

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

In the Matter of the Petition to Revoke
Probation Against:

WILLIAM BARRETT PAYNE, M.D.,

Physician's and Surgeon's Certificate,
No. A126143,

Respondent.

Case No. 800-2017-034191

OAH No. 2017070864

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, on February 21, 2018, in Los Angeles, California. Complainant was represented by Rebecca L. Smith, Deputy Attorney General. William Barrett Payne, M.D. (Respondent) was present and was represented by Benjamin Fenton with Fenton Law Group, LLP.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on February 21, 2018.

FACTUAL FINDINGS

Jurisdiction

1. On June 30, 2017, Kimberly Kirchmeyer (Complainant) filed the Petition to Revoke Probation while acting in her official capacity as the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

2. Respondent filed a Notice of Defense requesting a hearing on the Petition to Revoke Probation.

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Probationary Licensure

3. On June 12, 2013, the Board issued Physician's and Surgeon's Certificate Number A126143 to Respondent. That certificate is current and will expire on June 30, 2019.

4A. In a Decision and Order in Case No. 20-2013-231819, effective June 11, 2013, adopting a Stipulation for a Probationary License (Probation Order), the Board ordered that Respondent, then a license applicant, be issued a Physician's and Surgeon's Certificate, subject to a three-year probation. The Probation Order specified terms and conditions, including abstaining from using alcohol and controlled substances, submitting to biological fluid testing, undergoing psychotherapy treatment, and maintaining "a current and renewed California physician's and surgeon's probationary license" (Exhibit 1, p. 012). Condition 12 of the Probation Order also required the following:

NON-PRACTICE WHILE ON PROBATION. [Respondent] shall notify the Board or designee in writing within fifteen (15) calendar days of any periods of non-practice lasting more than thirty (30) calendar days and within fifteen (15) calendar days of applicant's return to practice. Non-practice is defined as any period of time [Respondent] is not practicing medicine in California as define[d] in Business and Professions Code sections 2051 and 2052 for at least forty (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. [¶]

[Respondent's] period of non-practice while on probation shall not exceed two (2) years. (Emphasis added.)

(Exhibit 1, p. 12.)

4B. The Probation Order was based on Petitioner's prior conviction for driving under the influence of alcohol. The Probation Order specifically noted: "On October 4, 2012, [Respondent] submitted an application for a Physician's and Surgeon's License in the state of California. [Respondent] disclosed on the application that he has participated in a drug or alcohol program, has been treated for a diagnosed addictive disorder, and has been convicted of Driving Under the Influence of alcohol." (Exhibit 1, p. 008.)

Respondent's Educational and Licensing Background; History of Alcohol Use/Treatment

5. Respondent was born in Salt Lake City, Utah, and he obtained a Bachelor of Science degree in physics from the University of Utah. In 2008, he earned his medical degree from Vanderbilt University in Nashville, Tennessee.

6A. From 2008 through 2009, Respondent completed an internship at the University of Arizona. At the end of that internship year, Respondent attended a NASCAR race with his brother. While at the event, Respondent drank alcohol, and he was later arrested for driving under the influence of alcohol (DUI).

6B. At the administrative hearing, Respondent appeared forthright and respectful, and he testified credibly regarding the events in question.

6C. Respondent characterized his DUI as a "poor decision," and a "huge mistake." His sobriety date is April 18, 2009, the date of his DUI. Since that date, he has completely abstained from alcohol use.

7A. Following his internship year at the University of Arizona, Respondent remained at the university to complete a residency in orthopedic surgery from 2009 through 2013. Just prior to his residency, Respondent received an email sent to all residents requiring them to report any incidents with law enforcement. He reported his DUI.

7B. Based on his disclosure, Respondent was referred for an evaluation after which it was recommended that he attend 30-days of inpatient rehabilitation. Respondent successfully completed the inpatient program. Thereafter, he participated in a monitored aftercare program for the remaining four years of his residency. The aftercare program was overseen by the Arizona Medical Board's Physician Health Program, and Respondent was required to attend weekly meetings and submit to random urine screening.

8. Respondent's orthopedic residency went well. During his fourth year, he applied to participate in a sports medicine fellowship, and he was matched with a one-year fellowship program at the University of Southern California (USC). As part of the fellowship, he was required to obtain licensure to practice medicine in California.

9. In the Fall of 2012, Respondent applied to the Board for licensure in California, and as part of the application process, he reported his DUI and rehabilitation programs. The license application process took many months, and Respondent was unsure if he would be able to obtain a California medical license in time to start his fellowship. When the Board informed him that it would not grant him full licensure but would allow him to have a probationary license, Respondent agreed to the Probation Order despite his concern about some of the probationary conditions. He understood that if he attempted to negotiate any of the offered terms, the licensing process would take even longer.

10. Respondent complied with the Probation Order during his fellowship at USC from 2013 through 2014.

11. During his fellowship year, Respondent began applying for employment after his California training, which would end in July 2014. He was offered positions in Oregon, Utah, and Washington.

12. In January 2014, Respondent's attorney called Respondent's Board probation monitor to inquire about the possibility of early termination of probation. The probation monitor explained that Respondent would be eligible to petition for early termination of probation after two years had lapsed.

13. In March 2014, Respondent spoke to his Board probation monitor and informed her that he had interviewed for employment in Washington. He noted that his license was scheduled to expire in June 2015, and he asked about the effect on his probation in letting his license expire. The probation monitor advised Respondent that he would be eligible to petition for early termination of probation in June 2015 but that he would need to have a current license to submit the petition.

14. In April 2014, Respondent notified the Board that he was in the process of applying for a medical license in the state of Washington and that he had been granted a medical license in Utah.

15. Respondent accepted an employment offer in Washington. On August 1, 2014, Respondent notified the Board that he would not be practicing medicine in the state of California as of August 1, 2014. On January 5, 2015, Respondent submitted to the Board a required Semi-Annual Declaration stating that he had moved to Burien, Washington and had begun practicing medicine there.

16. Following completion of his USC fellowship, Respondent moved to Washington and obtained his medical license there.

17. When applying for his medical license in Washington, Respondent disclosed his DUI and rehabilitation. Although he was granted a license, he was required to participate in the Washington Physicians Health Program for a year. That program included weekly group meetings and random drug screening. Respondent successfully completed that program in September 2015. He currently holds an active, unrestricted license in Washington.

18. Since his move to Washington, Respondent has been practicing medicine at Proliance Southwest Seattle Orthopedics (Proliance). His medical practice in Washington is very busy, and he has had no negative issues arise while practicing medicine there. Respondent serves on the Executive Committee of the hospital where he holds privileges, and he was recently appointed as Chief of the Surgery Department.

19. In September 2016, Respondent obtained board certification with the American Board of Orthopedic Surgery.

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Petition for Early Termination of Probation and Petition to Revoke Probation

20. Respondent neglected to submit a petition for early termination of probation when he became eligible to do so in 2015. After leaving California in 2014, he spent his first two years in Washington working in his busy medical practice and endeavoring to obtain board certification. He was later prompted to submit a petition for early termination of probation after he received notices from the Board. He also remained confused about the effect of allowing his California license to expire.

21. On June 13, 2016, Management Services Technician Maggie Lee, Respondent's current probation monitor, sent Respondent a letter informing him that he needed to renew his California license. Specifically, the letter stated:

In reviewing of your file, your California medical license has been expired on June 30, 2015. Per your Probation Order, Condition 10, GENERAL PROBATION REQUIREMENTS, the 3rd paragraph, "Respondent shall maintain a current and renewed California physician's and surgeon's probationary license," indicates that you are required to maintain a current license. Please complete this requirement by July 18, 2016.

(Exhibit 3, p 83.)

22. On July 12, 2016, Ms. Lee sent Respondent an email informing him of his possible eligibility for early termination of probation. The email stated:

[T]his is in response to your inquiry, [*sic*] you may be eligible to request a Petition for Early Termination of Probation Package. You will need to contact Cindie Kouza, Management Services Technician . . . to request this package or you may go to our MBC website, www.mbc.ca.gov, to print it out. The petition process will take about six months to a year for the background to be completed and a hearing to be scheduled. You may have to come to California and appear for the hearing.

If you are unable to satisfy the terms and conditions of your probation, you may request a voluntary surrender of your license as per Condition 16. . . . Also understand that, if accepted, the surrender will be deemed disciplinary action.

(Exhibit 3, p. 82.)

23. After receiving Ms. Lee's June 13, 2016 letter, Respondent renewed his California medical license.

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24. On December 28, 2016, Ms. Lee sent Respondent a letter, again informing him of his possible eligibility for early termination of probation. The letter stated:

In reviewing your file, you may be eligible to request a Petition for Early Termination of Probation Package. You will need to contact Cindie Kouza, Management Services Technician . . . to request this package or you may go to our MBC website, www.mbc.ca.gov, to print it out. The petition process will take about six months to a year for the background to be completed and a hearing to be scheduled. You may have to come to California and appear for the hearing.

(Exhibit 3, p. 75.)

25. On January 1, 2017, Respondent executed another required Semi-Annual Declaration stating that he was continuing to practice medicine in Washington.

26A. On March 28, 2017, Ms. Lee, sent Respondent a letter stating:

During a recent case review, management noticed that you may be non-compliant with the terms and conditions of your probation with the [Board].

Pursuant to your Probation Order, Condition 12 – Non-Practice While on Probation . . . [“]Respondent’s period of non-practice while on probation shall not exceed two (2) years.”

[O]n June 11, 2015, your period of non-practice while on probation exceeded two (2) years. Therefore, you are in violation of your probation order. [¶]

In reviewing your file, you may be eligible to request a Petition for Early Termination of Probation Package. You will need to contact Cindie Kouza, Management Services Technician . . . to request this package or you may go to our MBC website, www.mbc.ca.gov, to print it out. The petition process will take about six months to a year for the background to be completed and a hearing to be scheduled. You may have to come to California and appear for the hearing.

(Exhibit 3, p. 073.)

26B. The determination that Respondent’s two-year period of non-practice ran from June 11, 2013 through June 11, 2015 was incorrect. Respondent practiced medicine in California during his USC fellowship year, 2013 through the end of July 2014.

27A. On April 15, 2017, Respondent sent the Board a petition for early termination of probation in the form of a letter and attachments. The letter stated that it was intended “to

petition for relief of the probationary restriction on [his] California Medical License.” (Exhibit A, p. 4.) That petition was received by the Board on April 20, 2017.

27B. On April 25, 2017, Board Management Services Technician Cyndie Kouza sent Respondent a letter rejecting the letter for failure to use the Board’s petition form. The letter stated: “The [Board] has received your Petition for Penalty Relief. However, I am rejecting your petition for penalty relief due to the fact that you did not complete a penalty relief form or complete two fingerprint cards. . . .” (Exhibit B.) Ms. Kouza enclosed a Penalty Relief Form with instructions.

28A. On May 5, 2017, the Board sent Respondent a letter stating: “This letter is to notify you of your violation with the terms and conditions of your non-practice status while on probation with the [Board] as follows: 1) Non-practice while on probation exceeded two years on June 11, 2015.” (Exhibit 3, p. 072.)

28B. As with the March 28, 2017 letter, the determination that Respondent’s two-year period of non-practice ran from June 11, 2013 through June 11, 2015 was incorrect. (See Factual Finding 26B.)

29. On May 5, 2017, Respondent completed and signed the Petition for Penalty Relief form and subsequently submitted his petition. (Exhibit A, pp.1-3.) The evidence did not establish when the Board received Respondent’s May 5, 2017 Petition for Penalty Relief. On a date not established by the evidence, Respondent’s petition was again rejected and returned to him based on a pending Petition for Revocation of Probation against him.¹

30. Complainant filed the Petition to Revoke Probation on June 30, 2017.

31. Respondent understands that failure to comply with any term of is Probation Order is a violation of probation.

¹ Business and Professions Code section 2307 provides, in pertinent part:

(a) A person whose certificate has been . . . placed on probation, may petition the board for . . . modification of penalty, including modification or termination of probation.

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the . . . decision ordering that disciplinary action: [¶] (2) At least two years for early termination of probation of three years or more. [¶] . . . [¶]

(g) [N]o petition shall be considered while there is an accusation or petition to revoke probation pending against the person. . . .

32. Respondent has practiced medicine in Washington continuously since leaving California.

33. Respondent is licensed in Washington and Utah, and he has no disciplinary issues in those states. He does not plan to practice medicine in California. Respondent has the option of surrendering his California medical license, but does not wish to do so. He understands that license surrender would be considered a disciplinary action and could have adverse effects on his medical practice, his board certification, and his other medical licenses. If his California medical license is not revoked, he plans to submit a Petition for Penalty Relief as quickly as possible.

LEGAL CONCLUSIONS

1. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with Condition Number 12 of his probation, in that, based on the definition of "non-practice" in Condition 12, Respondent's period of non-practice while on probation exceeded two years, as set forth in Factual Findings 2 through 33.

2. Business and Professions Code section 2229 provides, in pertinent part:

(a) Protection of the public shall be the highest priority for the Division of Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

(b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel, [or] the division . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee . . .

3. California Code of Regulations, title 16, section 1361, subdivision (a), provides:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the Medical Board of California shall consider the disciplinary guidelines entitled "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (12th Edition/2016) which are hereby incorporated by reference. Deviation from these orders and guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines by adoption of a proposed decision or stipulation that the facts of the particular case warrant such a deviation - for example: the

presence of mitigating factors; the age of the case; evidentiary problems.

4A. Respondent's Probation Order, Condition 12 defines "non-practice" as "any period of time [Respondent] is not practicing medicine in California . . . for at least forty (40) hours in a calendar month," but provides an exception for "[a]ll time spent in an intensive training program." (Exhibit 1, p. 12.) It appears illogical that hours spent in a training program would be excluded from "non-practice," but the full-time, licensed practice of medicine in another state, even with monitoring, would be considered "non-practice." This inconsistency appears to have been addressed in the Board's current Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition/2016) (Current Guidelines) in which the model order for "Non-practice While on Probation" defines "non-practice" as follows:

[N]on-practice is defined as any period of time respondent is not practicing medicine . . . 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. If respondent resides in California and is considered to be in non-practice, respondent shall comply with all terms and conditions of probation. . . . All time spent in an intensive training program . . . 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. . . .
(Emphasis added.)

(Exhibit 5, p. 20.)

4B. Respondent admitted that, given his continuous medical practice in Washington since July 2014, he was unable to comply with Condition 12 of his Probation Order which defined his Washington medical practice as "non-practice." However, Respondent was not idling away time in Washington, but was practicing medicine full-time and obtaining board certification. Additionally, during the first year of his Washington licensure, Respondent participated in the Physicians' Health Program, attending weekly group meetings and submitting to random drug screening. Respondent successfully completed that program in September 2015. While not specifically designated as "probation," Respondent's participation in the Physicians' Health Program served the same oversight and patient protection purpose as probation. Thus, under the Current Guidelines' definition of "non-practice," Respondent would have been in substantial compliance with Condition 12 of his Probation Order. Consequently, with his Washington monitoring ending in September 2015: Respondent's two-year period of "non-practice" under Condition 12 would have run from October 2015 through October 2017; the Petition for Revocation of Probation would not have been filed until after October 2017; and Respondent's May 5, 2017 Petition for Penalty Relief would not have been rejected. (See Factual Findings 11, 15, 16, 17, 26B, 27A, 27B, 29, 30.)

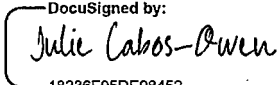
4C. The totality of the evidence established that Respondent's technical violation of Condition 12 did not give rise to any public protection concerns nor did it involve any potential risk of harm to patients. Given the foregoing, while cause for revocation of probation technically exists, Respondent presented sufficient evidence of mitigation such that revocation would be unduly harsh and punitive. Consequently, in the interests of justice, Respondent should be allowed to continue his probation, with Condition 12 tolled for a period of time to provide Respondent the opportunity to resubmit his Petition for Penalty Relief and have that petition heard and decided.

ORDER

Respondent's probation in Case No. 20-2013-231819 shall be extended for two years following the effective date of this Decision and Order, on the same terms and conditions as the original Probation Order, except for the following modifications:

1. From the effective date of this Decision and Order, the accumulation of Respondent's "non-practice" time under Probation Condition 12 shall be tolled until Respondent has resubmitted a Petition for Penalty Relief and has had that Petition for Penalty Relief heard and decided.
2. Respondent shall file any Petition for Penalty Relief within 60 days of the effective date of this Decision and Order. If Respondent fails to file any Petition for Penalty Relief within that 60-day period, the tolling provision set forth above (paragraph 1) will be dissolved and Probation Condition 12 will resume full effect.
3. Respondent's hours of licensed medical practice in Washington from August 1, 2014, through the end of September 2015, and from May 5, 2017, until Condition 12 resumes full effect, shall not be calculated as part of Respondent's period of "non-practice" under Probation Condition 12.

DATED: March 2, 2018

DocuSigned by:

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JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Petition to Revoke
Probation Against:

WILLIAM BARRETT PAYNE, M.D.
15217 28th Avenue SW
Burien, Washington 98166

Physician's and Surgeon's Certificate
No. A 126143,

Respondent.

Case No. 800-2017-034191

PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer ("Complainant") brings this Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California ("Board").

2. On June 12, 2013, the Medical Board issued Physician's and Surgeon's Certificate Number A 126143 to William Barrett Payne, M.D. ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2019, unless renewed.

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3. In a matter entitled *In the Matter of the Application of William Barrett Payne*, Case No. 20-2013-231819, the Board issued a decision, effective June 11, 2013, in which Respondent was granted a probationary license and placed on probation for a period of three (3) years on certain terms and conditions. A copy of that Decision is attached as Exhibit A and is incorporated herein by this reference.

JURISDICTION

4. This Petition to Revoke Probation is brought before the Board, under the following provisions of the California Business and Professions Code (“Code”) unless otherwise indicated.

5. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

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

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

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

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

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

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

1 **CAUSE TO REVOKE PROBATION**

2 **(Failure to Comply with Probation Condition Number 12:**

3 **Non-Practice While On Probation)**

4 6. At all times after the effective date of Respondent's probation, Condition 12,
5 provided:

6 "12) NON-PRACTICE WHILE ON PROBATION. [Respondent] shall notify the
7 Board or designee in writing within fifteen (15) calendar days of any periods of
8 non-practice lasting more than thirty (30) calendar days and within fifteen (15)
9 calendar days of [Respondent's] return to practice. Non-practice is defined as any
10 period of time [Respondent] is not practicing medicine in California as defined in
11 Business and Professions Code sections 2051 and 2052 for at least forty (40) hours
12 in a calendar month in direct patient care, clinical activity or teaching, or other
13 activity as approved by the Board. All time spent in an intensive training program
14 which has been approved by the Board or its designee shall not be considered non-
15 practice. A Board-ordered suspension of practice shall not be considered as a
16 period of non-practice.

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

22 "[Respondent's] period of non-practice while on probation shall not exceed
23 two (2) years.

24 "Periods of non-practice will not apply to the reduction of the probationary term.

25 "Periods of non-practice will relieve [Respondent] of the responsibility to comply
26 with the probationary terms and conditions with the exception of this condition
27 and the following terms and conditions of probation: Obey All Laws and General
28 Probation Requirements." (emphasis added.)

1 7. Respondent's probation is subject to revocation because he failed to comply with
2 Probation Condition 12, referenced above. The facts and circumstances regarding this violation
3 are as follows:

4 A. On August 1, 2014, Respondent notified the Board that he would not be
5 practicing medicine in the state of California as of August 1, 2014.

6 B. On January 5, 2015, Respondent executed a Semi-Annual Declaration stating,
7 under penalty of perjury that he has moved to Burien, Washington and began practicing medicine
8 at Proliance Southwest Seattle Orthopedics in Burien, Washington.

9 C. On January 1, 2017, Respondent executed a Semi-Annual Declaration stating,
10 under penalty of perjury that he continues to practice medicine at Proliance Southwest Seattle
11 Orthopedics in Burien, Washington.

12 D. On March 28, 2017, the Board notified Respondent of his non-compliance with
13 the terms and conditions of his probation with the Board, specifically that he has violated
14 Condition 12 of this Probation Order by exceeding 2-years of non-practice in California.

15 E. On May 5, 2017, the Board again notified Respondent that his non-practice
16 while on probation exceeded two years.

17 **DISCIPLINARY CONSIDERATIONS**

18 8. To determine the degree of discipline, if any, to be imposed on Respondent with
19 respect to the charges herein brought, Complainant alleges that by Decision and Order of the
20 Board, dated June 4, 2013, in the case entitled *In the Matter of the Application of William Barrett*
21 *Payne*, Case No. 20-2013-231819, Respondent was granted a probationary license and placed on
22 probation for a period of three (3) years on certain terms and conditions. That decision is now
23 final and is incorporated by reference as if fully set forth.

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PRAYER

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

1. Revoking the probation that was granted by Board in Case No. 20-2013-231819 and terminating the probationary license, Physician's and Surgeon's Certificate Number A 126143, issued to Respondent William Barrett Payne, M.D.;

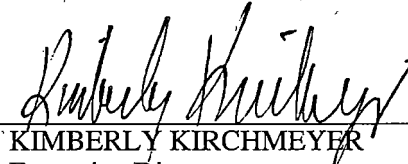
2. Revoking or suspending Physician's and Surgeon's Certificate Number A 126143, issued to Respondent William Barrett Payne, M.D.;

3. Revoking, suspending or denying approval of his authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice nurses;

4. Ordering him to pay the Board the costs of probation monitoring, if placed on probation; and

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

DATED: June 30, 2017



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

Complainant

LA2017505777

EXHIBIT A

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

In the Matter of the Application of:)	File No. 20-2013-231819
)	
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WILLIAM BARRETT PAYNE)	
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Applicant.)	
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DECISION AND ORDER

The attached Stipulation for a Probationary License is hereby accepted and 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 June 11, 2013, although the probation will not commence until the applicant completes any remaining requirements for licensure and the license is issued.

ORDERED: June 4, 2013.

MEDICAL BOARD OF CALIFORNIA

By: Reginald Low
Reginald Low, M.D., Chair
Panel B

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

In the Matter of the Application of:)	Case No. 20-2013-231819
)	
WILLIAM BARRETT PAYNE)	STIPULATION FOR A
)	PROBATIONARY LICENSE
For a Physician's and Surgeon's)	
License)	
_____)	

1) William Barrett Payne, applicant for a physician's and surgeon's license (hereinafter "applicant"), and Curtis J. Worden, Chief of Licensing of the Medical Board of California, hereby stipulate as follows:

2) Applicant has satisfactorily met all of the requirements for medical licensure in California.

3) On October 4, 2012, applicant submitted an application for a Physician's and Surgeon's License in the state of California. Applicant disclosed on the application that he has participated in a drug or alcohol program, has been treated for a diagnosed addictive disorder, and has been convicted of Driving Under the Influence of alcohol.

4) Section 480 (a) of the Business and Professions Code states the board may deny a license on the grounds that the applicant has one of the following: Section 480 (a)(1) Been convicted of a crime. Section 480(a)(3)(B) Done a crime or act that is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. Section 2234 of the Business and Professions Code states that the Board may take action for unprofessional conduct. Section 2236 of the Business and Professions Code states the conviction of any offense related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct. Section 2239 of the Business and Professions Code states the use 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 extent that such use impairs the ability of the licensee to practice medicine safely constitutes unprofessional conduct.

The above support a conclusion that grounds exist for denial pursuant to Sections 480 (a)(1), 480 (a)(3)(B), 2234, 2236 and 2239 of the Business and Professions Code.

5) Under Section 2221 of the Business and Professions Code, the Medical Board of California (Board) may deny a license to an applicant because of unprofessional conduct.

Alternatively, the Board has the discretionary authority to issue a probationary license with terms and conditions.

6) Applicant acknowledges he has a right to request a Statement of Issues and a hearing upon denial of license for cause. Applicant waives notice of hearing and judicial

review in favor of this Stipulation for a Probationary License, which is subject to approval by the Board. If not approved, this Stipulation is null and void and may not be used for any purpose.

7) This Stipulation for a Probationary License shall be subject to approval by the Medical Board of California. Applicant understands and agrees that counsel for the staff of the Medical Board of California may communicate directly with the Board regarding this proposed Stipulation, without notice to or participation by applicant or his counsel. By signing the Stipulation, applicant understands and agrees that he may not withdraw this 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 offer of a Stipulation for a Probationary License shall be of no force or effect; except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

The staff recommends to the Board that a Probationary License be issued as follows:

ORDER

IT IS ORDERED THAT WILLIAM BARRETT PAYNE, applicant, be issued a Physician's and Surgeon's License on a probationary basis, subject to the following terms and conditions:

- 1) Applicant is placed on probation for a period of three (3) years. Probation shall begin on the date the applicant is issued a probationary license.
- 2) BIOLOGICAL FLUID TESTING. Applicant shall immediately submit to biological fluid testing, at applicant's expense, upon request of the Board or its designee. Prior to practicing medicine, applicant shall, at applicant's expense, contract with a laboratory service-approved in advance by the Board or its designee-that will conduct random, unannounced, observed, urine testing at a rate determined by the Board or its designee. The contract shall require results of the urine tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Failure to maintain this laboratory or service during the period of probation is a violation of probation. A certified copy of any laboratory test may be received in evidence in any proceedings between the Board and applicant. Failure to submit to or comply with the time frame for submitting to, or failure to complete the required biological fluid testing, is a violation of probation.
- 3) CONTROLLED SUBSTANCES – ABSTAIN FROM USE. Applicant shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to applicant by another practitioner for a bona fine illness or condition.

Within fifteen (15) calendar days of receiving any lawfully prescribed medications, applicant shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If applicant has a confirmed positive biological fluid test for any substances (whether or not legally prescribed) and has not reported the use to the Board or its designee, applicant shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Applicant shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within fifteen (15) days of the notification to cease practice. If applicant requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the applicant with a hearing within thirty (30) days of the request, unless the applicant stipulates to later hearing. A decision shall be received from the Administrative Law Judge or the Board within fifteen (15) days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within fifteen (15) days of the issuance of the notification to cease practice or does not provide applicant with a hearing within thirty (30) days of a request, the notification of cease practice shall be dissolved.

4) ALCOHOL-ABSTAIN FROM USE. Applicant shall abstain completely from the use of products or beverages containing alcohol.

If applicant has a confirmed positive biological fluid test for alcohol, applicant shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Applicant shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within fifteen (15) days of the notification to cease practice. If applicant requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide applicant with a hearing within thirty (30) days of the request, unless applicant stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within fifteen (15) days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probation time period.

If the Board does not file an accusation or petition to revoke probation within fifteen (15) days of the issuance of the notification to cease practice or does not provide applicant with a hearing within thirty (30) days of a request, the notification of cease practice shall be dissolved.

5) PSYCHOTHERAPY. Within sixty (60) days of the effective date of this Decision, applicant shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional mental disorders. Upon approval,

applicant shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Applicant shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Applicant shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require applicant to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, applicant is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over applicant's license and the period of probation shall be extended until the Board determines the applicant is mentally fit to resume the practice of medicine without restrictions.

Applicant shall pay the cost of all psychotherapy and psychiatric evaluations.

6) NOTIFICATION. Prior to engaging in the practice of medicine, applicant shall provide a true copy of the Stipulation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to applicant, at any other facility where applicant 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 applicant. Applicant shall submit proof of compliance to the Board or its designee within fifteen (15) calendar days.

7) SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, applicant is prohibited from supervising physician assistants.

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

9) QUARTERLY DECLARATIONS. Applicant shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation.

Applicant shall submit quarterly declarations not later than ten (10) calendar days after the end of the preceding quarter.

10) GENERAL PROBATION REQUIREMENTS. Applicant shall comply with the Board's probation unit and all terms and conditions of this decision.

Applicant shall, at all times, keep the Board informed of his 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).

Applicant shall not engage in the practice of medicine in applicant's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

Applicant shall maintain a current and renewed California physician's and surgeon's probationary license.

Applicant 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 applicant should leave the State of California to reside or to practice, applicant shall notify the Board or its designee in writing thirty (30) calendar days prior to the dates of departure and return.

11) INTERVIEW WITH BOARD OR ITS DESIGNEE. Applicant shall be available in person for interviews either at applicant's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

12) NON-PRACTICE WHILE ON PROBATION. Applicant shall notify the Board or designee in writing within fifteen (15) calendar days of any periods of non-practice lasting more than thirty (30) calendar days and within fifteen (15) calendar days of applicant's return to practice. Non-practice is defined as any period of time applicant is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least forty (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. A Board-order suspension of practice shall not be considered as a period of non-practice.

In the event applicant's period of non-practice while on probation exceeds eighteen (18) calendar months, applicant 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.

Applicant'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.

13) EVALUATION PRIOR TO TERMINATION OF PROBATION. The Medical Board of California reserves the right to evaluate the applicant's probationary history at or near the end of the probationary period and to exercise its discretion whether to grant a clear license without conditions, or to take any other action deemed appropriate and reasonable under the circumstances.

14) COMPLETION OF PROBATION. Applicant 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, applicant's certificate shall be fully restored.

15) VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a 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 and terminate the probationary license. If an Accusation or Petition to Revoke Probation is filed against applicant during probation, the Board or its designee shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

16) LICENSE SURRENDER. Following the effective date of this Stipulation, if applicant ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, applicant 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, applicant shall within fifteen (15) calendar days deliver applicant's wallet and wall certificate to the Board or its designee and applicant shall no longer practice medicine. Applicant 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.

17) PROBATION MONITORING COSTS. Applicant shall pay all 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.

Failure to pay costs within thirty (30) calendar days of the due date is a violation of probation.

Applicant agrees to comply with the terms and conditions of the above Order.



William Barrett Payne, Applicant

5/31/13

Date



Curtis J. Worden, Chief of Licensing

5-08-2013

Date