonymous with the  
17 preponderance of the evidence standard. (See, *Ettinger v. Board of Medical Quality Assurance* (1985) 135  
18 Cal. App. 3<sup>rd</sup> 853, 856-858.)

19 Issues of law, such as whether the respondent has complied with statutory requirements, are  
20 subject to the court's independent review. (See, *Donaldson v. Department of Real Estate* (2005) 134 Cal.  
21 App. 4<sup>th</sup> 948, 954.)

22 The decision comes before the Court with a strong presumption of correctness, and petitioner has  
23 the burden of demonstrating that the administrative findings are contrary to the weight of the evidence or  
24 otherwise invalid. (See, *Fukuda v. City of Angels* (1999) 20 Cal. 4<sup>th</sup> 805, 817; *Dare v. Board of Medical*  
25 *Examiners* (1943) 21 Cal. 2<sup>nd</sup> 790, 798.)

26 Business and Professions Code section 2236(a) gives respondent the authority to impose discipline  
27  
28

1 on a licensee based on the conviction of any offense substantially related to the qualifications, functions,  
2 or duties of a physician and surgeon, which the statute defines as "unprofessional conduct". In this  
3 proceeding, petitioner does not contend that his two convictions are not substantially related to the  
4 qualifications, functions, or duties of a physician and surgeon.

5 With regard to the determination of penalty, the standard of review normally is a deferential one in  
6 which respondent's decision is reviewed for abuse of discretion. Under this standard, the trial court is not  
7 free to substitute its own discretion for that of the Board as to an appropriate penalty, and cannot interfere  
8 with the imposition of that penalty because in its own estimation the penalty is too harsh. The test for  
9 determining whether the Board acted within the scope of its legitimate discretion is whether reasonable  
10 minds may differ as to the propriety of the penalty imposed. If they may disagree, that fortifies the  
11 conclusion that there was no abuse of discretion. (See, *Cadilla v. Board of Medical Examiners* (1972) 26  
12 Cal. App. 3<sup>rd</sup> 961, 966-968.)

13 However, if an agency has imposed a single disciplinary order for multiple charges, some of  
14 which are found not to be sustained by the evidence, and if there is "real doubt" whether the same action  
15 would have been taken on proper findings, the matter should be returned to the agency for redetermination  
16 of the penalty. (See, *Franz v. Board of Medical Quality Assurance* (1982) 31 Cal. 3<sup>rd</sup> 124, 145; *Vollstedt*  
17 *v. City of Stockton* (1990) 220 Cal. App. 3<sup>rd</sup> 265, 277.)

#### 19 IV. Discussion

##### 20 1. Petitioner's 2008 DUI Conviction

21 Petitioner has submitted documentary evidence demonstrating that his 2008 DUI conviction was  
22 set aside, and that the case ultimately was dismissed, after the administrative hearing in this matter.<sup>14</sup>

23 <sup>14</sup> See, Attachment B to petitioner's Memorandum in Support of Petition for Writ of Administrative Mandamus,  
24 which consists of copies of records of the Los Angeles County Superior Court showing that the court granted a  
25 petition for writ of habeas corpus in petitioner's criminal case on November 15, 2011, which had the effect of setting  
26 aside the conviction, and subsequently dismissed the case for lack of prosecution on May 2, 2012. The Court may,  
27 and does, take judicial notice of these records in this case pursuant to Evidence Code section 452(d)(1) as records of  
28 a court of this State. The records post-date the administrative hearing in this case and thus are admissible as evidence  
in this proceeding pursuant to Code of Civil Procedure section 1094.5(e) as evidence that could not have been  
produced at the hearing before respondent in the exercise of reasonable diligence. The Court may admit the evidence  
at the hearing on the writ because, as described above, this is a case in which the court is authorized to exercise its  
independent judgment.

1 Based on that evidence, the Court concludes that respondent's finding that petitioner was convicted of a  
2 crime substantially related to the qualifications, functions or duties of the medical profession is no longer  
3 supported by the weight of the evidence, insofar as the finding relies on the 2008 DUI conviction.<sup>15</sup>

4 Respondent cites *Fick v. Board of Medical Examiners* (1973) 31 Cal. App. 3<sup>rd</sup> 247, 252 for the  
5 proposition that it acted well within the scope of its discretion by basing its disciplinary order on  
6 petitioner's DUI conviction, which had not been set aside as of the date of its disciplinary order, and that  
7 the subsequent setting aside of the conviction did not retroactively convert its order into an abuse of  
8 discretion.

9 Respondent's argument is not persuasive, because the *Fick* case is factually distinguishable, in that  
10 the conviction in that case was not set aside through a petition for habeas corpus, as was the case here.

11 Dr. Fick had been convicted, on a guilty plea, of violating Health and Safety Code section 11165.  
12 The Board of Medical Examiners relied on that conviction as well as on the underlying factual violation of  
13 the statute in revoking Dr. Fick's certificate. The Municipal Court in which Dr. Fick had been convicted  
14 subsequently ordered the matter dismissed in the interest of justice. Dr. Fick filed a petition for writ of  
15 mandate. The trial court granted the petition, concluding that the Board of Medical Examiners was not  
16 justified in revoking his certificate based on the conviction, because it had been set aside.

17 The appellate court reversed the judgment, finding that "[t]he action of the municipal court did not  
18 'set aside' Dr. Fick's conviction in a manner which would provide any basis for the superior court to in  
19 turn set aside the action of the Board." The court construed the Municipal Court's order of dismissal as an  
20 attempt to grant Dr. Fick relief under Penal Code section 1203.4, finding that there was no other proper  
21 statutory basis for the order. The appellate court further concluded that an order of dismissal under Penal  
22 Code section 1203.4 could not have any retroactive effect on the Board of Medical Examiners' decision in  
23 the case, because Business and Professions Code sections 2383 and 2384 permitted the Board to order a  
24

25  
26 <sup>15</sup> Petitioner does not argue that respondent's finding is invalid as to the 2009 conviction involving his possession of  
27 a counterfeit driver's license. That conviction has not been set aside, and the weight of the evidence thus supports  
28 respondent's finding as to that conviction alone. Petitioner does contend that his possession and use of the false  
driver's license does not constitute dishonesty, which is an issue separate from the existence of the conviction itself.  
That contention is addressed below.

1 license suspended or revoked based on a conviction "...irrespective of a subsequent order under the  
2 provisions of Section 1203.4 of the Penal Code..."<sup>16</sup>

3 In this case, by contrast, the Los Angeles County Superior Court did not dismiss petitioner's  
4 criminal case under Penal Code section 1203.4. Instead, it set aside petitioner's DUI conviction on a  
5 petition for habeas corpus. Respondent has not cited any provision of law that permits it to base discipline  
6 on a conviction irrespective of the granting of a petition for habeas corpus that has the effect of setting  
7 aside the conviction. Given these critical factual and legal differences, *Fick* does not control here.

8 The Court accordingly concludes that petitioner's 2008 DUI conviction is no longer a proper basis  
9 for the disciplinary order in this case.

## 10 2. Petitioner's Use of Alcohol

11 Respondent's disciplinary order relies on the facts of the incident that led to the now-vacated 2008  
12 DUI conviction, as described in Factual Finding number 5, to support the separate "use of alcohol"  
13 finding.<sup>17</sup>

14 Respondent imposed discipline under the authority of Business and Professions Code section  
15 2239(a), which provides that "the use...of alcoholic beverages, to the extent or in such a manner as to be  
16 dangerous or injurious to the licensee, or to any other person or the public...constitutes unprofessional  
17 conduct." In essence, respondent found that petitioner used alcohol on September 17, 2007 to the extent  
18 that he was under the influence of alcohol and, as a result of that impairment, drove in such a manner as to  
19 cause the accident that occurred on that night.

20 The Court has reviewed the evidence in the administrative record regarding the accident and finds  
21 that the weight of the evidence does not support the finding that petitioner used alcohol on the date of the  
22 accident to such an extent, or in such a manner, as to support discipline under Business and Professions  
23 Code section 2239(a). While it is clear that an accident occurred, it is not clear that petitioner was at fault,  
24 or that his consumption of alcohol on that evening caused the accident to occur or otherwise posed a  
25

26  
27 <sup>16</sup> See, 31 Cal. App. 3<sup>rd</sup> at 252.

28 <sup>17</sup> See, Proposed Decision, page 2.

1 danger to himself or to the public.

2 The evidence cited in support of the use of alcohol finding comes entirely from the hearing  
3 testimony of the California Highway Patrol Officer who responded to the scene after the accident, and  
4 from the reports that he prepared.<sup>18</sup>

5 While the officer concluded that petitioner was at fault, he did not witness the accident, and  
6 reached his conclusion based, at least in part, on the principle that the driver of a vehicle striking another  
7 vehicle from behind is virtually always at fault.<sup>19</sup> In many, or even most cases, this principle may be true,  
8 but it is not necessarily always true. In this case, petitioner persuasively suggests that it is called into  
9 question by the fact that the driver of the other car fled the scene. Petitioner's car suffered significant  
10 front-end damage, which suggests that a significant impact occurred and that the other car must also have  
11 suffered significant damage. The fact that the other driver fled the scene after suffering such damage  
12 reasonably may suggest that the other driver was at fault. If so, the accident could have occurred  
13 regardless of whether petitioner had consumed any alcohol that night. There does not appear to be any  
14 evidence in the record that petitioner was driving in an erratic or hazardous manner prior to the accident.  
15 The nature of the accident raises as many questions as it answers, and thus is not of sufficient weight by  
16 itself to support a finding that petitioner was at fault as the result of alcohol consumption.

17  
18 The officer also concluded that petitioner was at fault because he was under the influence of  
19 alcohol, reaching this conclusion based on his observations of petitioner's condition and on petitioner's  
20 performance on field sobriety tests. While this evidence is certainly suggestive and could provide some  
21 support for a finding that petitioner was under the influence of alcohol at the time of the accident, it is  
22 undermined to some extent by petitioner's testimony that he was injured in the accident and also had a foot  
23 deformity, either or both of which would affect his appearance and his performance on field sobriety tests.  
24 Respondent's decision noted this testimony and did not find it to be lacking in credibility.<sup>20</sup> Petitioner's

25  
26 <sup>18</sup> The officer's hearing testimony is found in the May 16, 2011 transcript at pages 24-62. The officer's reports are in  
the record as Exhibits 13 and 14.

27 <sup>19</sup> See, May 16, 2011 hearing transcript at page 53.

28 <sup>20</sup> See, Proposed Decision, page 2, Factual Finding number 5.

1 injury and physical condition reasonably could account for some of the problems the officer observed, and  
2 therefore weigh against the conclusion that petitioner was dangerously under the influence of alcohol.

3 As well, the Court finds that the officer's observations are counterbalanced by evidence of the  
4 results of the blood test petitioner submitted to after his arrest. The results were .08%, precisely the lower  
5 limit for being considered under the influence as a matter of law. As petitioner argues, however, and as  
6 respondent does not refute, the test results are subject to a margin of error such that petitioner's actual  
7 blood alcohol level may have been lower than .08%. Moreover, petitioner testified (without refutation)  
8 that he had consumed two drinks prior to 8:30 p.m. The accident occurred nearly three hours later. The  
9 results of the blood test and the unrefuted evidence of petitioner's drinking pattern on the night at issue do  
10 not tend to establish that petitioner drank to an excessive degree, or that he was obviously drunk to the  
11 point of being dangerous to himself or others at the time of the accident.<sup>21</sup>

12 The evidence as to any relationship between petitioner's alcohol consumption on the night of the  
13 accident and the accident itself therefore is, at best, equivocal. Moreover, the weight of the evidence does  
14 not tend to demonstrate that petitioner was under the influence of alcohol to such an extent that he posed a  
15 danger to himself or others. The Court accordingly finds that the weight of the evidence does not support  
16 discipline under Business and Professions Code section 2239(a).

17  
18 **3. Dishonesty in Petitioner's Possession and Use of a False Driver's License**

19 In his hearing testimony, petitioner admitted that he bought and possessed a counterfeit driver's  
20 license and took it to the Los Angeles International Airport with the intention of using it to board a flight  
21 to Atlanta. Nevertheless, he contends that he did not commit a "dishonest" or "corrupt" act within the  
22 meaning of Business and Professions Code section 2234(e)<sup>22</sup> because he told the TSA agent at the security  
23 gate that the license was not a government-issued ID, because all the information on the counterfeit license  
24 was accurate, and because he did not obtain or use the counterfeit license for monetary gain or at the

25  
26 <sup>21</sup> The Court also notes that the officer did not check the box on the Investigation Report form indicating that  
petitioner, when arrested, was "so intoxicated as to be a danger to himself/herself or others." (See, A.R., Exhibit 13,  
page AG EXH 13 - 0001.)

27 <sup>22</sup> The statute provides that unprofessional conduct includes: "The commission of any act involving dishonesty or  
28 corruption which is substantially related to the qualifications, functions, or duties of a physician or surgeon."

1 expense of another.

2 This contention is entirely unpersuasive. Simply obtaining (or possessing) a counterfeit driver's  
3 license is an inherently dishonest act. It demonstrates the fraudulent intent to pass off a false government  
4 document as the real article. Possessing such a false document is also illegal under Vehicle Code section  
5 14610(a)(1), which makes it unlawful for any person to have in his possession any fictitious driver's  
6 license, and under Penal Code section 529.5(c), which makes it a misdemeanor to possess a document  
7 falsely purporting to be a government-issued driver's license.

8 Moreover, although petitioner's argument implies that he did not actually use the counterfeit  
9 license for any purpose, his hearing testimony contradicts that argument. In fact, petitioner used his  
10 counterfeit license to obtain a boarding pass from the Delta Airlines check-in counter before proceeding to  
11 the security gate.<sup>23</sup> The CHP officer who made the DUI stop of petitioner in 2007 also testified that  
12 petitioner gave him a driver's license which later was determined to be counterfeit.<sup>24</sup> Presenting a  
13 counterfeit license as the real thing – on two separate occasions, including once to a law enforcement  
14 officer – clearly involved dishonesty.

15 Indeed, the evidence in this case actually shows that petitioner bought two counterfeit licenses: the  
16 first was confiscated at the time of his DUI arrest in 2007, and petitioner bought the second for his trip to  
17 Atlanta in November, 2008.<sup>25</sup> Moreover, in his hearing testimony, petitioner referred to the counterfeit  
18 license as a "duplicate", rather than "false" or counterfeit.<sup>26</sup> This was dishonest as well because it was  
19 designed to evade the question of the document's falsity. Under any reasonable and honest use of the  
20 term, a "duplicate" driver's license is obtained from the DMV, not from a bodega near MacArthur Park.

21 The essential facts supporting this finding are really not disputed. Petitioner did obtain, possess  
22 and use a counterfeit driver's license. Doing so was dishonest. The weight of the evidence therefore  
23

24  
25 <sup>23</sup> See, May 17, 2011 hearing transcript, pages 41, 124.

26 <sup>24</sup> See, May 16, 2011 hearing transcript, pages 33, 36-37.

27 <sup>25</sup> See, May 16, 2011 hearing transcript, pages 33 and 36; May 17, 2011 hearing transcript, pages 41; 108-109; 114-  
121.

28 <sup>26</sup> See, May 17, 2011 hearing transcript, page 96:2-3 and 8-9.



1 supports the finding that petitioner committed acts of dishonesty or corruption within the meaning of  
2 Business and Professions Code section 2243(e).

3 **4. Petitioner's Dishonesty in the Quarterly Declarations**

4 Petitioner does not dispute the facts supporting respondent's finding that he was dishonest in  
5 connection with three of his quarterly declarations. Indeed, the weight of the evidence unquestionably  
6 establishes that petitioner failed to disclose arrests or convictions on three occasions.

7 All of the quarterly declaration forms asked petitioner to answer the following question: "Since the  
8 last Quarterly Declaration have you been arrested, charged, or convicted of any Federal or State offense, or  
9 any county or city laws, rules or regulations?"<sup>27</sup>

10 In the Quarterly Declaration petitioner submitted on October 1, 2007, he answered "no" to this  
11 question, notwithstanding the fact that he had been arrested for driving under the influence of alcohol on  
12 September 17, 2007.<sup>28</sup>

13 In the Quarterly Declaration petitioner submitted on January 6, 2009, he answered "no" to this  
14 question, notwithstanding the fact that he had been arrested at the Los Angeles International Airport for  
15 possession of a counterfeit driver's license on November 4, 2008.<sup>29</sup>

16 And in the Quarterly Declaration petitioner submitted on July 8, 2009, he answered "no" to this  
17 question, notwithstanding the fact that he had been convicted for use of the counterfeit license on May 20,  
18 2009.<sup>30</sup>

19 In his hearing testimony, petitioner acknowledged that his answers were not accurate, and that he  
20 should have answered differently.<sup>31</sup> Nevertheless, he attempted to explain his answers in an effort to show  
21 that they were not dishonest. These explanations were unconvincing.

22 With regard to the September 17, 2007 DUI arrest, petitioner stated that he had answered "no"  
23

24 <sup>27</sup> See, for example, Quarterly Declaration dated January 6, 2007, A.R., Exhibit 25, page AG EXH 25 - 0001. If the  
25 answer to this question was "yes", the form directed petitioner to explain the answer on a separate sheet of paper.

26 <sup>28</sup> See, A.R., Exhibit 25, page AG EXH 25 - 0002.

27 <sup>29</sup> See, A.R., Exhibit 25, page AG EXH 25 - 0008.

28 <sup>30</sup> See, A.R., Exhibit 25, page AG EXH 25 - 0010.

<sup>31</sup> See, May 17, 2011 hearing transcript, pages 47-48; 50; 52.

1 because there had been no court proceedings in the case as of that date, and because he did not believe that  
2 he ultimately would be charged with a DUI, given the .08% blood alcohol test result.<sup>32</sup> Even if true, this  
3 does not change the undisputed fact that petitioner had been arrested. He had no reasonable excuse for not  
4 disclosing the arrest, and concealing it was dishonest.

5 With regard to the November 4, 2008 airport arrest, petitioner stated that he was under the  
6 impression that he was not "officially arrested" because he believed that he voluntarily had agreed to be  
7 detained instead of exercising his option to leave and return the next day, and because he had not been  
8 read his Miranda rights, so that he thought it was a "close call, whether or not that was a real bona fide  
9 arrest".<sup>33</sup> This is unconvincing because petitioner also testified that a police officer handcuffed him and  
10 removed him from the airport, and that the officer took him to the Pacific Division station, where he was  
11 fingerprinted and booked.<sup>34</sup> Given these events, petitioner could not reasonably have believed that he had  
12 not been arrested. Failing to disclose the arrest was dishonest.

13 Finally, with regard to the May 20, 2009 false driver's license conviction, petitioner stated that he  
14 checked "no" because he already had disclosed the facts of the airport incident during a taped interview  
15 with Medical Board investigator Jamie Sandoval, and that he made a note to that effect on the quarterly  
16 declaration form.<sup>35</sup> This explanation is also unconvincing. The note petitioner made on the quarterly  
17 declaration form is not appended to the question asking about arrests or convictions, but to a different  
18 question asking whether petitioner had complied with all terms and conditions of probation. The note  
19 itself, which is handwritten at the bottom of the page, makes no clear mention of the false driver's license  
20 conviction. Instead, it reads: "Except for fiscal matter re: probation costs and cost recovery matters now in  
21 litigation. Please also see MBOC Agent Jamie Sandoval's detailed report (and transcripts) of May 09 re:  
22 DUI et al. case."<sup>36</sup> This statement simply does not disclose the conviction. Moreover, Agent Sandoval's  
23

24  
25 <sup>32</sup> See, May 17, 2011 hearing transcript, pages 49.

26 <sup>33</sup> See, May 17, 2011 hearing transcript, page 50.

27 <sup>34</sup> See, May 17, 2011 hearing transcript, pages 44-46.

28 <sup>35</sup> See, May 17, 2011 hearing transcript, pages 51-52.

<sup>36</sup> See, A.R., Exhibit 25, page AG EXH 25 - 00010 and unnumbered page following.

1 interview with petitioner took place on May 5, 2009, prior to petitioner's conviction. In referring to the  
2 interview, petitioner therefore could not have disclosed the conviction, which had not yet occurred at the  
3 time of the interview. He accordingly cannot rely on this transcript to show full, honest disclosure of the  
4 conviction on the quarterly declaration.<sup>37</sup> The evidence shows that petitioner simply failed to disclose the  
5 conviction, which had occurred before he completed the quarterly declaration. Failing to disclose the  
6 conviction was dishonest.

7 As respondent found, petitioner clearly failed to disclose information regarding his arrests and  
8 convictions. His unconvincing explanations for non-disclosure are deceptive in themselves. The Court  
9 accordingly finds that the weight of the evidence supports the finding that petitioner committed dishonest  
10 acts in filing three of his quarterly declarations.

#### 11 V. Disposition

12 Based on the discussion set forth above, the Court makes the following ruling.

13 The petition for writ of mandate is granted in part and denied in part.

14 The petition is granted with regard to respondent's finding that petitioner is subject to discipline  
15 based on the July 29, 2008 DUI conviction and with regard to respondent's finding that petitioner is  
16 subject to discipline based on his use of alcohol on September 17, 2007. The weight of the evidence does  
17 not support those findings. A writ of mandate shall issue directing respondent to vacate those findings.

18 The petition is denied with regard to respondent's finding regarding petitioner's commission of  
19 acts of dishonesty or corruption within the meaning of Business and Professions Code section 2234(e),  
20 with regard to possession and use of a counterfeit driver's license and with regard to failing make required  
21 disclosures on quarterly declarations. The weight of the evidence supports that finding.

22 The Court's ruling does not address, or disturb, respondent's finding that petitioner is subject to  
23 discipline on the basis of his conviction for possession and use of a counterfeit driver's license. The  
24 petition did not challenge that finding.

25  
26 <sup>37</sup> See, interview transcript, A.R., Exhibit 26. Petitioner discusses the airport incident on pages 15-16 of the  
27 transcript. The Court notes that petitioner never admits that he possessed or used a counterfeit license at the airport,  
28 and that he states that he was "briefly detained" instead of arrested. His statements at the interview also were less  
than honest.

1 The Court's ruling does not address, or disturb, respondent's finding that cause exists to revoke  
2 petitioner's probation for violating the condition of probation requiring him to obey all laws. Petitioner's  
3 conviction for possession and use of a counterfeit driver's license, and the facts underlying that conviction,  
4 support that finding.<sup>38</sup> Moreover, the petition did not challenge that finding.

5 In addition to challenging certain of the factual findings and legal conclusions of respondent's  
6 decision, petitioner challenges the penalty of revocation as an abuse of discretion. This is a case in which  
7 respondent imposed a single disciplinary order based on multiple findings, some of which have been found  
8 not to be supported by the evidence. As stated above, the rule regarding review of the penalty in such  
9 cases is that if there is "real doubt" whether the same action would have been taken on proper findings, the  
10 matter should be returned to the agency for redetermination of the penalty. (See, *Franz v. Board of*  
11 *Medical Quality Assurance* (1982) 31 Cal. 3<sup>rd</sup> 124, 145; *Vollstedt v. City of Stockton* (1990) 220 Cal. App.  
12 3<sup>rd</sup> 265, 277.)

13 In this case, the Court finds that there is real doubt whether respondent would have entered the  
14 same disciplinary order based on the findings that have been sustained or were unchallenged. The order of  
15 penalty appears to be based on all of the adverse findings taken together, and does not make it clear that  
16 respondent would have ordered petitioner's license revoked based on less than all of the findings in the  
17 decision, or on the probation violation alone. Although the remaining findings are serious and potentially  
18 could support revocation on their own, particularly in light of Probation Condition No. 17 (cited above),  
19 the Court is not in a position to find that revocation is the only possible result the Board would reach if it  
20 were to reconsider the penalty.<sup>39</sup>

21 The Court therefore finds that the writ of mandate in this case should direct that the matter be  
22 remanded to respondent for reconsideration and redetermination of penalty based solely on the findings  
23 that the Court has found to be supported by the weight of the evidence and the findings that were not  
24

25 <sup>38</sup> For the reasons stated above, the DUI conviction, having been set aside, no longer supports that finding.

26 <sup>39</sup> The Court finds the supplemental briefing submitted by the parties to be inconclusive on this point. The Court  
27 notes, however, that petitioner has submitted statistics from a recent Medical Board report to the Legislature  
28 suggesting that petitions to revoke probation do not invariably result in revocation of a doctor's license. (See, Attachment A to petitioner's supplemental brief filed on December 14, 2012.) The statistics, while not determinative, support the conclusion that remand is the appropriate result in this case.

1 addressed or disturbed by the Court's ruling. This direction is not intended to control or restrict  
2 respondent's discretion in any other manner in its redetermination of penalty in this case.

3 In accordance with Local Rule 9.16, counsel for petitioner is directed to prepare a formal order,  
4 incorporating this Court's ruling as an exhibit, a separate judgment, and a peremptory writ of mandate;  
5 submit them to opposing counsel for approval as to form in accordance with Rule of Court 3.1312(a); and  
6 thereafter submit them to the Court for signature and entry of judgment in accordance with Rule of Court  
7 3.1312(b). The writ shall further command respondent to make and file a return within 60 days after  
8 issuance of the writ, setting forth what it has done to comply with the writ. The Court shall reserve  
9 jurisdiction in this action until there has been full compliance with the writ.  
10  
11  
12

13 DATED: January 31, 2013

MICHAEL KENNY

Judge MICHAEL P. KENNY  
Superior Court of California,  
County of Sacramento

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

<b>In the Matter of the Accusation and</b>	)	
<b>Petition to Revoke Probation Against:</b>	)	
	)	
	)	
<b>D. Anthony Jackson, M.D.</b>	)	<b>Case No. D1-2000-114681</b>
	)	
<b>Physician's and Surgeon's</b>	)	
<b>Certificate No. G 33174</b>	)	
	)	
<b>Respondent</b>	)	
_____	)	

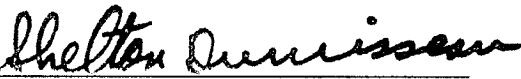
**DECISION**

**The attached Proposed Decision 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 August 19, 2011.**

**IT IS SO ORDERED July 22, 2011.**

**MEDICAL BOARD OF CALIFORNIA**

By:   
Shelton Duruisseau, Ph.D., Chair  
Panel A

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

In the Matter of the Accusation and  
Petition to Revoke Probation Against:

D. ANTHONY JACKSON, M.D.,  
Inglewood, California

Physician and Surgeon's  
Certificate No. G 33174

Respondent.

Case No. D1-2000-114681

OAH No. 2010060145

**PROPOSED DECISION**

This matter was heard by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, on May 16, 17 and 18, 2011, in Los Angeles, California.

Deputy Attorney General Albert Y. Muratsuchi represented complainant.

Justin H. Sanders, Attorney at Law, represented D. Anthony Jackson, M.D., (respondent) who was present during the hearing.

Evidence was received and the matter was submitted. The Administrative Law Judge finds as follows:

**FACTUAL FINDINGS**

1. Barbara Johnston made and filed the Accusation in her official capacity as Executive Director of the Medical Board of California, Department of Consumer Affairs. Linda K. Whitney (complainant) made and filed the First and Second Amended Accusations in her official capacity as Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On October 15, 1976, the Medical Board of California issued Physician and Surgeon's Certificate No. G 33174 to respondent. The certificate is in full force and effect.

3. Effective September 5, 2005, pursuant to a Stipulated Settlement and Disciplinary Order in Case No. 18-2000-114681, respondent's license was revoked.<sup>1</sup> The revocation was stayed and respondent was placed on probation for seven years under certain conditions, including a suspension from the practice of medicine for a period of 240 days. In addition, Probation Condition number 10 stated:

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

4. On July 29, 2008, in the Superior Court of California, County of Los Angeles, respondent was found guilty by a jury and was convicted of one count of driving under the influence of alcohol, a violation of Vehicle Code section 23152, subdivision (a); and of one count of driving with a blood alcohol level of .08% or more, in violation of Vehicle Code section 23152, subdivision (b). On August 29, 2008, respondent filed a Notice of Appeal of his conviction. On September 21, 2010, the Appellate Division of the Superior Court issued an order dismissing respondent's appeal as untimely. Therefore, the judgment of conviction is final.

5. The facts underlying respondent's conviction occurred on September 17, 2007, when respondent, while under the influence of alcohol, drove his car on the freeway and collided with another vehicle. The California Highway Patrol Officer who arrived on the scene of the accident performed a field sobriety test on respondent and determined that respondent was under the influence of alcohol. At the hearing, respondent denied that he was under the influence at the time of accident and his arrest. He testified that he was unable to perform the field sobriety tests because he had fractured his hip during the accident and because he has an anatomical deformity in his foot which makes it difficult for him to stand on one foot. Respondent asserted that he would not have been convicted of the offense had he not received what he claims was incompetent counsel during his trial. Respondent's assertion is not persuasive. Even assuming that his counsel made tactical and strategic errors during respondent's criminal trial, it would be speculative to conclude that a re-trial would produce not guilty verdicts on both counts.

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<sup>1</sup> The Stipulated Settlement and Disciplinary Order contains a "Culpability" section, which states in pertinent part: "Respondent understands and agrees that the charges and allegations in Accusation No. 18-2000-114681, if proven at hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate. Respondent agrees that the Division has a factual basis for the charges in the Accusation based upon the investigation conducted by the Board. . . . Nothing in this Stipulated Settlement and Disciplinary Order constitutes an admission of wrongdoing."



6. On May 20, 2009, in the Superior Court of California, County of Los Angeles, respondent was convicted on his plea of nolo contendere of violating Vehicle Code section 14610, subdivision (a)(1), an unlawful use of a driver's license, a misdemeanor. The facts underlying the conviction occurred on November 4, 2008, when respondent presented a counterfeit driver's license to a Transportation Security Administration (TSA) official at the Los Angeles Airport in an attempt to board a flight to Atlanta, Georgia. Respondent had purchased the counterfeit driver's license in downtown Los Angeles for \$80.00. Respondent was arrested for violating Penal Code section 529.5, possession of a false driver's license, a misdemeanor. This false driver's license was made to look exactly like an official driver's license issued by the California Department of Motor Vehicles (DMV). The face of the card included a replica of the DMV logo. The identifying information on the card, including name, address and birth date, was accurate.

7. Respondent presented evidence of mitigation. Prior to the incident at the Los Angeles airport, he went to Athens, Georgia, to visit his ailing mother who was near death at the time. At some point during the return flight or shortly thereafter, respondent lost his valid driver's license. Approximately one week later, respondent's mother passed away. Respondent then purchased airline tickets to fly back to Georgia to make arrangements for his mother's cremation and subsequent memorial service. Respondent believed that he would not be able to obtain a valid driver's license or photo ID from DMV in time for his scheduled flight. So he purchased the counterfeit driver's license for the purpose of presenting it to airline representatives and TSA officials in an effort to board the flight to Atlanta.

8. Respondent contends that he did not intend to deceive when he presented the counterfeit driver's license to the TSA official because the identifying information contained on the license was correct. Respondent's contention is not persuasive. The act of presenting a counterfeit driver's license to a TSA official with the intent to pass it off as an official DMV issued driver's license for the purpose of boarding a commercial airline is an act of dishonesty. In mitigation, respondent's misconduct was not done for monetary gain or at the expense of another. Rather, in respondent's mind this was an act of desperation in order to attend his mother's memorial service.

9. Condition No. 11 of respondent's probation, as set forth in the above referenced Stipulated Settlement and Disciplinary Order, requires respondent to submit quarterly declarations to the Board, signed under penalty of perjury, to allow the Board to determine whether respondent is in compliance with probation. Respondent submitted the following declarations which contained false information:

- (a) Respondent submitted such a declaration, signed by respondent on October 1, 2007, and covering the period July 1, 2007 through September 30, 2007. Question No. 5 of the form declaration asks, "Since the last Quarterly Declaration, have you

ever been arrested, charged or convicted of any Federal or State offense, of any county or city laws, rules or regulations (exclude parking tickets)?" Respondent answered "No," despite having been arrested for driving under the influence of alcohol on September 25, 2007. Respondent testified that he answered "no" to the question because he had not been "charged" when he signed the declaration. Respondent's testimony does not provide mitigation. He knew he had been arrested for driving under the influence of alcohol at the time he signed the declaration. His arrest occurred only five days before he signed the declaration. This was not a minor incident. On the night of his arrest, respondent was involved in an accident, was given field sobriety tests, taken to a hospital for a blood test to measure alcohol, then taken to the Norwalk Sheriff's Office where he was formally arrested and booked for DUI.

- (b) Respondent submitted a quarterly declaration covering the period October 1, 2008 through December 31, 2008. In this declaration, respondent again answered "No" to Question No. 5 despite having been arrested for the possession of a counterfeit driver's license on November 4, 2008. Respondent testified that he answered "no" because to the question because he was under the impression that he had not been arrested because he had not been given his Miranda rights. Respondent's testimony is not persuasive. The arresting officer's police report states that respondent was taken into custody and arrested for violating Penal Code section 529.5 (possession of a fraudulent I.D.) and was booked for a probation violation.
- (c) Respondent submitted another quarterly declaration covering the period April 1, 2009 through June 30, 2009. In this declaration, respondent again answered "No" to Question No. 5 despite having been convicted for the unlawful use of a driver's license on May 20, 2009. Respondent testified that although he answered "no" this question, he wrote a footnote at the bottom of the declaration which alluded to his May 2009 interview with the Board's investigator, and that subsequent transcripts of that interview would shed light on his arrest and conviction. Again, respondent testimony is not persuasive. The footnote refers to respondent's DUI conviction, not to his conviction for unlawful use of a driver's license.

## **DISCUSSION**

10. The standard of proof which must be met to establish the charging allegations in an accusation is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.). However, the standard of proof for establishing a violation of probation is preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437.). Complainant has met both standards in this case.

11. The purpose of a professional license disciplinary proceeding is to insure public protection, not to punish an individual licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d, 161). In this case, respondent committed two criminal offenses, one of which involved driving under the influence of alcohol and the other involved dishonesty in that respondent presented a false driver's license to a TSA official. Respondent then compounded his misconduct by failing to disclose his convictions in his quarterly declarations. Further, in his May 5, 2009 interview with the Board, respondent stated that he had only been "detained" at the Los Angeles airport. In fact, by that time of respondent's May 2009 interview, he had been charged and was in the middle of court proceedings for presenting the counterfeit driver's license to TSA officials.

## **LEGAL CONCLUSIONS**

### **Accusation**

1. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for unprofessional conduct under Business and Professions Code sections 2234, subdivision (a), and 2239, for use of alcohol in a manner that is injurious to himself or the public, as set forth in Factual Findings 4 and 5.

2. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for unprofessional conduct under Business and Professions Code section 2234, subdivision (e), for committing dishonest acts, as set forth in Factual Findings 6 through 9.

3. Cause exists to suspend or revoke respondent's physician and surgeon's certificate under Business and Professions Code sections 490, 2227 and 2236, and under California Code of Regulations, title 16, section 1360, for the convictions and the underlying conduct, as set forth in Factual Findings 4 through 8.

### **Petition to Revoke Probation**

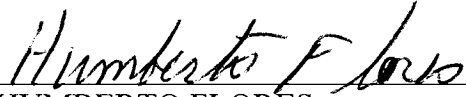
4. Cause exists to revoke the probation imposed on respondent's physicians and surgeon's certificate in Case No. 18-2000-114681 for violating condition number 10 of his probation by failing to obey all laws as set forth in Factual Findings 4 through 8.

## **ORDER**

1. The Petition to Revoke Probation previously imposed on respondent's Physician's and Surgeon's Certificate No. G 33174 in Case No. 18-2000-114681 is granted.

2. Physician's and Surgeon's Certificate No. G33174 issued to respondent D. Anthony Jackson, M.D. is revoked.

DATED: July 5, 2011

  
HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings

1 EDMUND G. BROWN JR.  
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2 GLORIA L. CASTRO  
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8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation and Petition  
12 to Revoke Probation Against:

Case No. D1-2000-114681  
OAH No. 2010060145

13 **D. ANTHONY JACKSON, M.D.**  
14 **553 Hyde Park Place**  
**Suite 5**  
15 **Inglewood, CA 92302**

**SECOND AMENDED ACCUSATION AND  
PETITION TO REVOKE PROBATION**

16 **Physician's and Surgeon's Certificate**  
**No. G 33174**

17 Respondent.  
18

19  
20 Complainant alleges:

21 **PARTIES**

22 1. Linda K. Whitney ("Complainant") brings this Second Amended Accusation and  
23 Petition to Revoke Probation solely in her official capacity as the Executive Director of the  
24 Medical Board of California ("Medical Board" or "Board"), Department of Consumer Affairs.  
25 2. On or about October 15, 1976, the Medical Board of California issued Physician's  
26 and Surgeon's Certificate Number G 33174 to D. ANTHONY JACKSON, M.D. ("Respondent").  
27 This certificate was in full force and effect at all times relevant to the charges brought herein and  
28 will expire on May 31, 2012, unless renewed.

3. In a disciplinary action entitled *In the Matter of the Accusation Against D. Anthony Jackson, M.D.*, Case No. 18-2000-114681, the Board issued a decision and order, effective September 5, 2005, in which Respondent's license was revoked. However, the revocation was stayed, and Respondent was placed on probation for a period of seven (7) years with certain terms and conditions, including a suspension from the practice of medicine for 240 days. A copy of the 2005 Medical Board decision and order is attached as Exhibit A and is incorporated by reference.

## JURISDICTION

4. This Second Amended Accusation and Petition to Revoke Probation is brought before the Medical Board of California, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 490 of the Code states in relevant part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. . . ."

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/ / /

1       6.     Section 2227 of the Code states:

2       "(a) A licensee . . . who has entered into a stipulation for disciplinary action with the board,  
3 may. in accordance with the provisions of this chapter:

4       "(1) Have his or her license revoked upon order of the board.

5       "(2) Have his or her right to practice suspended for a period not to exceed one year upon  
6 order of the board.

7       "(3) Be placed on probation and be required to pay the costs of probation monitoring upon  
8 order of the board.

9       "(4) Be publicly reprimanded by the board.

10       "(5) Have any other action taken in relation to discipline as part of an order of probation, as  
11 the division or an administrative law judge may deem proper. . . ."

12       7.     Section 2234 of the Code states:

13       "The Division of Medical Quality<sup>1</sup> shall take action against any licensee who is charged  
14 with unprofessional conduct. In addition to other provisions of this article, unprofessional  
15 conduct includes, but is not limited to, the following:

16       "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the  
17 violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical  
18 Practice Act].

19       . . .

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

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

23       8.     Section 2236 of the Code states in relevant part:

24       "(a) The conviction of any offense substantially related to the qualifications, functions, or  
25 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this  
26

27       <sup>1</sup> "Division of Medical Quality" or "Division" refers to the Medical Board of California.  
28 (Business and Professions Code § 2002.)

chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

“(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.”

9. Section 2239 of the Code states in relevant part:

“(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.”

10. California Code of Regulations, Title 16, section 1360, states in relevant part:

“For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.”

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**FIRST CAUSE FOR DISCIPLINE**

**(Conviction of Crimes)**

11. Respondent is subject to disciplinary action under sections 490, 2227, and 2236 of the Code, as well as under California Code of Regulations, Title 16, section 1360, for two criminal convictions substantially related to the qualifications, functions, or duties of a physician and surgeon.

12. On or about July 29, 2008, in the case of *People of the State of California vs. Anthony Jackson*, Los Angeles County Superior Court case no. 7CPO9551, Respondent was found guilty by a jury and convicted of one count of driving under the influence of alcohol, a violation of Vehicle Code section 23152, subdivision (a), a misdemeanor, and one count of driving while having a 0.08 percent or higher blood alcohol level, a violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. Respondent was sentenced to thirty-six months of summary probation, fined, and ordered to enroll in a three-month first-offender alcohol education and counseling program. On or about August 29, 2008, Respondent filed a Notice of Appeal in this case. On or about September 21, 2010, the Appellate Division of the Superior Court issued an order dismissing Respondent's appeal as untimely. Therefore, the judgment of conviction is now final.

13. The facts supporting Respondent's July 29, 2008 conviction are as follows. On or about September 25, 2007, 11:25 P.M., Respondent was driving eastbound on Interstate Freeway 105, east of Paramount Boulevard, when he collided with another vehicle. Respondent's BMW 528i spun around and came to a stop, blocking traffic in the fast lane. Shortly after Respondent's collision, California Highway Patrol Officer D. Evans arrived and escorted Respondent to the shoulder of the freeway. Officer Evans then asked Respondent a series of questions. Respondent admitted that he had two drinks prior to the collision. When asked if he felt the effects of the drinks, Respondent stated, "Yes, I kind of feel it a little." Officer Evans smelled the odor of alcohol on Respondent's breath, and noted that his speech was slurred and his eyes were red and watery with droopy eyelids. Officer Evans then administered a series of field sobriety tests for Respondent to perform, including the horizontal gaze nystagmus test, the modified position of

1 attention. standing on one foot, finger count, and hand pat. The field sobriety tests revealed signs  
2 of physical and mental impairment consistent with Respondent being under the influence of  
3 alcohol. Officer Evans also administered the Preliminary Alcohol Screening device, which  
4 indicated the presence of ethyl alcohol in Respondent, with a first reading of .095 taken on or  
5 about 12:10 A.M., and a second reading of .097, taken on or about 12:12 A.M. Based on Officer  
6 Evans's training and experience in conducting investigations on persons driving under the  
7 influence of alcohol, combined with his investigation and observations of Respondent on the  
8 evening of the collision, the officer formed the opinion that Respondent was driving under the  
9 influence of alcohol, and arrested him. Following his arrest, Respondent provided a blood sample  
10 at 1:42 A.M., which revealed a .097 percent blood alcohol content around two hours after the  
11 collision. Respondent's California driver's license was confiscated upon his arrest. On or about  
12 October 1, 2007, California Highway Patrol Officer E. Dasilva inspected the license and  
13 concluded that it was a counterfeit license.

14 14. In a separate matter, on or about May 20, 2009, in the case of *People of the State of*  
15 *California vs. Anthony Dennis Jackson*, Los Angeles County Superior Court case no. 9WA00300.  
16 Respondent pled nolo contendere and was convicted of the charge of an unlawful use of a driver's  
17 license, a violation of Vehicle Code section 14610, subdivision (a)(1), a misdemeanor.  
18 Respondent was sentenced to twelve months of summary probation and ordered to pay a fine.

19 15. The facts supporting Respondent's May 20, 2009 conviction are as follows. On or  
20 about November 4, 2008, Respondent was detained at Los Angeles Airport after presenting a  
21 counterfeit California driver's license to airport security officials. When questioned by Los  
22 Angeles Airport Police Officer M. Lu, Respondent acknowledged that he was in possession of a  
23 counterfeit driver's license which he purchased a week earlier at MacArthur Park for eighty  
24 dollars.

## 25 **SECOND CAUSE FOR DISCIPLINE**

### 26 **(Commission of Acts Involving Dishonesty)**

27 16. Respondent is subject to disciplinary action under section 2234, subdivision (e) of the  
28 Code in that he committed acts involving dishonesty which are substantially related to the

1 qualifications, functions, or duties of a physician and surgeon. The facts supporting this Second  
2 Cause for Discipline are set forth in Paragraphs 14 and 15 of this Second Amended Accusation  
3 and Petition to Revoke Probation, which are hereby incorporated by reference. As alleged above,  
4 Respondent was caught not once, but twice, presenting a counterfeit California driver's license to  
5 law enforcement officers.

### 6 **THIRD CAUSE FOR DISCIPLINE**

#### 7 **(Misuse of Alcohol)**

8 17. Respondent is subject to disciplinary action under section 2239, subdivision (a) of the  
9 Code in that he used alcoholic beverages to the extent, or in such a manner as to be dangerous or  
10 injurious to himself or to any other person or to the public. The facts supporting this Third Cause  
11 for Discipline are set forth in Paragraph 13 of this Second Amended Accusation and Petition to  
12 Revoke Probation, which is hereby incorporated by reference.

### 13 **FOURTH CAUSE FOR DISCIPLINE**

#### 14 **(Commission of Acts Involving Dishonesty)**

15 18. Respondent is subject to disciplinary action under section 2234, subdivision (e) of  
16 the Code in that he committed acts involving dishonesty which are substantially related to the  
17 qualifications, functions, or duties of a physician and surgeon.

18 19. The facts supporting this Fourth Cause for Discipline are as follows. Probation  
19 Condition No. 11 of the Medical Board's September 5, 2005 decision and order requires  
20 Respondent to submit quarterly declarations signed under the penalty of perjury to the Medical  
21 Board. The purpose of these declarations is to allow the Board to determine whether Respondent  
22 is complying with the terms and conditions of his probation. These declarations are on forms  
23 provided by the Board.

24 20. Respondent submitted a declaration covering the reporting period from July 1, 2007  
25 to September 30, 2007. Question number 5 of the form declaration asks, "Since the last Quarterly  
26 Declaration have you been arrested, charged, or convicted of any Federal or State offense, of any  
27 county or city laws, rules or regulations? (Exclude parking tickets)" In response to this question,  
28 Respondent checked the box next to the response, "No," despite the fact that he was arrested for

1 driving under the influence of alcohol on September 25, 2007, as discussed in Paragraph 13  
2 above. This declaration is signed by Respondent under the penalty of perjury, and dated October  
3 1, 2007.

4 21. Respondent submitted a declaration covering the reporting period from October 1,  
5 2008 to December 31, 2008. Question number 5 of the form declaration asks, "Since the last  
6 Quarterly Declaration have you been arrested, charged, or convicted of any Federal or State  
7 offense, of any county or city laws, rules or regulations? (Exclude parking tickets)" In response  
8 to this question, Respondent checked the box next to the response, "No," despite the fact that he  
9 was arrested for possession of a counterfeit California driver's license on November 4, 2008, as  
10 discussed in Paragraph 15 above. This declaration is signed by Respondent under the penalty of  
11 perjury, and dated January 6, 2009.

12 22. Respondent submitted a declaration covering the reporting period from April 1, 2009  
13 to June 30, 2009. Question number 5 of the form declaration asks, "Since the last Quarterly  
14 Declaration have you been arrested, charged, or convicted of any Federal or State offense, of any  
15 county or city laws, rules or regulations? (Exclude parking tickets)" In response to this question,  
16 Respondent checked the box next to the response, "No," despite the fact that he was convicted on  
17 May 20, 2009 of the offense of an unlawful use of a driver's license, a violation of California  
18 Vehicle Code section 14610, subdivision (a)(1), a misdemeanor (as discussed in Paragraph 14  
19 above). This declaration is signed by Respondent under the penalty of perjury, and dated July 8,  
20 2009.

### 21 CAUSE TO REVOKE PROBATION

#### 22 (Failure to Obey All Laws)

23 23. At all times from September 5, 2005, the effective date of Respondent's probation, to  
24 the present, Probation Condition No. 10 stated:

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

27 24. Respondent's probation is subject to revocation because he failed to comply with  
28 Probation Condition No. 10. The facts supporting this Cause to Revoke Probation are set forth in

1 Paragraphs 12 through 15 and Paragraphs 19 through 22 of this Second Amended Accusation and  
2 Petition to Revoke Probation, which are hereby incorporated by reference.

### 3 DISCIPLINARY CONSIDERATIONS

4 25. To determine the degree of discipline to be imposed on Respondent, Complainant  
5 requests that Respondent's prior disciplinary history be taken under consideration:

6 26. On September 5, 2005, in a disciplinary action entitled *In the Matter of the*  
7 *Accusation Against D. Anthony Jackson, M.D.*, Medical Board case no. 18-2000-114681, the  
8 Board's decision and order went into effect. The Board revoked Respondent's license, stayed the  
9 revocation, and placed him on probation for a period of seven (7) years with certain terms and  
10 conditions, including Respondent's suspension from the practice of medicine for 240 days. The  
11 Board's decision and order was based on allegations of gross negligence, repeated negligent acts,  
12 incompetence, excessive treatment, prescribing without good faith prior examination and medical  
13 indication, dishonesty/Medi-Cal fraud, and failure to maintain adequate and accurate records,  
14 with respect to fourteen patients. A copy of the 2005 Medical Board decision and order is  
15 attached as Exhibit A and is incorporated by reference.

16 27. On May 15, 2006, the Board issued an order suspending Respondent's license for his  
17 failure to complete the Physician Assessment and Clinical Education (PACE) Program, as  
18 required by Probation Condition No. 5 of the 2005 Medical Board decision and order, which is  
19 attached as Exhibit A. Having complied with the terms and conditions of the order, the  
20 suspension order was terminated on September 11, 2006.

### 21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
23 and that following the hearing, the Medical Board of California issue a decision:

24 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 33174.  
25 issued to D. Anthony Jackson, M.D.;

26 2. Revoking the probation that was granted by the Medical Board in Case No. 18-2000-  
27 114681 and imposing the stayed disciplinary order to revoke Physician's and Surgeon's Certificate  
28 Number G 33174, issued to D. Anthony Jackson, M.D.;

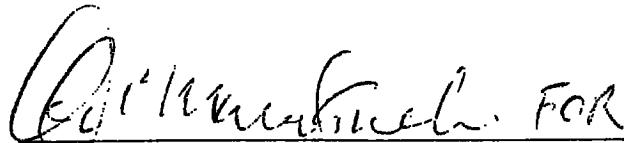
1           3.     Revoking, suspending or denying approval of D. Anthony Jackson, M.D.'s authority  
2 to supervise physician assistant, pursuant to section 3527 of the Code;

3           4.     Ordering D. Anthony Jackson, M.D. to pay the Board the costs of probation  
4 monitoring, if placed on probation; and

5           5.     Taking such other action as deemed necessary and proper.

6  
7  
8 DATED: \_\_\_\_\_

12/9/10

 FOR

LINDA K. WHITNEY  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
Complainant