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

In the Matter of the Application of:	)	
KATI LYNN KENNER	)	**Case No. 950-2017-001487**
Applicant	)	

DECISION AND ORDER

The attached Stipulation for a Probationary License is hereby adopted as the Decision and Order of the Physician Assistant Board, Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on January 24, 2018.

IT IS SO ORDERED January 10, 2018.

PHYSICIAN ASSISTANT BOARD

By: Robert E. Sachs

Robert E. Sachs, P.A., Chair

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

In the Matter of the Application of:	)	
	)	
Kati Lynn Kenner	)	STIPULATION FOR A
	)	PROBATIONARY LICENSE
For a Physician Assistant	)	
License	)	
	)	

Kati Lynn Kenner, applicant for a physician assistant license (hereafter Applicant), and Maureen L. Forsyth, Executive Officer, Physician Assistant Board (Board), hereby stipulate as follows:

FACTS

1) This Applicant is a Stanford University – Foothill College graduate of the Primary Care Physician Assistant Program. She is not licensed to practice as a physician assistant in any state.

2) On April 17, 2017, the applicant submitted an application for physician assistant licensure to the Physician Assistant Board. Question 23a on the application asks, in pertinent part: "*Have you ever been convicted of or pled nolo contendere to ANY criminal or civil offence in the United States, its territories, or a foreign country?*" Question 23b on the application asks: "*Is any appeal related to the above pending?*" A notice printed above Question 23 informs applicants that, "*you are required to include any conviction that has been set aside and dismissed or expunged, or where a stay of execution has been issued.*" The application also includes the following notice, which states that, "falsification or misrepresentation of any item or response on this application or any attachment hereto is grounds for denying or revoking a license."

3) The Applicant checked the box marked "yes" in response to Question 23a, indicating she had been convicted of or plead nolo contendere to ANY criminal or civil offense in the United States, its territories, or a foreign country.

4) The Applicant signed the application for licensure submitted to the Board on April 18, 2017, certifying under penalty of perjury that she read the questions in the application and that all of the information, statements, attachments and representations she provided in her application are true and correct.

5) The Applicant was convicted on August 18, 2014 of violating California Vehicle Code section 23103 (A) – Reckless Driving, which was plead down from California Vehicle Code sections 23152 (a), (b), and (f) – Driving Under the Influence of Alcohol or Drugs.

6) Section 480(a) of the Business and Professions Code states that a board may deny a license regulated by this code on the grounds that the applicant has one of the following: (1) Been convicted of a crime; (2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another; or (3) Done any act that if done by a licentiate of the business or profession in question would be grounds for suspension or revocation of license. The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

7) The Applicant agrees that grounds exist to deny the applicant's application for licensure pursuant to Business and Professions Code section 480 based on paragraph 5 above.

8) The Applicant acknowledges that she has a right to request a hearing on the denial of her request for licensure. The Applicant voluntarily, knowingly, and intelligently waives and gives up this right by signing this Stipulation.

9) Pursuant to section 3527(a) of the Business and Professions Code, the Board may deny an application for licensure, or issue a license subject to terms and conditions, or suspend or revoke, or impose probationary conditions upon a physician assistant license, after a hearing, for unprofessional conduct. Unprofessional conduct includes, but is not limited to, a violation of the Physician Assistant Practice Act (commencing with Business and Professions Code section 3500), a violation of the Medical Practice Act (commencing with Business and Professions Code section 2000), or a violation of the regulations adopted by the Board or the Medical Board of California.

10) Pursuant to section 3519.5 of the Business and Professions Code, the Board may issue a probationary license on terms and conditions. This Stipulation for a Probationary License (Stipulation) reflects Board staff's recommendation to the Board regarding the issuance of a probationary license on terms and conditions to the Applicant in this matter, and that this Stipulation shall be subject to approval by the Board in order to be effective.

11) The Applicant understands and agrees that counsel for Complainant and Board staff may communicate directly with the Board and Board staff regarding this Stipulation without notice to or participation by the Applicant or her legal counsel. By signing the Stipulation, the Applicant understands and agrees that she may not withdraw her agreement or seek to rescind the Stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this Stipulation, the Stipulation for a Probationary

License shall be of no force or effect (except for this paragraph) and shall be inadmissible in any legal action between the parties. Further, the Board shall not be disqualified from further action by having considered this matter.

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

13) This Stipulation is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulation may not be altered, amended, modified, supplemented, or otherwise changed, except by a writing executed by an authorized representative of each of the parties.

14) In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue a probationary license to the Applicant on the terms and conditions set forth below.

TERMS AND CONDITIONS

1) The probationary license issued to Applicant shall be for a period of three (3) years or until she is successfully discharged from the Diversion Program plus one (1) year, whichever is longer, beginning on the date Applicant is issued a probationary license. Upon successful completion of the probationary period and all terms and conditions, an unrestricted physician assistant license shall be issued.

2) Clinical Diagnostic Evaluation (CDE)

Within 30 days from the effective date of the Decision and Order and thereafter as required by the Board, Respondent shall undergo a CDE from a licensed practitioner who holds a valid, unrestricted license to conduct CDEs, has three (3) years' experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Board. The evaluations shall be conducted in accordance with accepted professional standards for conducting a substance abuse CDE.

Respondent shall undergo a CDE to determine whether the respondent has a substance abuse problem and whether the respondent is a threat to himself or herself or others. The evaluator shall make recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the respondent's rehabilitation and safe practice.

Respondent shall not be evaluated by an evaluator that has a financial, personal, or business relationship with the respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

During the evaluation, if respondent is determined to be a threat to himself or herself or others, the evaluator shall notify the Board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed thirty (30) days.

Respondent may return to either full-time or part-time work if the Board determines he or she is fit to do so based upon consideration of the CDE report and the following criteria:

- License type;
- Licensee's history;
- Documented length of sobriety/time that has elapsed since last substance use;
- Scope and pattern of use;
- Treatment history;
- Medical history and current medical condition;
- Nature, duration and severity of substance abuse; and,
- Whether the licensee is a threat to himself or herself or others.

The Board shall determine whether or not the respondent is safe to return to full-time or part-time work, and what restrictions shall be imposed on the respondent. However, respondent shall not return to practice until he or she has thirty (30) days of negative drug tests.

If respondent is required to participate in inpatient, outpatient, or any other type of treatment, the Board shall take into consideration the recommendation of the CDE, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

In the event that any Condition Applying the Uniform Standards requires interpretation or clarification, the Uniform Standards shall be controlling.

3) <u>Abstain from the Use of Alcohol</u>

Applicant shall abstain completely from the use of products or beverages containing alcohol.

4) <u>Abstain from the Use of Controlled Substances and Dangerous Drugs</u>

Applicant shall abstain completely from personal use, possession, injection, consumption by any route, including inhalation of all controlled substances as defined in the California Uniform Controlled Substances Act. This prohibition does not apply to medications lawfully prescribed to Applicant for a bona fide illness or condition by a

practitioner licensed to prescribe such medications. Within fifteen (15) calendar days of receiving any lawful prescription medications, Applicant shall notify the recovery program in writing of the following: prescriber's name, address, and telephone number; medication name and strength, issuing pharmacy name, address, and telephone number. Applicant shall also provide a current list of prescribed medication with the prescriber's name, address, and telephone number on each quarterly report submitted. Applicant shall provide the probation monitor with a signed and dated medical release covering the entire probation period.

Applicant shall identify for the Board's approval a single coordinating physician and surgeon who shall be aware of Applicant's history of substance abuse and who will coordinate and monitor any prescriptions for Applicant for dangerous drugs, and controlled substances. Once a Board-approved physician and surgeon has been identified, Applicant shall provide a copy of the Stipulation to the physician and surgeon. The coordinating physician and surgeon shall report to the Board or its designee on a quarterly basis Applicant's compliance with this condition.

The Board may require that only a physician and surgeon who is a specialist in addictive medicine be approved as the coordinating physician and surgeon.

If Applicant has a positive drug screen for any substance not legally authorized, Applicant shall be contacted and instructed to leave work and ordered by the Board to cease any practice and may not practice unless and until notified by the Board. The Board will notify Applicant's employer, if any, and worksite monitor, if any, that Applicant may not practice. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, Applicant shall be automatically suspended from practice pending the final decision on the petition to revoke probation or accusation. This period of suspension will not apply to the reduction of this probationary period.

5) Drug and Alcohol Recovery Monitoring Program

Within fifteen (15) calendar days from the effective date of this Stipulation, Applicant shall enroll, participate in, and successfully complete the Board's drug and alcohol recovery monitoring program at Applicant's cost until the drug and alcohol recovery monitoring program determines that participation in the drug and alcohol recovery monitoring program.

Applicant shall comply with all components of the drug and alcohol recovery monitoring program. Applicant shall sign a release authorizing the drug and alcohol recovery monitoring program to report all aspects of participation of the drug and alcohol recovery monitoring program as requested by the Board or its designee.

Failure to comply with requirements of the drug and alcohol recovery monitoring program, terminating the program without permission or being expelled for cause shall constitute a violation of probation by Applicant and shall be immediately suspended from the practice as a physician assistant.

Probation shall be automatically extended until Applicant successfully completes the program.

6) Biological Fluid Testing

Applicant shall immediately submit to and pay for any random and directed biological fluid or hair sample, breath alcohol or any other mode of testing required by the Board or its designee.

Applicant shall be subject to a minimum of fifty-two (52) random tests per year within the first year of probation and a minimum of thirty-six (36) random tests per year, for the duration of the probationary term up to five (5) years and a minimum of one (1) test per month in each year of probation after the fifth year provided that there have been no positive test results during the previous five (5) years.

The Board or its designee may require less frequent testing if any of the following applies:

- Where Applicant has previously participated in a treatment or monitoring program requiring testing, the Board or its designee may consider that prior testing record in applying the testing frequency schedule described above;

- Where the basis for probation or discipline is a single incident or conviction involving alcohol or drugs, or two incidents or conviction involving alcohol or drugs that were at least seven (7) years apart, that did not occur at work or on the way to or from work, the Board or its designee may skip the first-year testing frequency requirement(s).

- Where Applicant is not employed in any health care field, frequency of testing may be reduced to a minimum of twelve (12) tests per year. If Applicant wishes to thereafter return to employment in a health care field, Applicant shall be required to test at least once a week for a period of sixty (60) days before commencing such employment, and shall thereafter be required to test at least once a week for a full year, before Applicant may be reduced to a testing frequency of no less that twenty-four (24) tests per year.

- Where Applicant has demonstrated period of sobriety and/or non-use, the Board or its designee may reduce the testing frequency to no less than twenty-four (24) tests per year.

Applicant shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Applicant shall have the test performed by a Board-approved laboratory certified and accredited by the U.S. Department of Health and Human Services on the same day that he or she is notified that a test is required. This shall ensure that the test results are sent immediately to the Board. Failure to comply

within the time specified shall be considered an admission of a positive drug screen and constitute a violation of probation. If the test results in a determination that the urine was too diluted for testing, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation. If a positive result is obtained, the Board may require Applicant to immediately undergo a physical examination and to complete laboratory or diagnostic testing to determine if any underlying physical condition has contributed to the diluted result and to suspend Applicant's license to practice. Any such examination or laboratory and testing costs shall be paid by Applicant. If it is determined Applicant altered the test results, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation and Applicant must cease practicing. Applicant shall not resume practice until notified by the Board. If Applicant tests positive for a banned substance, Applicant shall be contacted and instructed to leave work and ordered to cease all practice. Applicant shall not resume practice until notified by the Board. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

7) Major Violations

This provision applies if the licensee commits a violation of the drug and alcohol recovery monitoring program or any other condition applying the uniform standards specific to controlled substances.

If Applicant commits a major violation, Applicant shall immediately upon notification by the Board, cease practice until notified otherwise in writing by the Board.

Major Violations include, but are not limited to the following:

1. Failure to complete a Board-ordered program;
2. Failure to undergo a required CDE;
3. Committing multiple minor violations of probation conditions;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code or state or federal law;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive for a banned substance; and
8. Knowingly using, making, altering, or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

8) Approval of Supervising Physician

Within 30 days of the effective date of this Stipulation, Applicant shall submit to the Board or its designee for its prior approval the name and license number of the supervising physician and a practice plan detailing the nature and frequency of supervision to be provided. Applicant shall not practice until the supervising physician and practice plan are approved by the Board or its designee.

Applicant shall have the supervising physician submit quarterly reports to the Board or its designee.

If the supervising physician resigns or is no longer available, Applicant shall, within 15 days, submit the name and license number of a new supervising physician for approval. Applicant shall not practice until a new supervising physician has been approved by the Board or its designee.

9) Notification of Employer and Supervising Physician

Applicant shall notify her current and any subsequent employer and supervising physician(s) of the discipline and provide a copy of this Stipulation to each employer and supervising physician(s) during her period of probation, before accepting or continuing employment. Applicant shall ensure that each employer informs the Board or its designee, in writing within 30 days, verifying that the employer and supervising physician(s) have received a copy of this Stipulation.

This condition shall apply to any change(s) in place of employment.

The Applicant shall provide to the Board or its designee the names, physical addresses, mailing addresses, and telephone numbers of all employers, supervising physicians, and worksite monitor, and shall inform the Board or its designee in writing of the facility or facilities at which the person practices as a physician assistant.

10) Obey All Laws

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

11) Quarterly Reports

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

12) Other Probation Requirements

Applicant shall comply with the Board's probation unit. Applicant shall, at all times, keep the Board and probation unit informed of Applicant's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board and probation unit. Under no circumstances shall a post office box serve as an address of record, except as allowed by California Code of Regulations 1399.511.

Applicant shall appear in person for an initial probation interview with the Board or its designee within 90 days of the decision. Applicant shall attend the initial interview at a time and place determined by the Board or its designee.

Applicant shall, at all times, maintain a current and renewed physician assistant license.

Applicant shall also immediately inform probation unit, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.

13) Interview with Medical Consultant

Applicant shall appear in person for interviews with the Board's medical or expert physician assistant consultant upon request at various intervals and with reasonable notice.

14) Non-practice While on Probation

Applicant 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. Non-practice is defined as any period of time exceeding 30 calendar days in which Applicant is not practicing as a physician assistant. Applicant shall not return to practice until the supervising physician is approved by the Board or designee.

If, during probation, Applicant moves out of the jurisdiction of California to reside or practice elsewhere, including federal facilities, Applicant is required to immediately notify the Board in writing of the date or departure, and the date or return, if any.

Practicing as a physician assistant in another state of the United States or federal jurisdiction while on active probation with the physician assistant licensing authority of that state or jurisdiction shall not be considered non-practice.

All time spent in a clinical training program that has been approved by the Board or its designee, shall not be considered non-practice. Non-practice due to a Board ordered suspension or in compliance with any other condition or probation, shall not be considered a period of non-practice.

Any period of non-practice, as defined in this condition, will not apply to the reduction of the probationary term. Periods of non-practice do not relieve Applicant of the responsibility to comply with the terms and conditions of probation.

It shall be considered a violation of probation if for a total of two years Applicant fails to practice as a physician assistant. Applicant shall not be considered in violation for non-practice as long as Applicant is residing and practicing as a physician assistant in another state of the United States and is on active probation with the physician assistant

licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

15) Unannounced Clinical Site Visit

The Board or its designee may make unannounced clinical site visits at any time to ensure that Applicant is complying with all terms and conditions of probation.

16) Condition Fulfillment

A course, evaluation, or treatment completed after the acts that gave rise to Stipulation but prior to the effective date of the Stipulation may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of the condition.

17) Completion of Probation

Applicant shall comply with all financial obligations (e.g., cost recovery, probation costs) no later than 60 calendar days prior to the completion of probation. Upon successful completion of probation, an unrestricted license will be issued.

18) Violation of Probation

If Applicant violates probation in any respect, the Board after giving Applicant notice and the opportunity to be heard, may revoke probation. If an accusation or petition to revoke probation is filed against Applicant 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.

19) Probation Monitoring Costs

Applicant 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. The costs shall be made payable to the Physician Assistant Board and delivered to the Board no later than January 31 of each calendar year.

20) Voluntary License Surrender

Following the effective date of this probation, if Applicant ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, Applicant may request, in writing, the voluntary surrender of Applicant's license to the Board. Applicant's written request to surrender his or her license shall include the following: his or her name, license number, case number, address of record, and an explanation of the reason(s) why Applicant seeks to surrender his or her license. The Board reserves the right to evaluate the Applicant's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Applicant shall not be relieved of

the requirements of his or her probation unless the Board or its designee notifies Applicant in writing that Applicant's request to surrender his or her license has been accepted. Upon formal acceptance of the surrender, Applicant shall, within 15 days, deliver Applicant's wallet and wall certificate to the Board or its designee and shall no longer practice as a physician assistant. Applicant will no longer be subject to the terms and conditions of probation and the surrender of Applicant's license shall be deemed a disciplinary action. If Applicant re-applies for a physician assistant license, the application shall be treated as a petition for reinstatement of a revoked license.

21) Modification or Early Termination of Probation

Applicant agrees to the term of probation length and agrees not to petition for or seek an early termination of the length of probation or modification of the terms of probation.

If adopted by the Board as noted in Facts paragraph 14 above, the Applicant agrees to comply with the terms and conditions set forth herein.

Kati Lynn Kenner, Applicant

07/03/2017
Date

Maureen L. Forsyth, Executive Officer
Physician Assistant Board

7-7-17
Date