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

In the Matter of the Petition to Revoke Probation Against: Richard Frederick Buss, M.D. Physician's & Surgeon's Certificate No. G 52995 Respondent.	Case No.: 800-2022-085617

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the petition for reconsideration, filed by Richard Frederick Buss, M.D., and the time for action having expired at 5:00 p.m. on November 28, 2022, the petition is deemed denied by operation of law.

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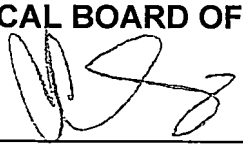
DECISION

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

This Decision shall become effective at 5:00 p.m. on November 28, 2022.

IT IS SO ORDERED October 28, 2022.

MEDICAL BOARD OF CALIFORNIA



Laurie Rose Lubiano, J.D., Chair
Panel A

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

In the Matter of the Petition to Revoke Probation Against:

RICHARD FREDERICK BUSS, M.D., Respondent

Agency Case No. 800-2022-085617

OAH No. 2022030420

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on July 11, 2022, from Sacramento, California.

Kalev Kaseoru, Deputy Attorney General, represented complainant William Prasifka, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs, State of California.

Respondent Richard Frederick Buss, M.D., represented himself.

Evidence was received, the record closed, and the matter submitted for decision on July 11, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

ISSUANCE OF CERTIFICATE

1. The Board issued respondent Physician's and Surgeon's Certificate G 52995 on July 12, 1984. Respondent paid the fee to renew his certificate on January 11, 2022, and his certificate expires on January 31, 2024, unless renewed.

HISTORY OF DISCIPLINE

First Case

2. On April 20, 2011, a former Board Executive Director filed an Accusation in Case Number 02-2010-206541, seeking to discipline respondent's certificate for gross negligence, repeated negligent acts, incompetence, and failure to maintain accurate and adequate medical records (First Case). The allegations arose out of respondent's treatment of a 32-year-old patient who initially presented with migraine headaches on November 8, 2006. Over the next year, he treated the patient for headaches, neck pain, and a stiff neck by prescribing various medications. Respondent last treated the patient on November 28, 2007. The following day, the patient was found unresponsive at home and later declared dead at the hospital. The cause of death was "polypharmacy."[1]

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[1] The simultaneous use of multiple drugs to treat a single ailment or condition.

3. Respondent resolved the First Case by signing a Stipulated Settlement and Disciplinary Order agreeing that his certificate would be revoked, the revocation stayed, and the certificate placed on probation for five years. A condition of probation was obey all laws, regulations, and rules governing the practice of medicine in California. The Board issued a Decision adopting the Stipulated Settlement, and respondent's five-year probation period commenced March 20, 2015. It was scheduled to end March 20, 2020.

SECOND CASE

4. On February 25, 2020, a former Board Executive Director filed a Petition to Revoke Probation and Accusation in Case Number 800-2020-063778 seeking to revoke respondent's probation, lift the order staying revocation, and revoke respondent's certificate (Second Case). The Petition and Accusation alleged respondent committed gross negligence, failed to maintain accurate and adequate medical records while treating seven patients, and committed repeated negligent acts while treating those patients and one other. It was further alleged that his treatment of the eight patients constituted a failure to obey all laws and was grounds to revoke probation.

5. Respondent resolved the Second Case by signing a Stipulated Settlement and Disciplinary Order agreeing that his certificate would be revoked, the revocation stayed, and his certificate placed on probation for five years. Conditions of probation included: (1) enroll in a professional boundaries program within 60 days of the effective date of the Decision and complete the program within six months of "initial enrollment" (Condition 3); (2) have an approved practice monitor "within 60 calendar days of the effective date of this Decision, and continuing throughout probation" (Condition 5); (3) "have a third [*sic*] party chaperone present while consulting,

examining or treating female patients" (Condition 6); and (4) the Board can revoke probation and carry out the stayed discipline "if Respondent violates probation in any respect" (Condition 16).

6. The Stipulated Settlement contained the following additional language:

> [I]f an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation/Petition to Revoke Probation No. 800-2020-063778 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

7. The Board adopted the Stipulated Settlement on February 2, 2021. Respondent's five-year-probation period commenced on March 4, 2021.

Compliance with Conditions of Probation Imposed in Second Case

8. Jeff Routsong was respondent's assigned probation monitor in the First Case when the Board issued its Decision in the Second Case. He continued as respondent's probation monitor in the Second Case.

9. Mr. Routsong met with respondent on February 11, 2021, to discuss the conditions of his probation in the Second Case and answer any questions he had. At the end of the meeting, respondent signed an Acknowledgment of Decision, which read in part:

> Your signature in the space provided below acknowledges that you received a copy of said decision. Further, your

signature acknowledges that I explained all the terms and conditions of your probation and addressed any of your questions and that you understood what is required of you during your term of probation.

CONDITION 3 – PROFESSIONAL BOUNDARIES COURSE

10. On May 6, 2021, respondent enrolled in an online professional boundaries course scheduled for September 4 through 6, 2021, and provided Mr. Routsong proof of enrollment. He missed the deadline for enrolling specified in Condition 3 by three days.

CONDITION 5 – PRACTICE MONITOR

11. On November 25, 2019, respondent designated Michael Juby, M.D., as his practice monitor in the First Case. The Board accepted the nomination, and Dr. Juby signed a Practice Monitor Agreement agreeing to act as respondent's practice monitor. Dr. Juby continued as respondent's practice monitor after the Board issued its Decision in the Second Case.

CONDITION 6 – THIRD-PARTY CHAPERONE

12. On April 16, 2021, respondent entered into written agreements with three female employees to serve as third-party chaperones when he treated female patients. He submitted applications to the Board for each of the employees to be approved as his third-party chaperones, and the Board approved each of them.

Respondent's Letters to the Board

REQUEST FOR RECONSIDERATION OF PROBATION

13. On June 8, 2021, less than three months into his five-year probation, respondent requested that the Board reconsider his probation because "the reasons for [his] probation are grossly inadequate." He claimed his agreement to a third-party chaperone was conditioned on the Stipulated Settlement including the statement "There are no allegations that Respondent has engaged in sexual misconduct with any patient." He further claimed that statement was missing from the notice of probation posted on the Board's website for his license. The Board denied respondent's request as untimely.

NONCOMPLIANCE WITH CONDITIONS OF PROBATION

14. On July 6, 2021, respondent informed the Board: "This is to let you know I am no longer willing to continue my probation." He claimed he "was coerced into agreeing with this new probation by [his] prior attorney." He characterized requiring a third-party chaperone as "ridiculous" and "inappropriate," and he explained "I do not intend to continue it."

15. Between August 6 and October 7, 2021, respondent continued writing to the Board and stating he was unwilling to continue probation and was not complying with the conditions. On October 14, 2021, he requested that the Board revoke his license because he was "not willing to surrender it" and was "unable to complete five more years of probation." He continued to argue, "there were [no] valid reasons to put me on probation, but I was never allowed to say so." He concluded:

> I am not willing to continue my probation. I am not willing to continue with a chaperone for all female patients, out of concern that I might offend someone with a random non-sexual question. I have postponed my Boundaries Course. I have asked my practice monitor to defer for now.

16. Three months later, respondent posited "the accusations against [him] were either wrong, or trivial, or misleading." He described the third-party chaperone requirement as "absurd" and "not being done." He confirmed he had stopped paying his practice monitor.

Board's Investigation of Respondent's Compliance with Probation

17. Ralph Correa has been an Inspector with the Board for approximately 18 months. His duties include monitoring physicians' compliance with the conditions of their probation. He took over for Mr. Routsong as respondent's probation monitor on August 27, 2021.

18. Mr. Correa investigated respondent's compliance with probation, which included interviewing respondent and communicating with Dr. Juby. Respondent confirmed he was no longer complying with Conditions 3, 5, or 6. Dr. Juby confirmed he last spoke with respondent "maybe [in] March or April" 2021. At that time, respondent told Dr. Juby his services were longer needed because respondent "was appealing Something [*sic*] directly to the [b]oard."

19. Mr. Correa documented his investigation in a written report and included a recommendation that respondent be ordered to cease practicing medicine based on his violations of Conditions 5 and 6. Based thereon, complainant issued a Cease Practice Order on January 21, 2022, prohibiting respondent "from engaging in the

practice of medicine . . . until a final decision has been issued in an accusation and/or petition to revoke probation filed pursuant to this matter." Respondent received the Cease Practice Order four days later, and he has not practiced medicine since January 28, 2022.

20. As of the date of hearing, Mr. Correa has not received any documentation showing respondent's completion of a professional boundaries course, reemployment of a practice monitor, or continued use of a third-party chaperone when consulting with, treating, or examining female patients. Neither Mr. Correa, nor anyone else with authority to do so, has excused respondent's compliance with any conditions of his probation.

Respondent's Evidence

21. Respondent admitted he: (1) did not complete the Professional Boundaries course he enrolled in on May 6, 2021, or any other professional boundaries course; (2) stopped using Dr. Juby as his practice monitor; and (3) stopped using a third-party chaperone with female patients. He further admitted that once he stopped complying with those conditions, he never reinstated any because he was waiting to renegotiate his probation with someone from the Board.

22. Respondent explained he had to postpone the September 2021 Professional Boundaries course because he did not complete the requisite 12 hours of pre-course study and the company offering the course went out of business. He stopped using Dr. Juby because he contacted the Board about his dissatisfaction with his probation conditions and never received a response. Finally, respondent stopped using a third-party chaperone because all the approved chaperones thought the requirement was "ridiculous."

23. Respondent agreed that placing his certificate on probation for five years in the First Case was reasonable, but was adamant that he was "not willing to continue another five years of probation due to false accusations" in the Second Case. He admitted he signed the Stipulated Settlement and "gave up my right to contest" the allegations in the Second Case, but claimed he had "hard evidence, in the form of Progress Notes, that were claimed not to exist."

Analysis

24. Respondent did not dispute: (1) the requirements of Conditions 3, 5, or 6, (2) he violated each of those conditions, and (3) the Board has not excused him from complying with any of those conditions. Instead, he argued he never should have been placed on probation in the first place because the allegations in the Second Case "were either wrong, or trivial, or misleading." But he admitted he signed the Stipulated Settlement. By doing so, he agreed:

> [I]f an accusation and/or petition to revoke probation is filed against him before the Board, all of the allegations and charges contained in Accusation/Petition to Revoke Probation No. 800-2020-063778 shall be deemed true, correct and fully admitted by [him] for purposes of any such proceeding or any other licensing proceeding involving [him] in the State of California.

Respondent's motives for signing the Stipulated Settlement are wholly irrelevant, and the Board has no jurisdiction over any claim that his attorney did not adequately represent him during settlement.

25. Respondent's argument that his agreement to a third-party chaperone was conditioned on the settlement agreement specifying he was not accused of sexual misconduct with the patient ignored the following language at the bottom of Condition 6 in the Stipulated Settlement: "There are no allegations that Respondent has engaged in sexual misconduct with any patient."

26. Respondent's argument why he has not completed a professional boundaries course was unpersuasive. Though it may have been reasonable for him to postpone the September 2021 course so he could complete the prerequisite work, he did not explain his failure to complete the prerequisites and the course during the following two months. Additionally, he provided no supporting documentation that the provider went out of business. Nor did he explain why he could not complete a professional boundaries course offered by another provider.

27. Respondent's desire to renegotiate his probation conditions did not excuse his noncompliance with the practice monitor requirement or any other requirement. Moreover, neither his nor anyone else's opinions about the third-party chaperone requirement excused his noncompliance.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Complainant has the burden of proving respondent violated the conditions of his probation. (Evid. Code, § 500.) He must meet his burden by a preponderance of the evidence. (*Sandarg v. Dental Board of California* (2010) 184 Cal.App.4th 1434, 1441.) This evidentiary standard requires complainant to produce evidence of such weight that, when balanced against evidence to the contrary, is more

persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, he must prove it is more likely than not that respondent violated the conditions of his probation. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

2. The Board may discipline a physician by placing his certificate on probation. (Bus. & Prof. Code, § 2227, subd. (a)(3).) Conditions of probation may include requiring the physician "to obtain additional professional training." (Bus. & Prof. Code, § 2228, subd. (a).) The Board may restrict or limit "the extent, scope, or type of practice" the physician may engage in. (*Id.*, subd. (c).) Ultimately, the Board may take any action it deems proper "in relation to discipline as part of an order of probation." (Bus. & Prof. Code, § 2227, subd. (a)(5).)

3. Respondent resolved the Second Case by signing a Stipulated Settlement agreeing that his certificate would be revoked, the revocation stayed, and his certificate placed on probation for five years. Conditions of probation included: (1) additional training (Condition 3); (2) a practice restriction in the form of a practice monitor (Condition 5); and (3) a practice limitation in the form of a third-party chaperone with female patients (Condition 6). Condition 16 provided the following regarding 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.

4. On March 8, 2022, complainant signed a Petition to Revoke Probation outlining respondent's violations of Conditions 3, 5, and 6. Complainant alleged that those violations constituted cause for revoking respondent's probation, lifting the stayed revocation, and revoking his certificate. Respondent was given notice of the hearing on the Petition to Revoke Probation on March 16, 2022, and he appeared at the administrative hearing almost four months later.

Conclusion

5. Respondent was given notice of, and an opportunity to be heard on, the allegations in the Petition to Revoke Probation filed in the Second Case. At hearing, complainant establish a prima facie case, and respondent did not introduce any evidence to the contrary. Cause exists to grant complainant's request for relief. Instead of offering mitigating evidence or evidence of rehabilitation, respondent repeatedly attempted to collaterally attack the reasons for which his certificate was placed on probation, despite multiple warnings it was improper to do so. Therefore, revoking his certificate is necessary to ensure public protection.

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ORDER

The Petition to Revoke Probation dated March 8, 2022, is GRANTED. The Probation granted in Case Number 800-2020-063778 is REVOKED, the order staying revocation is VACATED, and Physician's and Surgeon's Certificate Number G 52995 is REVOKED.

DATE: July 28, 2022

Coren D. Wong (Jul 28, 2022 16:49 PDT)

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings