

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

In the Matter of the Accusation Against:

Luis Enrique Gonzalez, M.D.

Physician's and Surgeon's
Certificate No. A 166700

Respondent.

Case No. 800-2021-079244

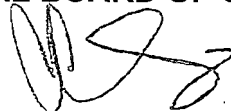
DECISION

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 May 8, 2023.

IT IS SO ORDERED April 6, 2023.

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 Accusation Against:

LUIS ENRIQUE GONZALEZ, M.D.,

Physician's and Surgeon's Certificate No. A 166700,

Respondent.

Agency Case No. 800-2021-079244

OAH No. 2022060775

PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on February 6, 2023.

Latrice R. Hemphill, Deputy Attorney General, represented Reji Varghese, (complainant), Interim Executive Director, Medical Board of California (Board), Department of Consumer Affairs.

Seth Weinstein, Attorney at Law, represented Luis Enrique Gonzalez, M.D. (respondent) who was present at the hearing.

At the hearing, the ALJ was provided with Exhibits B, C, and D containing confidential information protected from disclosure to the public. Redaction of the documents to obscure this information was not practicable and would not provide adequate privacy protection. To prevent the disclosure of confidential information, the ALJ issued a Protective Order placing Exhibits B, C, and D under seal following their use in the preparation of the Proposed Decision. The ALJ also redacted confidential information from Exhibits 5, 6, and A.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on February 6, 2023.

Factual Findings

Jurisdictional Matters

1. On November 18, 2019, the Board issued Physician's and Surgeon's Certificate Number A 166700 to respondent. This license is scheduled to expire on November 30, 2023.

2. On May 25, 2022, complainant filed the Accusation in his official capacity. Respondent filed a Notice of Defense requesting a hearing. Jurisdiction to proceed with this hearing has been established.

Criminal Conviction

3. On December 16, 2021, respondent was convicted on his plea of nolo contendere of violating Vehicle Code section 23152, subdivision (b), driving under the influence of an alcoholic beverage (DUI) with a blood alcohol content (BAC) of 0.08

percent or higher, a misdemeanor. (Superior Court of California, Los Angeles County, case number 1MN02510.)

4. For this criminal conviction, the court placed respondent on summary probation for 36 months and ordered him to pay \$1,012 in fines and fees, complete a three-month first offender alcohol and drug counseling program, attend a Mothers Against Drunk Driving (MADD) Victim Impact Program, and refrain from driving with any measurable amount of alcohol in his blood. Respondent complied with all terms of his criminal probation, which is scheduled to expire on December 16, 2024.

5. The facts and circumstances surrounding this criminal conviction, as established by the arrest report are as follows: On June 24, 2021, at approximately 10:00 p.m., Los Angeles Police Department (LAPD) dispatch received a call reporting a collision at the Olympic Boulevard off-ramp of the 405 Freeway. LAPD officer Hayden Gavett responded to the scene and found respondent sitting in his vehicle. When Officer Gavett approached respondent, respondent admitted he had lost control of his vehicle and collided with the concrete divider. As he spoke to respondent, Officer Gavett noticed respondent had an odor of alcohol emitting from his breath and person and his eyes were red and watery. When questioned by Officer Gavett, respondent admitted he had consumed alcohol. Officer Gavett then administered a series of Field Sobriety Tests, which respondent performed poorly. Respondent was arrested for DUI. At the police station, respondent was administered chemical breath tests, which showed that he had a BAC of 0.187 percent at 11:44 p.m. and 0.190 percent at 11:48 p.m.

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Respondent's Evidence

BACKGROUND

6. Respondent was born in Puerto Rico and moved to Florida at the age of two. He was raised by a single mother and attended Yale University from 2008 to 2012. After receiving his undergraduate degree in Molecular, Cellular, and Developmental Biology in 2012, respondent worked as a research associate for the Yale School of Medicine performing research on autism genetics. In 2014, respondent attended the Medical College of Wisconsin, and he obtained his medical degree in 2018. From July 2018 to June 2019, respondent completed a pediatrics residency at Kaiser Permanente in Los Angeles. From July 2018 to June 2019, he completed his psychiatry residency at the UCLA Greater Los Angeles Veteran's Affairs (UCLA-GLAVA) program.

7. Respondent is board certified in psychiatry. He currently works 20 hours per week as a contract psychiatrist at Victory Starts Now (VSN), a medical, mental health, and supportive services program for veteran and homeless patients.

DUI INCIDENT

8. Respondent testified at the hearing sincerely and openly about the DUI incident underlying his criminal conviction. Respondent recounted that on June 24, 2021, he was working as a psychiatry resident at the UCLA-GLAVA program. After his morning shift, respondent attended a party hosted by his attending physician. At the party, respondent consumed several glasses of champagne without any food. Respondent then made the "terrible" (his term) decision to drive home by himself. As he was driving on the 405 Freeway, respondent felt his own impairment and decided to exit the freeway. However, when he reached the off ramp towards Olympic Boulevard, respondent lost control of his vehicle and hit the concrete barrier.

9. Respondent admitted he was not candid with Officer Gavett when he was questioned about his alcohol consumption. Respondent told the officer he had consumed one White Claw Hard Seltzer when in fact he had drank several glasses of champagne. Respondent regretted his lack of candor, explaining he was feeling anxious at the time of his arrest and had been afraid of the repercussions of telling the truth.

REHABILITATION

10. Respondent submitted an affidavit dated July 20, 2022, from Matthew Torrington, M.D., a board-certified addiction medicine specialist. (Ex. E.) Dr. Torrington is a medical review officer, and he has served as a medical director, primary addiction medicine physician, and consulting addiction medicine physician for various drug and alcohol treatment centers in Southern California.

11. On June 29, 2022, Dr. Torrington conducted an evaluation of respondent. To perform his evaluation, Dr. Torrington reviewed respondent's arrest report; took an in-depth medical, psychiatric, psychosocial, and substance use history of respondent; administered the AUDIT screening test for alcohol misuse; and conducted a brief physical examination. During his evaluation, respondent recounted to Dr. Torrington the DUI incident underlying his criminal conviction, which was consistent with his testimony at the hearing. Regarding respondent's substance use history and his results on the AUDIT screening test, Dr. Torrington wrote:

[Respondent] relates that he has not had any alcohol since the incident on 6.24.21. He describes a substance use history complicated only by this incident. [Respondent] related that he was first exposed to alcohol socially in

college, and denies any prior alcohol misadventure. I administered the AUDIT screen to [respondent], score: 0/40. [Respondent] also tested negative for illicit substances and EtG in a point of care 14 panel urine drug screen in my office.

(Ex. E, p. B54.)

12. Dr. Torrington concluded:

There is no evidence to suggest that [respondent] is a danger to himself and/or to the public as a Physician. Especially if [respondent] continues to completely abstain from alcohol, there is little to no chance that any further substance related issues could arise. Obviously, A misdemeanor DUI conviction is a significant event, but in my clinical opinion this young health care provider has learned from the "teachable moment" and changed his lifestyle for the better. If the board is extremely concerned, some period of monitoring for alcohol could be considered, but in this case that may be an unnecessary burden and expense.

(Ex. E, p. B54.)

13. In compliance with his criminal probation, respondent completed a three-month first offender alcohol and drug counseling program and the MADD Victim Impact Program. He also completed three months of Alcoholics Anonymous (AA) meetings and worked the 12 Steps. However, respondent no longer attends AA,

as he does not believe that he has a substance abuse problem. Before his DUI arrest, respondent drank wine on social occasions and did not have any issues with excessive consumption of alcohol. After his DUI arrest on June 24, 2021, respondent has completely abstained from alcohol. He has voluntarily participated in a sobriety monitoring program with CAMtech Monitoring, which required him to submit three breath samples per day. According to a report from CAMtech Monitoring, respondent submitted a total of 335 tests during the period from September 19, 2022, to January 5, 2023, and all tests were negative. (Ex. 6.)

14. Respondent speaks Spanish, German, and some Japanese. Having worked with the veteran and homeless population, he wishes to use his language and medical skills to help patients in underserved communities. However, his criminal conviction has adversely impacted his career. Although Pacific Coast Psychiatric Associates, a private psychiatric practice group, expressed an interest in hiring respondent, they are unable to give him a job offer until the resolution of this matter.

15. While respondent acknowledges the gravity of his wrongdoing, he also believes he would not make the same mistake again, in part because it has been "an endless source of stress." Respondent recognizes that when he drove while intoxicated, he endangered himself and the public at large. Respondent has learned his lesson, and he repeated several times that he felt "intense remorse" for his misconduct. He averred he would never drink and drive again.

Character Evidence

16. Margaret L. Stuber, M.D., Professor of Psychiatry and Biobehavioral Sciences at UCLA Medical School and Program Director of the UCLA-VAGLA Psychiatry Residency, testified at the hearing on respondent's behalf. Dr. Stuber was respondent's

direct supervisor during his residency from July 1, 2019, to June 30, 2022. Dr. Stuber described respondent as an excellent resident who met all expected milestones for his training each year. Dr. Stuber is aware of respondent's DUI arrest and criminal conviction. Nevertheless, she has never observed respondent using alcohol while on duty, and she has no concerns about respondent's clinical capacity or his use of alcohol at work. Dr. Stuber does not believe respondent poses a risk to the public, and she would not hesitate to hire respondent or refer patients to him. Dr. Stuber submitted a character reference letter consistent with her testimony at hearing. (Ex. G.)

17. Philip Miles Blumenshine, M.D., Associate Program Director of the UCLA-VAGLA Psychiatry program, testified at the hearing on respondent's behalf. Dr. Blumenshine supervised respondent during his third and fourth years in the residency program. Dr. Blumenshine recounted he was surprised when respondent disclosed his DUI conviction to him because the misconduct was out of line with respondent's character. Dr. Blumenshine testified he has never seen respondent under the influence of alcohol, even though he has interacted socially with respondent. Dr. Blumenshine has no concerns about respondent's alcohol use and his psychiatric skills at the workplace.

18. In a letter dated January 27, 2023, Collin Leuck, M.D., supervising psychiatrist at VSN, where respondent currently practices, wrote:

[Respondent] was professional and appropriate during our meetings, and actively participated in our discussions. I never received comments or complaints from housing staff about him. Therefore, I had no reasons to doubt his clinical judgment or his professionalism. I was surprised to learn of

his DUI conviction, since this was out of step with my existing impression of him.

(Ex. I.)

19. In a letter dated January 27, 2023, Brooke Bardin, LCSW, Director of Clinical Quality Assurance at VSN, described respondent as "extremely skilled" at working with VSN's population of chronically homeless patients. Ms. Bardin also wrote:

[Respondent] quickly makes needed changes to ensure safety of all, while building rapport with patients on Involuntary Medication Orders. This can be extremely difficult for some of our psychiatrists, but [respondent] seems to do this with ease. He works well with all of the interdisciplinary members of his team including nurses, mental health workers, case managers, and mental health clinicians. His patients appreciate his ability to listen to their concerns and support them in understanding why a certain medication's benefits outweigh the risks. He has done an excellent job of engaging his patients and building rapport, so they see him as human and not some doctor "experimenting" on them.

[Respondent] has been transparent about his DUI, treatment following the DUI, and pending disciplinary action from the Medical Board. I have never had any concerns about [respondent's] work. He has always been professional, and I highly value his clinical judgement. Since

working with him, I have recommended he take on more of our sites because he is able to quickly stabilize our patients and work well with those others find challenging. His houses have less substance use relapses than the other psychiatrists and are overall more calm due to the stability of the patients living in them. At a time when there is a shortage of psychiatrists, especially skilled psychiatrists who use an empowering approach in forced treatment, [respondent's] role in our agency is extremely important. He has been extremely instrumental in the success and expansion of our program. Our agency would be at a hardship, without his work. . . .

(Ex. H.)

20. At the hearing, Ms. Bardin testified consistently with the contents of her letter. She described respondent as "one of the best, if not the best staff psychiatrist" at VSN. Ms. Bardin does not believe respondent poses any risk to his patients or the public.

Costs

21. The Board incurred the following costs: (1) \$2,860 in investigation costs, (2) 60.5 hours of legal services at rates ranging from \$195 to \$220 per hour (subtotal \$13,203.75), and (3) six hours of good faith estimate of additional hours that will be incurred for the preparation of the case, up to and including, the administrative hearing at the rate of \$220 (subtotal \$1,320). The claimed total costs are \$17,383.75, which are reasonable.

22. Respondent submitted financial statements showing his income in 2020 and 2021 was approximately \$78,000 and \$119,000, respectively. (Exs. B & C.) He also has student loans totaling more than \$280,000. (Ex. D.)

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The standard of proof which must be met to establish the charging allegations is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) This means the burden rests on complainant to establish the charging allegations by proof that is clear, explicit, and unequivocal—so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Causes for Discipline

2. The Board has the authority to revoke or suspend a physician's license for engaging in unprofessional conduct. (Bus. & Prof. Code, §§ 2004, 2234.) Unprofessional conduct includes incurring a criminal conviction substantially related to the qualifications, functions, or duties of a physician (Bus. & Prof. Code, §§ 490, 2236), and using alcoholic beverages in such a manner as to be dangerous to the licensee or to the public. (Bus. & Prof. Code, § 2239.)

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3. California Code of Regulations, title 16, section 1360 provides, in pertinent part:

[A] crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare.

4. Driving under the influence of alcohol, even if it is a single instance, is substantially related to the qualifications, functions, and duties of a physician in that it evidences a potential unfitness to practice medicine. In *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770-771, the Court held:

Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician's fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. [Citation.]

Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society. . . .

5. Cause exists to subject respondent's license to disciplinary action, pursuant to Business and Professions Code sections 2236, subdivision (a), and 490, and California Code of Regulations, title 16, section 1360, on the grounds that respondent has been convicted of a crime substantially related to the qualifications, functions, and duties of a physician and surgeon. (Factual Findings 3 to 5.)

6. Cause exists to subject respondent's license to disciplinary action, pursuant to Business and Professions Code section 2239, on the grounds that respondent used alcoholic beverages in such a manner as to be dangerous to himself and to the public. (Factual Findings 3 to 5.)

7. Cause exists to subject respondent's license to disciplinary action, pursuant to Business and Professions Code section 2234, subdivision (a), on the grounds that respondent engaged in unprofessional conduct. (Factual Findings 3 to 5.).

Level of Discipline

8. California Code of Regulations, title 16, section 1360.1, provides in pertinent part:

When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act

has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:

- (a) The nature and severity of the act(s) or offense(s).
- (b) The total criminal record.
- (c) The time that has elapsed since commission of the act(s) or offense(s).
- (d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
- (e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

9. Applying these factors to the case at hand, the nature of respondent's misconduct is moderately serious. Respondent drove while intoxicated, endangering himself and the public at large. Respondent's BAC, at the time of his arrest, was also approximately twice the legal limit. Although respondent has not suffered any other criminal convictions, his June 2021 DUI arrest and subsequent December 2021 conviction are relatively recent. Respondent has complied with all terms and conditions of his criminal probation, which is expected to terminate in 2024.

10. Evaluation of respondent's rehabilitation evidence must heed the Board's mandate under Business and Professions Code section 2229 that the protection of the public is its highest priority. The Board is not required to postpone imposition of discipline until a problem with alcohol begins to affect a physician's work. (*In re Kelley* (1990) 52 Cal.3d 487, 495.) A physician suffering from clouded judgment may cause harm or death, and even one instance of work-related alcohol use could pose a grave danger to patients. Thus, the analysis regarding the extent of respondent's rehabilitation must focus on the likelihood that respondent will again use alcohol in a dangerous manner.

11. Here, respondent presented significant evidence of rehabilitation showing his DUI arrest and criminal conviction was an isolated incident unlikely to reoccur. He completed the court-ordered DUI course and MADD program, attended AA meetings and individual therapy, underwent his psychological evaluation with Dr. Torrington, and continues to maintain full sobriety as confirmed by CAMtech Monitoring. Dr. Torrington's affidavit substantiated respondent does not have an alcohol use disorder. Dr. Torrington also opined there is little to no chance respondent would experience further substance abuse-related issues. This opinion is convincing because it was unrefuted and corroborated by respondent's comprehensive efforts at rehabilitation and his forthright testimony at the hearing. Therefore, the evidence established respondent does not have an alcohol use disorder, he does not pose a future threat to patients or to the public in general, and there is virtually no likelihood of recidivism based on an underlying psychological disorder.

12. In addition, respondent accepted responsibility for his extreme lack of judgment, and he expressed deep remorse for his dangerous actions. Respondent displayed full candor at the hearing, and he was also transparent about his DUI

conviction with his colleagues and supervisors. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317.) Fully acknowledging the wrongfulness of past actions is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940; *In the Matter of Brown, supra*.) However, a truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) Although respondent's arrest and criminal conviction were relatively recent and respondent is still on summary probation, respondent has taken significant actions, including undergoing regular testing, to prove he is safe to practice and will not re-offend.

13. Furthermore, as the testimony of his colleagues and supervisors attest, respondent is a highly-skilled, trusted psychiatrist with no indicia of alcohol use at work. Respondent speaks several languages and has experience working with challenging patients. He intends to use his language and medical skills to help underserved populations. Respondent also has an excellent reputation among his peers. These are additional rehabilitation factors weighing in respondent's favor.

14. California Code of Regulations, title 16, section 1361 requires the Board to consider the "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (12th Edition/2016) and to use the Uniform Standards for Substance-Abusing Licensees without deviation for each individual determined to be a substance-abusing licensee. (Cal. Code Regs., tit. 16, § 1361, subds. (a) & (b).) Under California Code of Regulations, title 16, section 1361.5, the licensee is presumed to be a substance-abusing licensee if the licensee is disciplined for unprofessional conduct involving the abuse of alcohol. (Cal. Code Regs., tit. 16, § 1361.5, subd. (a).) In this case, however, respondent rebutted the presumption he is a substance-abusing licensee, due to Dr.

Torrington's credible opinion that respondent does not suffer from alcohol use disorder and the absence of any history of alcohol misuse. Therefore, the application of the Uniform Standards for Substance-Abusing Licensees in this matter is not warranted.

15. As set forth in Business and Professions Code sections 2227 and 2229, there are several types of discipline that may be imposed to serve the goals of licensee rehabilitation and public protection. Given the extensive evidence of rehabilitation and the low likelihood of recidivism, imposing probationary terms, which would include a prohibition against solo practice and a requirement to undergo a diagnostic evaluation, would be unduly harsh. Consequently, a public reprimand is adequate to protect the public interest, health, and welfare.

16. Pursuant to Business and Professions Code section 125.3, complainant is entitled to recover the reasonable costs of investigation and enforcement of this matter. Complainant has incurred reasonable costs of \$17,383.75. (Factual Finding 21.) Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that the cost award statutes do not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus, the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Ibid.*) The Board, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and whether or not the licensee has raised a colorable defense. The Board must also consider the licensee's ability to make payment.

17. Considering the *Zuckerman* factors, reduction of the award of complainant's reasonable costs by 75 percent is appropriate. Respondent used the hearing process to obtain a reduction in the severity of the discipline imposed. Additionally, respondent's income varied between \$78,000 and \$119,000 in the last two years, and he owes more than \$280,000 in student loans. (Factual Finding 22.) Therefore, respondent shall be required to pay the costs of enforcement of this matter in the amount of \$4,345.

ORDER

1. Respondent Luis Enrique Gonzalez, M.D. is hereby reprimanded under Business and Professions Code section 2227, subdivision (a)(4).

2. Within six months of the effective date of this decision, respondent shall pay to the Board its costs associated with enforcement of this matter in the amount of \$4,345. Failure to pay the costs within six months of the effective date of this decision shall constitute disobedience of a Board order and grounds for discipline against respondent's Physician and Surgeon's Certificate.

DATE: 03/03/2023

Ji-Lan Zang

JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings