

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

**In the Matter of the First Amended Petition to
Revoke Probation of:**

Rodney Sidransky, M.D.

**Physician's and Surgeon's
Certificate No. A 78625**

Respondent.

Case No. 800-2021-081738

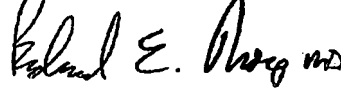
DECISION

**The attached Revised 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 March 11, 2022.

IT IS SO ORDERED February 9, 2022.

MEDICAL BOARD OF CALIFORNIA



**Richard E. Thorp, M.D., Chair
Panel B**

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

**In the Matter of the First Amended Petition to Revoke
Probation of:**

RODNEY SIDRANSKY, M.D. Respondent

Agency Case No. 800-2021-081738

OAH No. 2021110400

REVISED PROPOSED DECISION¹

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter virtually via the Microsoft Teams application on December 16 and 17, 2021.

¹ On January 18, 2022, the Office of Administrative Hearings received a request from the board for clerical/technical error corrections to be made pursuant to California Code of Regulations, title 1, section 1048 (Section 1048). Specifically, the board requested "petitioner" be changed to "respondent" in the title; that the order language (which was inadvertently omitted) be added; and that the decision be entitled "petition to revoke" rather than "first amended" petition to revoke. These requested changes are deemed appropriate under Section 1048, and the first two

Jason J. Ahn, Deputy Attorney General, represented complainant, William Prasifka, Executive Director, Medical Board of California (board), Department of Consumer Affairs, State of California.

Steven H. Zeigen, Rosenberg, Shpall & Zeigen, APLC, represented respondent, Rodney Sidransky, M.D.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 17, 2021.

FACTUAL FINDINGS

Background

1. On April 10, 2002, the board issued physician's and surgeon's certificate number A 78625 to respondent. Respondent's license will expire on July 31, 2023, unless renewed.

requested corrections were made in this revised proposed decision. During the hearing, and as explained in paragraph 10 of the original proposed decision (and this revised proposed decision), complainant amended the petition without objection and filed a first amended petition to revoke probation with OAH. The first amended petition to revoke probation was also entered into evidence as Exhibit 30. Thus, the last request for correction is denied. Other than the two noted technical changes, no other changes were made in this revised proposed decision.

THE 2016 DISCIPLINARY MATTER

2. On February 18, 2016, the board filed an accusation against respondent in Case No. 800-2015-011746. The accusation contained two causes for discipline. The first cause for discipline was for excessive use of alcohol or drugs. The accusation detailed respondent's extensive history of alcohol use, and admission to the emergency room following a fall, as well as treatment for alcohol dependency. Another hospital admission showed traces of various drugs in his system (benzodiazepine and TCH [marijuana]²). Respondent's belongings were searched during one of the admissions and respondent was found to be in possession of multiple controlled substances (Xanax, Suboxone, Klonopin, and oxycodone)³. The second cause for

² Benzodiazepines are Schedule IV controlled substances pursuant to Health and Safety Code section 11057, subdivision (d), and dangerous drugs pursuant to Business and Professions Code section 4022. Respondent had a medical marijuana card for legal use of marijuana.

³ Alprazolam (trade name Xanax) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d). Suboxone is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e). Clonazepam (trade name Klonopin) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d). Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b). All these substances are dangerous drugs pursuant to Business and Professions Code section 4022.

discipline was for prescribing Carisoprodol⁴ to himself on two occasions. The accusation also contained an allegation that respondent suffered from a mental and/or physical illness and was not safe to practice pursuant to Business and Professions Code section 822.

3. On June 16, 2016, respondent entered into a stipulated settlement, wherein he admitted the truth of each and every allegation contained in the accusation.

4. By decision and order effective September 16, 2016 (2016 decision and order), the board revoked respondent's physician's and surgeon's certificate and immediately stayed the revocation for seven years subject to various terms and conditions.

THE 2018 DISCIPLINARY MATTER

5. On January 26, 2018, the board filed an accusation against respondent in Case No. 800-2017-038264, alleging four causes for discipline as follows: gross negligence; repeated acts of negligence; failure to maintain adequate records; and unprofessional conduct. The allegations involved respondent's care and treatment of one patient. As a disciplinary consideration, the accusation cited the fact that respondent was on probation as a result of the 2016 decision and order.

⁴ Carisoprodol (trade name Soma) is a Schedule IV controlled substance pursuant to the Federal Code of Regulations, Title 21, Section 812, and a dangerous drug pursuant to Business and Professions Code section 4022.

6. On August 3, 2018, respondent entered into a stipulated settlement with the board resolving the disciplinary matter, wherein respondent admitted that, if the matter were to proceed to hearing, the board could make a prima facie case against him and that his license was therefore subject to discipline.

7. By decision and order effective October 18, 2018 (2018 decision and order), the board revoked respondent's physician's and surgeon's certificate and immediately stayed the revocation for eight years subject to various terms and conditions. The 2018 decision and order also provided that, when effective, it would supersede the probation conditions and probationary term previously set in the 2016 decision and order. The 2018 decision and order contained the following probation conditions:

1. CONTROLLED SUBSTANCES – ABSTAIN FROM USE.

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, respondent 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 respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the board or its designee, respondent shall receive a notification from the board or its designee to immediately cease the practice of medicine until a final decision on an accusation and/or a petition to revoke probation. . . .

2. ALCOHOL – ABSTAIN FROM USE. Respondent shall abstain completely from the use of products or beverages containing alcohol.

If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until a final decision on an accusation and/or a petition to revoke probation

3. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon the request of the board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the board or its

designee. Respondent shall make daily contact with the board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the board or its designee. The board may order the respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the respondent. . . .

[¶] . . . [¶]

23. 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. . . .

8. On October 10, 2017, respondent signed a document entitled, "Acknowledgement of Decision," in which he agreed that he had received a copy of the 2018 decision and order and that a board representative had discussed all applicable probation conditions with him.

9. It is noted that conditions 1 and 2 contain additional language (not reproduced here) that require the board to file a petition to revoke probation and

request a hearing be set within certain time limits following the issuance of a cease practice order. The provisions further purport to limit the time an administrative law judge has to issue a proposed decision to 15 days. This was brought to the attention of OAH on January 4, 2021, when someone from the board called to find out why the decision had not yet been issued. However, neither an administrative law judge nor anyone from OAH was a party to 2018 stipulated settlement, which was an agreement solely between respondent and the board to resolve the 2018 disciplinary matter without a hearing. While the board is free to limit its own ability to do or not do certain things (by agreement with a respondent), an administrative law judge or OAH cannot be bound by the terms of a respondent's probationary condition. Such a term is void as a matter of law. Government Code section 11517, subdivision (c)(1), provides that a proposed decision shall be issued within 30 days of when a matter is submitted for decision, and that is what controls here.

The First Amended Petition to Revoke Probation

10. On October 19, 2021, complainant filed a petition to revoke probation. On December 17, 2021, following the second day of hearing, complainant filed a first amended petition to revoke probation, making minor changes. Respondent did not object to the first amended petition to revoke probation, as the added issues had already been addressed during the hearing. The first amended petition to revoke probation alleged three causes for discipline as follows:

- Failure to comply with biological fluid testing requirements by not calling in to see if he was selected to provide a biological fluid sample on May 22, 2020; October 31, 2020; January 3, 2021; February 13, 2021; April 22, 2021, August 13, 2021; and October 18, 2021 (violation of probation condition number 3)

- Failure to abstain from the use of alcohol on June 3, 2021, and June 19, 2021 (violation of probation condition number 2)
 - Failure to abstain from the use of controlled substances on September 8, 2021, and September 10, 2021 (violation of probation condition number 1)
11. Respondent timely filed a notice of defense; this hearing followed.

Missed Check-Ins

12. The following factual findings were derived from documentary evidence; the testimony of Jennifer Saucedo, Assistant Governmental Program Analyst with the board; and the testimony of respondent.

13. The board contracts with FSSolutions (FSS) for licensees on probation to call in to see if they are required to submit a biological fluid sample. By the terms of respondent's probation conditions, he was required to make contact with FSS on a daily basis.

14. Respondent failed to contact FSS on to see if he was selected to provide a biological fluid sample on May 22, 2020; October 31, 2020; January 3, 2021; February 13, 2021; April 22, 2021, August 13, 2021; and October 18, 2021.

15. Ms. Saucedo sent multiple letters to respondent regarding missed check-ins, advising him that failure to call in to FSS constituted a probation violation.

16. Respondent's testimony regarding the missed check-ins is summarized as follows: He did not dispute that he failed to contact FSS on each of those dates. He did not provide the board with reasons for the missed check-ins because he was not asked by anyone at the board to provide one. He has four alarms on his phone to

remind him when he should call in. He has the FSS application downloaded on his iPad. He is not trying to deceive anyone. The reasons he did not call FSS on the specified dates are as follows:

- May 22, 2020: he missed work and slept all day. He felt like he had a "covid-like" sickness.
- October 31, 2020: he and his wife were on vacation, having just arrived at their destination after taking a late night flight. Due to jet lag and confusion he forgot to check-in.
- January 3, 2021: he and his wife were in the middle of closing on their first home together so he did not call in.
- February 13, 2021: he had just received his second covid-19 vaccine and had a "very strong reaction" so he slept the whole day.
- April 22, 2021: he missed work because he had blood emesis and was vomiting all day.
- August 13, 2021 – he did not recall the reason.
- October 18, 2021: he did not recall the reason.

17. Cause exists to revoke respondent's probation for the seven probation violations that occurred on May 22, 2020; October 31, 2020; January 3, 2021; February 13, 2021; April 22, 2021, August 13, 2021; and October 18, 2021. While it is understandable that, on occasion, someone may forget to call-in or become ill, there is no exception for illness and this was not simply a few times; it was seven times over

the course of a little more than a one-year period. None of respondent's excuses were grounds to excuse the failed check-ins.

Failure to Abstain from Alcohol and Controlled Substances

TESTS RELATING TO ALCOHOL

18. Phosphatidylethanol (PEth) is a metabolite of ethanol (alcohol) that forms in the red blood cells when alcohol is present. The cutoff for purposes of lab testing to show the presence of alcohol is 20 ng/mL.

19. On June 3, 2021, respondent provided a blood spot sample after being selected to do so, which was tested in accordance with his probation conditions. Respondent's result showed a PEth level of approximately 26 ng/mL. There was nothing unusual noted with the integrity of the sample with respect to the chain of custody.

20. On June 19, 2021 respondent provided a blood spot sample after being selected to do so, which was tested in accordance with his probation conditions. Respondent's result showed a PEth level of approximately 68 ng/mL. There was nothing unusual noted with the integrity of the sample with respect to the chain of custody.

21. Due to respondent's adamant denial that he consumed alcoholic beverages, respondent had his hair tested on August 2, 2021, almost two months after the original samples in June 2021. This test looks for the presence of a different metabolite of alcohol, ethyl glucuronide (EtG). Respondent's hair sample tested negative for that metabolite.

TESTS RELATING TO TRAMADOL

22. Tramadol hydrochloride (trade names Ultram, Ultracet) is an opioid analgesic, a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

23. On September 8, 2021, respondent provided a urine sample after being selected to do so. Respondent's sample showed the presence of 5,079 ng/mL of tramadol and 1,123 ng/mL (cutoff 100 ng/mL) of tramadol metabolite. There was nothing unusual noted with the integrity of the sample in the chain of custody. This sample was split and sent to an independent lab for reconfirmation. That split sample confirmed the presence of tramadol.

24. On September 10, 2021, respondent provided a urine sample after being selected to do so. Respondent's sample showed the presence of 5,221 ng/mL of tramadol and 1,173 ng/mL (cutoff 100 ng/mL) of tramadol metabolite. There was nothing unusual noted with the integrity of the sample in the chain of custody. This sample was split and sent to an independent lab for reconfirmation. That split sample confirmed the presence of tramadol.

25. On October 22, 2021, respondent had a hair test completed by United States Drug Testing Laboratories. Those lab results showed negative for tramadol.

26. On October 28, 2021, respondent had a fingernail test completed by United States Drug Testing Laboratories. Those lab results showed negative for tramadol.

CEASE PRACTICE ORDER

27. As a result of the June 2021 and September 2021 tests, the board issued a cease practice order to respondent on October 5, 2021, due to the violations of Condition Nos. 1 and 3 of respondent's probation in the 2018 decision and order. According to respondent, he received and has remained in compliance with that order.

RESPONDENT'S TESTIMONY

28. The following is a summary of respondent's testimony and his curriculum vitae: respondent received his Bachelor of Science in Electrical Engineering in 1993, followed by his Doctor of Medicine in 2000. He completed residency programs in emergency medicine and psychiatry. Respondent currently works at Crownview Medical Group, where he has been since 2019. He provides psychiatric services to all ages. He specializes in treating individuals with Attention Deficit Hyperactivity Disorder, Addiction, Anxiety, Depression, Bipolar, Schizophrenia, traumatic brain injury, and Alzheimer's disease. From 2016 to 2019, respondent has worked in various medical settings, where he has provided addiction counseling and other medical and psychiatric services.

29. Respondent denied ever consuming an alcoholic beverage since his probation began in 2016, and maintained he has not taken tramadol in his entire life. Respondent was adamant that he has remained sober since 2016. He attends Alcoholics Anonymous on a daily basis and is a sponsor for eight people. He attends the Pacific Assistance Group meetings every Monday. He had joined Pacific Assistance Group right at the beginning of his first probation, in 2016. It is a group dedicated to medical professionals in recovery. He randomly tested over 42 times and never had a positive test. He took and passed the University of California, San Diego's Physician

Assessment and Clinical Education program (PACE) in 2019 and has implemented all of the PACE recommendations.

Respondent's sobriety is more important to him than his marriage and his career because both depend on his sobriety. Living a sober lifestyle is a fantastic way to live. Being a psychiatrist is an honor and it is all he knows how to do. He has taken many continuing education courses, and submitted proof of the same. He is the sole provider for his family and would like to keep practicing medicine.

Respondent's testimony was sincere, direct, and credible.

Expert Testimony

TESTIMONY OF JAMES FERGUSON, D.O.

30. James Ferguson received his Bachelor of Science degree in environmental health in 1977. He obtained his Doctor of Osteopathy degree in 1981. He is a distinguished fellow of the American Society of Addiction Medicine and a diplomate of the American Board of Addiction Medicine. Dr. Ferguson is on the editorial board of the Journal of Addiction Medicine and has held many positions over the years, including Chief Medical Review Officer, Senior Medical Review Officer, Urgent Care Physician, and a commissioned officer for the United States Public Health Service. Dr. Ferguson has also worked in private practice and has given many professional presentations as follows: Monitoring Program Procedures, Specimen Selection and Issues; Ethanol Biomarkers; Forensic Drug Testing: How it Benefits Monitoring Programs; Drug Testing Issues in Monitoring Programs; Urine Luck: Office-Based Drug Testing for Addiction Clinicians; Urine Dilution in Monitoring Programs; The Basics of Being an MRO; Validity Testing Issues in Workplace Drug Testing; and Alternative Matrices in Workplace Drug Testing. Dr. Ferguson is the Medical Director

for Recovery Management Services at FSS, which has a contract with the board for the testing of licensee biological fluid samples. He has held this position since 2011.

Dr. Ferguson testified at the hearing on behalf of complainant, and also provided a declaration. The following is a summary of both: Dr. Ferguson reviewed all the biological fluid samples and results discussed above. Dr. Ferguson also reviewed the chain of custody documents concerning the same. There was nothing unusual noted in the integrity of any of the samples provided.

When asked if the hair test respondent provided in August 2021 invalidated the previous two blood spot samples that were positive for PEth in June 2021, Dr. Ferguson said it did not. He was adamant that the only thing that can actually invalidate a positive test is when a split specimen is taken and that split sample is retested by a different laboratory, and the hair test did not meet this criteria. Further, the hair test looks for a different metabolite of alcohol, EtG, than the metabolite tested for in blood spot samples, which is PEth. Dr. Ferguson also pointed out that a hair sample is more sensitive of a test than a blood spot test because it is a "long period" specimen, and as such, it takes more ingestion of whatever is being tested for to induce a positive in a hair test. When looking at respondent's test results, he noted that whatever amount of alcohol respondent ingested in June 2021 was not enough to show up on the hair test, but the hair test did not invalidate the positive PEth results. Given that each type of biological test (hair, urine, blood) have different collection methods, different cutoff values, and different retention values, the results in one type of test do not invalidate results in another test.

Regarding the two tests in September that showed the presence of tramadol, again, Dr. Ferguson noted that the only thing that would invalidate these tests would be if a split sample were to be taken and retested at a different lab and showed

different results. That did not happen here. A split sample, in fact, was taken of both the September 8, 2021, and September 10, 2021, samples and sent to an independent lab. Both split sample tests confirmed the presence of tramadol and tramadol metabolite.

Dr. Ferguson said that the hair test respondent submitted to in October 2021 did not invalidate the September 2021 tests because, for the same reasons as previously discussed in connection with the June 2021 tests for alcohol, hair tests are different than urine tests and whatever amount of tramadol respondent ingested to cause the urine to be positive in September may not have been sufficient to show up in a hair test in October 2021.

Accordingly, Dr. Ferguson concluded that the June 2021 tests showed respondent consumed alcohol and the September 2021 tests showed respondent consumed tramadol.

TESTIMONY OF JOSEPH JONES PH.D.

31. Joseph Jones obtained a Bachelor of Science degree in chemistry in 1989, a master of science in chemistry in 1998, and a Ph.D in public health in 2017. Dr. Jones is a member of the American Chemical Society; American Association of Clinical Chemists; Research Society on Alcoholism; Midwest Association for Toxicology and Therapeutic Monitoring; Clinical Laboratory Management Association; American Public Health Association; Society of Hair Testing; Society of Forensic Toxicologists; The College on Problems of Drug Dependence; American Society of Addiction Medicine; Chicago Chromatography Discussion Group; and the Society of Peth Research. Dr. Jones has extensively published in 35 separate professional journals, the subjects of which include biological fluid testing, specifically, PEth, EtG, and hair testing. Dr. Jones

has also peer-reviewed the work of other professionals for publication in professional journals, which included subjects such as chemistry, mass spectrometry, toxicology, drug testing and analysis, alcoholism, and forensic chemistry.

Dr. Jones has held many positions over the years, including senior certifying lab official, data reviewer for a laboratory, supervisor for an occupational lab testing service, and certifying scientist. Dr. Jones is also on the national registry of certified chemists as a toxicological chemist and has testified as an expert in unemployment hearings, family court, civil court, criminal court, and at military courts-martial. Dr. Jones is currently the CEO for United States Drug Testing Laboratories.

Dr. Jones testified at the hearing on behalf of complainant, and also provided a declaration. The following is a summary of both: Dr. Jones reviewed all the biological fluid samples and results discussed above. Dr. Jones' testimony echoed much of what Dr. Ferguson stated. Dr. Jones noted that respondent's excuses as to why the two positive tests for alcohol may have occurred in June 2021 (that he used hand sanitizer and ate chicken madeira) were not plausible. First, he noted that when one cooks with alcohol, as is the case with chicken madeira, the alcohol boils out and there would not be enough to render a positive test. Regarding hand sanitizer, a subject he has actually written a paper about, there is simply not enough dermal transfer of ethanol to yield a positive PEth test.

Regarding the August 2021 hair test that showed negative for alcohol, Dr. Jones said that this test has no bearing on the June 2, 2021, and June 19, 2021 blood spot test results for many reasons. Thus, the result of the first sample has no bearing on the second sample. The collection of the hair it is different than collecting a blood spot sample. Substances also leach out of the hair differently than the blood because of personal hygiene. A person who is planning on providing a hair sample can accelerate

the rate at which the substance will leach from their hair (washing, cutting, et c.). There are also very different thresholds for positivity. The amount of drinking to generate a low level PEth can be due to much less drinking than that required to show up positive on a hair test. A hair test is not as sensitive. A PEth test is therefore very good at detecting relapse (from having a drink or two) whereas a hair test is more focused on someone who drinks much more.

Dr. Jones disagreed with respondent's expert, Amadeo J. Pesce Ph.D., DABCC. Specifically, Dr. Pesce pointed out that there was no evidence of alcohol use in subsequent hair or urine tests; while Dr. Jones said this was technically true, it does not discount the two positive June 2021 PEth tests. Further, he noted that Dr. Pesce cited his article, "Ethyl glucuronide in hair and fingernails as a long-term alcohol biomarker Addiction" 2014 Mar; 109(3): 425–431, which contained the statement "EtG in hair and fingernails as an objective long-term, up to 12 weeks, is a qualitative indicator of any alcohol use." Dr. Pesce used this article to support his conclusion that if the two June 2021 blood spot tests were positive for PEth, and EtG has a 12-week life, the hair test respondent took in August 2021 should have been positive. However, Dr. Jones said Dr. Pesce's interpretation of his study was taken out of context. Specifically, his study looked at college students who drank heavily on a daily basis – not someone who has an occasional drink. For that reason, Dr. Pesce's conclusion is "patently absurd."

Further, Dr. Jones takes issue with Dr. Pesce's attack on the reliability of blood spot tests. According to Dr. Jones, Dr. Pesce believes that certain hematocrit levels must be present to be a valid test, and the blood spot tests do not indicate what levels of hematocrit were present. Hematocrit is the ratio of the solids to liquids present in a blood sample. Dr. Pesce commented in his declaration that "to estimate plasma concentrations is highly dependent on hematocrit of the blood." Dr. Pesce cites an

article he authored regarding therapeutic drug monitoring (TDM). Dr. Jones noted that PEth does not reside in plasma; it resides in the phospholipid membranes of blood cells. For this reason, TDM interpretation is very different than PEth testing and interpretation. In other words, the only reason a person would need to know the hematocrit levels would be if you were doing TDM, for example, in a hospital setting - to see if a person is taking a medication as prescribed. When a PEth test is completed, it is not to test the level or amount of ethanol a person is consuming; it is merely to confirm the presence of the metabolite. All that matters is that it is more or less than the cutoff. Even if we knew the hematocrit level for the PEth tests, the effect of the hematocrit level has no bearing on the results. Thus, there does not need to be any adjustment or accounting for hematocrit levels. In Dr. Jones's view the June 2021 tests were valid.

Regarding the positive tests for tramadol in September 2021, the October 22, 2021, hair sample does not undermine the validity of the September 2021 tests. The proper way to invalidate a test is to split the sample and retest the same sample; not take a new sample and test it using a different type of test. Using a split sample to reconfirm a positive has been the standard in the scientific community for over 30 years. Each type of biological fluid test or hair test have different sensitivities, plus, we do not know what respondent did in between the time the two different tests were conducted (i.e. wash his hair or cut his hair). Also, it is important to note that the hair test is designed for a person who is abusing a substance and then going abstinent for a few days; it is not designed to detect the person (like the PEth test) that ingests a substance only occasionally.

Dr. Jones also does not believe the October 28, 2022, fingernail sample that tested negative for tramadol undermines the positive tramadol tests in September

2021. Again, like hair, fingernail tests have a longer detection threshold. The detection threshold for blood is 1 to 2 days; the detection threshold for urine is 2 to 3 days; the detection threshold for fingernails is 4 to 6 months. The longer the detection window, the more of a substance it takes to yield a positive result. This is because the fingernail test is looking for the substance abuser, not the occasional user.

Dr. Jones concluded respondent's September 2021 samples were consistent with respondent not being abstinent from alcohol during the two to four weeks prior to the tests and that the September 2021 positive tramadol tests, which were reconfirmed by splitting both samples and retesting them at an independent lab, are therefore, accurate.

TESTIMONY OF AMADEO PESCE, PH.D.

32. Amadeo Pesce received his Bachelor of Science degree in biology in 1960. He received his Ph.D in biochemistry in 1964. He has been a lab director in some form for over 50 years. He has been an assistant professor in experimental medicine, pathology, and laboratory medicine. He has been an adjunct assistant professor where he directed a research laboratory performing immunoassays for testing proteins and immunohistology. Dr. Pesce belongs to the American Chemical Society; American Association for Clinical Chemistry; Society of Experimental Biology and Medicine; National Academy of Clinical Biochemistry; Fellow, Association of Clinical Scientists; Association of Clinical Biochemists; Clinical Laboratory Management Association; and the San Diego Section AACC. He has received seven different awards in various areas such as biochemistry, toxicology, and clinical science. Dr. Pesce has served as a thesis advisor to seven students between 1971 and 1992. Dr. Pesce has 271 publications in peer reviewed journals, magazines, and online websites. He has also written 36 books and holds five patents pertinent to his work as a clinical chemist. Dr. Pesce is currently

the laboratory director at Birdrock Laboratory which, performs urine testing for pain management, addiction centers, and performs routine testing.

Dr. Pesce reviewed all relevant lab tests and documents pertinent to these proceedings. Dr. Pesce testified at the hearing and completed a declaration. The following is a summary of his testimony and declaration: Dr. Pesce believes that the amount of blood in a blood spot specimen can affect the validity of the blood spot test results. He said that the amount of hematocrit in the specimen matters and it concerns him that we do not know the amount of hematocrit in respondent's two June 2021 blood spot tests. Without knowing the actual amount of the blood spot specimen calls into question the accuracy of the result. He cited an article that he wrote, wherein he stated "The use of DNS assays to estimate plasma concentrations is highly dependent on the hematocrit of the blood" as support for his opinion.

Dr. Pesce also thinks that there is significance in the fact that the two June 2021 blood spot tests show such different results; the earlier test is barely above the cutoff and the later test is much higher. This, to him, suggests "significant alcohol usage" in that time frame. Dr. Pesce estimated it would have been at least four to six drinks per week. Thus, with that level of alcohol use, the hair test taken in August 2021 should have been positive for alcohol. In that respect, the negative hair test calls into question the prior positive blood spot tests.

Dr. Pesce also finds the two positive tramadol tests in September to be suspect because the results are so similar, in fact, almost identical (suggesting they may have been the same sample). Dr. Pesce also feels that the subsequent October 2022 hair test should have shown the presence of tramadol because of the high amount of tramadol detected in the September 2021 urine samples. Dr. Pesce felt the data is "conflicting" because other than the tests at issue, there are over 200 test results that

have all been negative for alcohol and tramadol. If respondent was using tramadol or consuming alcohol, he would expect to see it show up in more than just these tests.

Dr. Pesce concluded that the June and September 2021 tests are therefore "too unreliable to be deemed valid."

EVALUATION OF EXPERT TESTIMONY

33. A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1318-1319.) In resolving any conflict in the testimony of expert witnesses, the opinion of one expert must be weighed against that of another. In doing so, consideration should be given to the qualifications and believability of each witness, the reasons for each opinion, and the matter upon which it is based. California courts have repeatedly underscored that an expert's opinion is only as good as the facts and reason upon which that opinion is based. (*Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 924.)

34. Relying on certain portions of an expert's opinion is entirely appropriate. A trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal. 3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.* at pp. 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal. App. 2d 762, 767.) The fact finder may also reject the testimony of a

witness, even an expert, although it is not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal. 3d 875, 890.)

35. All three experts were exceptionally well-qualified to testify regarding the biological fluid testing and interpretation of results. All three experts were credible. However, the testimony of Dr. Ferguson and Dr. Jones is deemed more helpful in resolving the issue at hand: the reliability of the results for respondent's two June 2021 positive tests for alcohol and two September 2021 positive urine tests for Tramadol.

First, there were no noted issues regarding the integrity of any of the samples with respect to the chain of custody. Although Dr. Pesce called into question the reliability of the two tramadol tests from September 2021 because they were so similar (suggesting it might have been the same sample) there is no objective evidence to support this theory.

Second, Dr. Ferguson and Dr. Jones both agreed that the proper way to invalidate a test is to split the sample and retest that sample at an independent laboratory to see if the results are different. The splitting of the samples did not yield different results. The two September 2021 urine samples that tested positive for tramadol were split and reconfirmed.

Third, Dr. Ferguson and Dr. Jones persuasively explained that the detection periods and sensitivity of urine, blood, and hair tests are all different. The threshold cutoffs to detect the presence of a relevant substance is different. Thus, the fact that the hair test in August 2022 tested negative does not undermine the positive PEth results from June 2021, and the October 2021 hair test does not undermine the positive urine tests from September 2021 that showed the presence of tramadol, which were also reconfirmed. It was also persuasive that each biological medium is collected

differently, tested differently, and used to detect a specific kind of user. Specifically, the hair (and nail) tests are used to look for a chronic abuser; the urine and blood tests are used to seek out the occasional user; therefore it is not surprising that the tests that were performed subsequent to the two June 2021 positives and two September positives (and two reconfirmations) were negative; they have no bearing on the earlier tests.

Fourth, Dr. Pesce's testimony regarding the hematocrit levels in the blood, though relevant for purposes of TDM, does not appear to be relevant in PEth testing, which is not seeking information about therapeutic drug levels; again, it is only looking for the bare presence of the metabolite.

Finally, it is not persuasive that Dr. Pesce feels the positive tests are not accurate because respondent tested over 200 times and every test was negative except the isolated few tests at issue here. Again, as Dr. Ferguson and Dr. Jones explained, the point of the PEth and urine tests, which are more sensitive than hair tests, are to seek out the occasional user, not the abuser.

Accordingly, the two June 2021 PEth tests (positive for alcohol) and two September urine tests (positive and reconfirmed for tramadol) are deemed valid and reliable.

Character Evidence

36. Duane Rogers, Psy.D., wrote a letter and testified at hearing. Both are summarized as follows: Dr. Rogers is a licensed marriage and family therapist (LMFT). He has been involved with the case management and professional monitoring of Department of Consumer Affairs licensees since 1982. He currently works as an Area Administrator and Case Manager, and the local health facilitator, for the Pacific

Assistance Group. Pacific Assistance Group is a statewide group of facilitators. Every county has two or three offices that operate independently. It is a group that works with those in the health care field who are in recovery, and one of the purposes of the group is to help individuals get their licenses reinstated. Respondent joined Pacific Assistance Group by self-referral in February 2016. When respondent first began the group, he was not yet on probation. When an individual joins the group, they have to sign a very strict contract that includes biological fluid testing. Respondent tested 14 to 16 times between March 2016 and September 2016, and always tested negative. In 2016, when respondent began his probation, the board took over all the testing. Respondent still attends the group every Monday evening. Respondent was devastated when all this happened because he was adamant that he is clean. Dr. Rogers believes respondent and has not observed or suspected any deviation from respondent's sobriety.

37. Swend Holland, M.D., wrote a letter and testified at hearing. Both are summarized as follows: Dr. Holland is respondent's practice monitor and has known respondent for five years. He sees respondent on a weekly basis and communicates with respondent almost every day. Respondent is very active in Alcoholics Anonymous the Big Book Awakening program. Dr. Holland has not observed anything in respondent's behavior or medical charting that would indicate he has had a relapse. Respondent helps many people in recovery and Dr. Holland is aware of the basis for the petition to revoke probation and believes respondent's long history of compliance with his probation should be considered.

38. Mark Meldon, D.O., wrote a letter on respondent's behalf, which is summarized as follows: Dr. Meldon first met respondent when respondent interviewed for an open psychiatrist position in November 2019 at Dr. Meldon's outpatient mental

healthcare practice, Crownview Medical Group. He hired respondent on the spot due to respondent's extensive knowledge of addiction medicine. Respondent shared his personal journey of addiction recovery with Dr. Meldon, and Dr. Meldon was able to see how important it was for respondent to help others in recovery. Dr. Meldon served as respondent's supervising physician while he worked at Crownview, and spent two to three days a week with respondent over a two-year period. Dr. Meldon felt respondent always gave sound medical advice and met Crownview's standards for good patient care. Dr. Meldon never observed any signs of relapse. Dr. Meldon "wholeheartedly" supports respondent and is confident that respondent has maintained his sobriety.

39. Jonathan Bear wrote a letter on respondent's behalf, which is summarized as follows: Mr. Bear has known respondent for one and a half years. He typically has daily contact with respondent at meetings during "Big Book" study. Respondent has helped Mr. Bear with his own sobriety and serves as a role model for him. He holds respondent in high regard, and characterizes him as a compassionate and responsible member of Alcoholics Anonymous. Mr. Bear has not noticed any changes in respondent's behavior that would suggest he is under the influence of any mind-altering substance. Respondent's sobriety is very important to respondent, and Mr. Bear does not believe respondent would go against anything that contravenes the "spirit and traditions" of Alcoholics Anonymous.

40. Kathy Dobbersteen, Ed.D, wrote a letter on respondent's behalf, which is summarized as follows: She has known respondent for over three years. A close friend recommended respondent to her so someone close to her could seek treatment for acute anxiety and depression. Dr. Dobbersteen feels respondent is a very caring individual and is always available if she has an urgent concern. Respondent is open about his life and cares deeply about his patients. Respondent is a leader in the

Alcoholics Anonymous community. He is passionate about his sobriety and helping others maintain their sobriety. Respondent always speaks about how grateful he is to have achieved his current life and would not do anything that would risk that accomplishment.

41. Anna Glynn wrote a letter on respondent's behalf, which is summarized as follows: Ms. Glynn has been respondent's patient for almost two years. He has been a positive influence in her life. Out of all the psychiatrists she has encountered, respondent is the best. He genuinely cares about her as a patient. She has changed her life as a result of respondent's guidance. Respondent introduced her to the Big Book Awakening Fellowship," in which he is an active member and advocate. Ms. Glynn described respondent as a legend in the Big Book program. Respondent has always been transparent about his life in recovery. He is humble, knowledgeable, and has integrity. Respondent "practices what he preaches" and she is proud to have him as a doctor.

42. Delia Lozoya wrote a letter on respondent's behalf, which is summarized as follows: Ms. Lozoya met respondent in February 2021 when she was looking for a psychiatrist to evaluate someone close to her. This individual had been struggling for two years with mental health issues and is very difficult to reach. Respondent maintained patients and was able to gain the trust of the individual who needed treatment, which led to that patient becoming stable over time.

43. Monti Ricasa has known respondent since 2016. Respondent has always been one of his sponsors in sobriety and has been a blessing. He has met respondent at his home for meetings and he has also picked her up and driven him to Alcoholic's Anonymous and Big Book Awakenings meetings. Respondent goes above and beyond for all of the individuals he sponsors. Respondent sends daily meditation and prayers

for them to start their day, and Mr. Ricasa does not know many people who have that level of concern or dedication to individuals they sponsor. Respondent even interprets the Big Book meetings into Spanish for those who do not speak English. "Words cannot explain" the type of humanity and concern for others that respondent exhibits.

44. Chris Rosas wrote a letter on respondent's behalf, as follows:

I, Chris Rosas, have known [respondent] for the better part of five (5) years at which time he became my sponsor and I, his sponsee, for the treatment of alcoholism. Without him being a constant in this difficult part of my life's journey, I would not be where I am today. His continued support has changed my life for the better and I wouldn't trade it for the world. In all the years that I've known him, I have never known [respondent] to ever be under the influence of alcohol. We communicate on a daily basis via text where he sends inspirational quotes and passages to continue his support in my recovery journey. [Respondent] is a kind and spiritual family man who is intelligent and devoted to all those that he's taken under his wing for support. I will be forever grateful to him for all that he has done and continues to do for me. . . .

45. Rosanne State, M.D., wrote a letter on respondent's behalf, as follows:

I have known [respondent] for the past 18 months. I have seen and interacted with [respondent] on a weekly or biweekly basis since that time. [Respondent's] recovery

efforts are exemplary. He is a highly spiritual, honest, willing, and kind man, who I've been blessed to

know. Indeed, I look to him as a role model of recovery, who inspires me each time I interact with him. [Respondent] has generously made himself available to me when I need advice about recovery, and I often turn to him for his wise counsel. He is always patient, listens attentively, and shares his wisdom selflessly. [Respondent] truly impresses me as someone who recognizes that recovery is a gift and that he grows by sharing that gift with others. He is a man who lives to serve others.

[Respondent] and I are both participants in the Pacific Assistance Group (PAG), a program for healthcare professionals in recovery under the direction of Duane E. Rogers, Psy.D., MFT. At each meeting, we do a recovery reading and then share our experience, strength, and hope based on the themes of the reading. [Respondent] always shares both his scholarly knowledge about the AA twelve step program, and his rich, lived experience of recovery. I have learned so much from him; he has helped me immensely on my recovery journey. [Respondent] finds the time in a busy professional schedule to sponsor several men in AA; He facilitates multiple AA Step Studies, including a Big Book Awakenings Step study in Spanish. I am also aware that [respondent] is frequently called upon professionally to

treat patients with drug and alcohol problems- a task he approaches with great enthusiasm and dedication. It is not surprising that these patients - who can be very challenging to work with- thrive under his care. I am honored to call [respondent] a colleague and a mentor. There is no question in my mind that [respondent's] exemplary recovery is absolutely genuine, and that [respondent] is and has been sober for many years. He truly embodies the program of AA in a spirit of unfailing gratitude, humility, and faith. He is a loving husband, father, and grandfather, who is devoted to his family. My own recovery has been so enriched by my interactions with [respondent], by witnessing his sobriety week after week for the past 18 months, and - beyond that- his remarkable recovery. Recovery is a spiritual path that [respondent] follows with sincere devotion and love; Sobriety is a prerequisite for recovery . I know [respondent] treasures recovery beyond measure, and would never compromise his sobriety. . . .

46. Tiffany Tucker wrote a letter on respondent's behalf, which is summarized as follows: She has known respondent for three years. He has provided excellent care for her and several other individuals she knows. She has full knowledge of why the hearing is occurring and supports respondent. She has never seen respondent appear to be under the influence of any substance and feels that the positive tests must be a mistake. Respondent operates from a position of integrity and is dedicated to his medical career. He has a busy work schedule and a large client base. Respondent is

also dedicated to a clean and drug-free lifestyle. He places a huge importance on his sobriety.

47. Tiffany Walker testified at the hearing and provided a letter on respondent's behalf. Both are summarized as follows: She met respondent at Alcoholics Anonymous. She has been respondent's sponsor for six years. She has seen respondent work the 12 steps. Respondent works with many groups and has also brought recovery to the Spanish-speaking community. Respondent has integrity and she trusts him at his word.

48. Christopher Wehrle wrote a letter on respondent's behalf, which is summarized as follows: he has known respondent for two years. Respondent has been his mentor, doctor, and friend. As a mentor, respondent has been pivotal in advising and inspiring him to re-enter a doctoral program so that he can teach at the graduate level. As a medical provider, respondent has assisted him with medication adjustment which, in turn, has helped him be a more productive father, partner, employee, and friend. As a friend, respondent has not only encouraged him to continue with the 12-step program, but has also introduced him to a new version of that program. Mr. Wehrle admires respondent for his commitment to sobriety and sponsorship of many people. Mr. Wehrle does not believe respondent has been drinking alcoholic beverages or using any mind-altering substances. Respondent has been a pillar in the community as long as he has known him.

49. Marissa Wilson wrote a letter on respondent's behalf, which is summarized as follows: She and someone close to her are bipolar. Both she and this individual have been working with respondent since December 2020. Respondent has worked wonders for both of them and provides both clinical and emotional support.

He has the unique ability to treat the patient as a whole and has made a positive impact on both their lives.

50. David Youtie wrote a letter on respondent's behalf, as follows: He was referred to respondent in July 2020. He not only views respondent as a competent medical professional but also as a friend and fellow recovering alcoholic. Respondent has helped Mr. Youtie explore the possibility of going back to school to become a substance abuse counselor. He and respondent are both regular attendees at AA and respondent is always honest and forthright in his pursuit of ongoing recovery. Respondent has been a "guiding light" and an inspiration to Mr. Youtie.

LEGAL CONCLUSIONS

1. The burden of proof for all of the allegations made in the petition to revoke probation rests upon the board and requires the board to prove the allegations by a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1442; Evid. Code, § 115; 500.)

2. Cause does not exist to conclude that respondent violated Condition Nos. 1 and 2 of the 2018 decision and order. This conclusion is reached based on respondent's credible testimony that he has been sober since 2016. His testimony is supported by numerous individuals who wrote letters on his behalf attesting that he is dedicated to his sobriety and has helped others maintain their sobriety. The record shows that respondent, from the morning when he sends affirmations to those he sponsors, to the evening, when he attends meetings to help others and to help himself maintain sobriety, is committed to living a clean and sober lifestyle. Indeed, as respondent stated, his sobriety is more important to him than his marriage and career

because both are dependent on him maintaining sobriety. Thus, the positive biological fluid tests in June and September 2021 are inconsistent with respondent's credible and powerful assertion that he is sober, and also inconsistent with the testimony and letters from the many individuals who not only attest to respondent's sober lifestyle, but also the level of dedication and professionalism he brings to his practice of psychiatry, and in the counseling of those who are experiencing their own recovery journey.

3. This finding is made notwithstanding the testimony of Dr. Jones and Dr. Ferguson regarding the trace amounts of alcohol and tramadol found in the test results. The evidence of record outside their expert testimony calls into question whether respondent actually did consume alcoholic beverages (on the two occasions in June 2021) or ingest tramadol (on the two occasions in September 2021). Every single test respondent has taken since he was placed on probation in 2016, save the four tests in June and September of 2021, have been negative. Although nothing unusual was found regarding the chain of custody regarding the taking and testing of any of the four samples that tested positive, the isolated nature of those positive tests in relation to the plethora of negative tests since 2016, the negative tests that occurred after the June and September 2021 tests, the credible testimony of respondent, and the strong character evidence supporting respondent's testimony regarding his commitment to sobriety, all suggest something had to be "off" in the testing of those four samples. In sum, while a preponderance of the evidence established that four tests were positive in June and September 2021, a preponderance of the evidence did not show respondent actually ingested alcohol or tramadol on those occasions, causing those positive results. Thus, a preponderance of the evidence did not establish a violation of Condition Nos. 1 or 2.

4. A preponderance of the evidence did, however, establish that respondent violated Condition No. 3. Respondent was placed on probation in 2016. He was placed on probation again in 2018, the conditions of which superseded the 2016 conditions. Between May 22, 2020 and October 18, 2021, respondent failed to call in to FSS to check if he was selected for biological fluid testing on seven separate occasions. Any one of these instances were grounds for revocation of his probation. Cause therefore exists to set aside the 2018 stay order and imposing the stayed discipline of revocation of respondent's certificate under Condition No. 23.

5. As with all matters seeking to discipline a professional license, or revoke probation, the paramount concern is always protection of the public. Nothing showed that, at any time, the public was at risk. Nobody suffered any harm as a result of respondent's failures to check-in with FSS. The individuals who attested to respondent's dedication to sobriety, and respondent's own testimony, have more than established that his sobriety is more important to him than anything else. Respondent's practice monitor and employer, Dr. Holland and Dr. Meldon, are in the best position to know if respondent poses any threat to the public. Yet, both wholeheartedly support respondent, and have observed no signs of relapse.

6. When the board places a licensee on probation, it is, in essence giving a respondent a second chance to show the board that the licensee is worthy, and safe, to practice. In the case of a respondent who has biological fluid testing conditions and call-in conditions, it is therefore crucial that the licensee follow the probationary conditions so that the board can fulfill its mandate to protect the public. On this record, it would be a great disservice to the public, given respondent's deep commitment to helping others in recovery and lack of evidence that he has failed to abstain from alcohol or controlled substances, to revoke his physician's and surgeon's

certificate. That said, respondent needs to answer for the year of missed check-ins, and also dedicate himself in the future to following his probation conditions with the same passion, commitment, and vigor he has shown to his patients and those he sponsors in recovery. Accordingly, the probation conditions set forth in the 2018 decision and order shall remain in effect, except that respondent's probation shall be extended for one year.

7. These conclusions are based on the Factual Findings and Legal Conclusions as a whole. Evidence and arguments presented by the parties, and not referenced in this decision, have been considered in reaching this decision. All arguments contrary to this decision have been considered and rejected.

ORDER

The first amended petition to revoke probation is denied. Respondent shall remain on probation under the same terms and conditions as indicated in the 2018 decision and order (Case No. 800-2017-038264), except that his probation shall be extended by one year.

DATE: January 19, 2022

Kimberly J. Belvedere

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings