

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

**In the Matter of the Accusation
Against:**

Anna Skor Noble, M.D.

**Physician's and Surgeon's
Certificate No. A 115913**

Respondent.

Case No.: 800-2021-075605


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 June 12, 2023.

IT IS SO ORDERED: May 12, 2023.

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 Accusation Against:

ANNA SKOR NOBLE, M.D., Respondent

Agency Case No. 800-2021-075605

OAH No. 2022110105

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 14, 15, and 16, 2023, by videoconference.

Tessa L. Heunis, Deputy Attorney General, represented complainant, Reji Varghese, Interim Executive Director, Medical Board of California, Department of Consumer Affairs (board).

David Balfour, Attorney at Law, Buchalter, APC, represented respondent, Anna Skor Noble, M.D., who was present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on March 16, 2023. Identifying information was redacted from the exhibits after submission.

PROTECTIVE ORDER SEALING CONFIDENTIAL RECORDS

Exhibits C and D, expert reports, were received and contained confidential information. It is impractical to redact the information from these exhibits. To protect the privacy and the confidential personal information from inappropriate disclosure, those exhibits are ordered sealed. This sealing order governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517, may review the documents subject to this order, provided the documents are protected from release to the public.

SUMMARY

Complainant alleged that Dr. Noble suffered a substantially related conviction, driving under the influence of alcohol (DUI); used alcohol in a dangerous manner; exhibited unprofessional conduct; and is a substance abusing physician. Dr. Noble successfully complied with all terms of her criminal probation, has been voluntarily submitting to random biological fluid testing and breathalyzer tests three times per day, voluntarily attended an ethics program given by a board-approved provider, and expressed sincere and appropriate remorse. Colleagues and friends who have known her for years strongly supported her and described her DUI as an aberration. Dr. Noble's expert, who is a board-approved expert in treating substance abuse, was the only expert to perform an evaluation addressing Dr. Noble's fitness to practice medicine. He concluded Dr. Noble was fit to practice without restrictions, and his opinions were unrefuted. Dr. Noble rebutted the presumption that she is a substance

abusing physician and demonstrated sufficient rehabilitation. On this record, a term of probation with appropriate terms and conditions to ensure public safety is warranted.

FACTUAL FINDINGS

Licensing History and Jurisdictional Background

1. The board issued Physician and Surgeon's Certificate No. A 115913 to Dr. Noble on February 18, 2011. She was originally licensed under her former name, Selvaggio. Her certificate was in full force and effect at all times herein and will expire on February 28, 2025, unless renewed. There is no history of discipline against Dr. Noble's medical license.

2. The accusation was signed by the former Executive Director, William Prasifka, in his official capacity on October 11, 2022. Complainant alleged that Dr. Noble subjected her license to discipline because in 2021 she was convicted of a substantially related offense, used alcoholic beverages to an extent or a manner that was dangerous to herself or the public, and her actions constituted unprofessional conduct.

3. Complainant served all required jurisdictional documents on Dr. Noble who timely filed a notice of defense, and this hearing followed.

Dr. Noble's Education and Employment History

4. Dr. Noble and her mother emigrated from Ukraine to Los Angeles when Dr. Noble was nine years old. She received a Bachelor of Science in Psychobiology from the University of California, Los Angeles (UCLA). During one college summer she worked at a clinic "in a shanty town" in Lima, Peru. After graduation she worked at a

hospital in Tanzania providing medical care to poor patients and an adjacent orphanage. She then worked as a research assistant at Harvard Medical School, Department of Surgery, from 2003 to 2005. At Harvard, Dr. Noble performed stem cell research related to cardiovascular surgery.

Dr. Noble obtained her Doctor of Medicine from David Geffen School of Medicine, UCLA in 2009. From 2009 to 2012, she did an internal medicine residency at Cedars-Sinai Medical Center in Los Angeles, which included doing rotations at the Veterans Administration (VA) Hospital. After completing her residency, Dr. Noble did a fellowship at Cedars-Sinai in pulmonary critical care which she completed in 2015. During her fellowship she treated respiratory, pulmonary medicine, and intensive care unit (ICU) patients, training at four different hospitals, an outpatient clinic, and a specialty clinic. She developed an interest in interstitial lung disease and became involved in a research project studying progenitor stem cells in the lungs. After completing her fellowship, she stayed on as a clinical faculty member to complete her research, and continued doing clinical work.

In 2016, Dr. Noble began her employment in Orange County at Chest & Critical Care Consultants as a Pulmonary Critical Care Physician. In 2020 she returned to Los Angeles and began working at Saban Community Clinic, a clinic where she worked during her training. At Saban Community Clinic, she serves as Associate Medical Director, and Director for Academic Affairs and Education. However, for several months she continued to work both at both Chest & Critical Care Consultants and Saban Community Clinic to assist with the critical shortage of health care providers during the COVID-19 pandemic.

Dr. Noble is board-certified in internal medicine, pulmonary disease, and critical care medicine. She has several publications to her name.

Dr. Noble's 2021 Conviction and Underlying Arrest

SUPERIOR COURT RECORDS

5. On May 9, 2022, in Orange County Superior Court, Case No. 21HM02172, Dr. Noble was convicted, on her plea of guilty, of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, and subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or more, both misdemeanors. In her plea form Dr. Noble admitted she unlawfully drove a motor vehicle while under the influence of alcohol with a BAC of 0.19 percent.

The court stayed the Vehicle Code section 23152, subdivision (b), charge pursuant to Penal Code section 654.¹ The court suspended imposition of sentence for three years and placed Dr. Noble on informal probation for violating Vehicle Code section 23152, subdivision (a). As terms and conditions, the court ordered her to violate no laws; obey all orders; not drive with alcohol in her system; submit to a chemical test of blood on demand; not drive without a valid license or insurance; serve two days in custody with credit for two days served; complete 40 hours of community service; complete a six month first offender alcohol program; complete Victim Impact Counseling; and pay fines and fees.

¹ Penal Code section 654, subdivision (a), states in part: "An act or omission that is punishable in different ways by different provisions of law may be punished under either of such provisions, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other."

Dr. Noble introduced documents demonstrating she complied with all the terms of her probation. She paid her fines and fees, and completed her community service in one months' time, on July 4, 2022, by volunteering at Meals on Wheels. She had her license reinstated by the Department of Motor Vehicles, completed the first offender program, and attended victim impact counseling.

Her probation is set to end in May 2025.

POLICE REPORT AND FORENSIC VOLATILE EXAMINATION REPORT

6. A Laguna Beach Police Department report was received in evidence under *Lake v. Reed* (1997) 16 Cal.4th 448, 461-462, which sets forth how peace officer reports may be received. The report documented that on February 13, 2022, at 9:25 p.m., Officer Wade Kraus was driving his patrol car northbound on a divided roadway when he observed oncoming headlights indicating a car was driving towards him the wrong way. There was a vehicle to Officer Kraus's left which was in the path of the oncoming car. Officer Kraus activated his emergency overhead lights in order to prevent a head on collision. When he did so, the driver of the oncoming car activated that vehicle's right turn indicator, proceeded to drive over the concrete and dirt center median, and moved into the number one lane for the southbound traffic.

Officer Kraus made a U-turn across the center median and attempted to stop the vehicle. The vehicle stopped in the middle of the lane and using his PA system, Officer Kraus directed the driver to yield to the right shoulder, which the driver did. The driver was identified as Dr. Noble and Officer Kraus "immediately" smelled the strong odor of an alcoholic beverage emanating from within the vehicle when he approached it. He observed that Dr. Noble's eyes were bloodshot and watery, and she spoke with a very noticeable slur. The passenger in the vehicle, Dr. Noble's husband,

also spoke with a noticeable slur. Dr. Noble was unable to produce her driver's license and denied consuming alcohol. When backup arrived, Officer Kraus had Dr. Noble exit the vehicle and observed she had an unsteady gait. Dr. Noble reported feeling anxious with the two male officers, and became visibly upset. Dr. Noble's husband was also upset, and refused to comply with directives. He was eventually removed from the vehicle, placed in handcuffs, and arrested for public intoxication.

A female officer arrived to perform field sobriety tests. Dr. Noble admitted to drinking one glass of wine at dinner. Dr. Noble failed to follow directives at the scene, and the female officer was only able to perform a modified nystagmus test. Based on those test results, and Officer Kraus's observations, Dr. Noble was arrested for DUI. After being read her rights, Dr. Noble agreed to submit to a chemical blood test, and was transported to jail. However, at jail, she refused the blood test. Officers had to obtain a subpoena, and physically restrain her in order for blood to be drawn.

The Orange County Sheriff-Coroner Department Forensic Volatile Examination Report documented that one analyst listed the blood draw results as a BAC of 0.19 percent, and another as 0.20 percent. Dr. Noble's plea agreement stated 0.19 percent.

TESTIMONY OF ARRESTING OFFICER

7. Wade Kraus is currently employed as a police officer with the City of Irvine. Prior to that he was employed by the City of Long Beach where Dr. Noble's DUI occurred. Officer Kraus was driving northbound on Laguna Canyon Road, which is a divided roadway with two lanes going in each direction and a median separating the north and southbound lanes. While driving, Officer Kraus observed a car approximately a block north of him make a left turn from a side road into oncoming traffic. The car failed to make a wide enough left turn so it would go past the median and into the

southbound lanes. The car began traveling southbound in the number one northbound lane of Laguna Canyon Road.

There was a vehicle immediately to Officer Kraus's left, and the two cars were traveling directly towards each other. Officer Kraus activated his lights and positioned his vehicle between the two cars to prevent a collision. At that point, the wrong way driver noticed his overhead lights, activated her turn signal, and drove her car over the median to get into the southbound lanes. Officer Kraus made a U-turn, drove over the median into the southbound lanes, and attempted to stop the wrong way driver. The driver made a complete stop in the number one lane, as opposed to yielding to the right side curb. Officer Kraus used his PA system to tell the driver to pull over to the curb which she did, and he initiated a traffic stop.

When Officer Kraus approached vehicle, Dr. Noble was driving and he immediately noticed objective signs of alcohol intoxication. When asked why she was driving in the wrong lane, Dr. Noble said it was not her car, and that she does not see well at night. She denied consuming alcohol. Another male officer arrived and Officer Kraus had Dr. Noble exit the vehicle. Dr. Noble was unable to perform field sobriety tests and became uncooperative, trying to pull away from the officers' grasp. Dr. Noble relayed feeling unsafe because of the two male officers, so a female officer was called to assist, but Dr. Noble was not very cooperative with that officer, either. At one point, Dr. Noble did admit to drinking one glass of wine at the restaurant. She was eventually arrested for DUI and had her blood drawn at the jail.

Officer Kraus testified that Dr. Noble refused both a breathalyzer and a blood draw so a warrant had to be obtained. However, that testimony is refuted by his own report which makes no mention of a breathalyzer and instead states: "After placing [Dr. Noble] under arrest, I read her the chemical test admonition. [Dr. Noble] stated

she would submit to a chemical blood test." While Dr. Noble did later refuse a blood draw and asked to speak to her lawyer at the jail, and a search warrant was obtained for a blood draw, there is no documentation in the police report that a breathalyzer was ever offered or refused. Moreover, as documented below, the Department of Motor Vehicles (DMV) restored Dr. Noble's license because the officer's body camera did not show that she refused a breathalyzer.

Officer Kraus described Dr. Noble's demeanor as uncooperative and "passively resistive." She appeared aggravated and made comments to officers, including ones that she was a physician, treated people like them, and asked why they were doing this to her. However, he admitted that he did not put any of that in his report. Dr. Noble's husband was also intoxicated, uncooperative, and taken into custody. Officer Kraus described the area where the restaurant is located and where the traffic stop took place. There are many parking spots that Dr. Noble drove by and the car could have remained parked by the restaurant. This testimony was offered to refute Dr. Noble's claim that they had to move their car because they did not think it could remain there overnight. However, that line of questioning was not persuasive because intoxicated people make poor decisions and the fact that Dr. Noble and her husband may have been mistaken in their belief that their car needed to be moved is but an example of such a poor decision.

On cross-examination, Officer Kraus acknowledged that some individuals he stops for DUI are uncooperative. He also agreed there were a limited number of Ubers at that time because of COVID. Officer Kraus was not involved any further in this matter after writing his report until being contacted approximately one and one-half to two weeks ago by complainant's counsel.

Dr. Noble's Testimony

8. Dr. Noble testified about her education and training. Her undergraduate degree is in psychobiology, which is the study of the brain, a field closely related to neuroscience. She always wanted to be a doctor and volunteered at hospitals in high school, working in the emergency room. During one summer in college, she volunteered working on a project "in shanty towns" in Lima, Peru, and after graduation she worked at a hospital in Tanzania. She worked two years as a research assistant in Boston at Brigham and Women's Hospital, which is affiliated with Harvard, performing stem cell research to study "optimal ways to optimize graft procurement."

She then applied to medical school and attended UCLA Medical School. On weekends she volunteered to fly to towns in Mexico to perform primary care at "pop-up clinics." She enjoyed all her rotations in medical school but towards the end enjoyed internal medicine the most, so she applied for an internal medicine residency at Cedars-Sinai, which she did for three years after graduating in 2009. During that residency she also did rotations at the VA hospital.

In 2009, two months before her intern year began at Cedars-Sinai, Dr. Noble had her first child. She completed her residency in 2012 and immediately began her fellowship in pulmonary critical care at Cedars-Sinai. During this fellowship, the focus was more of a combination of pulmonary medicine and ICU management. She covered the ICU or pulmonary services and trained at four different hospitals. She also did outpatient work at a clinic and at a specialty clinic for cystic fibrosis, lung transplant and other types of lung patients. She continued to work at the VA hospital where she treated lung cancer and inhalation injury patients. During her fellowship, her second child was born in 2014.

While in her fellowship, Dr. Noble became interested in interstitial lung diseases, and during her last year of her fellowship, she became involved in a research project studying progenitor stem cells in the lungs, so she remained for approximately 10 months after graduating from her fellowship to complete that research. She next took a position in Orange County at Chest & Critical Care Consultants, a pulmonary critical care group. There were six pulmonologists and “a couple dozen hospitalists” who serviced approximately 10 hospitals, covering night and weekend calls. The work consisted of a combination of inpatient ICU or pulmonary consult patients plus outpatient clinic work.

In November 2021, she left the group to return to Los Angeles and work for Saban Community Clinic, a federally-funded, quality healthcare center, formally known as Los Angeles Free Clinic. The clinic serves underserved patients. This was the continuity clinic where she worked during her residency. In May 2020, she pushed her start date back because COVID started and the Orange County group needed her to stay. The volume of patients at the hospitals was already unmanageable and if she left the group, it would become even more unmanageable.

Dr. Noble worked with the Orange County group treating COVID patients. She explained how surgery cases were canceled, usual procedures were postponed, and the majority of patients had COVID. The ICUs overflowed to the preop areas, other wards, into tents, and hallways, as the hospital “overflowed” with COVID patients. It was “a very different medicine than I’ve ever practiced before.” Dr. Noble worked 12 hours a day and continued to work every other weekend, only taking four days off per month. The hospital ran out of PPE and doctors used their own N95’s, “reusing them for quite a while.” Collectively, she and her colleagues “all saw more death than ever seen before.” Very young patients typically not expected to die were dying, and

patients were dying alone without their families at their side. At the end of each workday, Dr. Noble would begin calling families to give them updates because they were not allowed to visit their loved ones. After joining Saban Community Clinic, Dr. Noble continued to work weekends in Orange County until November 2021.

While still working weekends in Orange County to help with COVID, Dr. Noble began her employment at Saban Community Clinic in May 2020, taking a 50 percent pay cut because she wanted to work with less fortunate patients. She was hired as Saban Community Clinic's first pulmonary medicine physician. She was responsible for the pulmonary patients and worked three clinics per week. Everyone at the clinic is truly dedicated, and she loves working with the staff, residents, and medical students. It is "the most rewarding work" and she enjoys increasing patient access to clinics. She also now has more time to spend with her family.

In July 2021 she was promoted to Associate Medical Director where she oversees all training and administration responsibilities. She has started a number of specialty clinics so she manages the logistics of establishing those clinics. Her duties and responsibilities as Associate Medical Director include overseeing policies, ensuring clinical operations during COVID, which required her to implement a number of new protocols the clinic did not have before. She is also responsible for infusion treatments which provide antibody therapies for patients. She explained that the medications are free but there was nowhere for patients to receive them, so she created an infusion clinic where patients can receive treatment.

In her role, Dr. Noble has worked with Cedars-Sinai to procure volunteers to come and run specialty clinics which has enabled her to expand the rheumatology clinic and add orthopedic, nephrology, and endocrine clinics. She is currently working on starting a diabetes clinic and an obesity clinic. She finds physicians to collaborate

with who are willing to come volunteer at the clinics which requires providing space, staff, and scheduling patients. Dr. Noble works with residents or fellows so the clinics also become a training environment. Saban Community Clinic also has medical students working at the clinics as it is a training facility for them, too. Saban Community Clinic is a continuity clinic and medical students develop a panel of patients. She serves as the advisor and preceptor, who teaches or discusses patients and their care with the medical students, residents, and fellows in a “teach while practicing medicine” environment. Dr. Noble attends all meetings at Cedars-Sinai to discuss the progress of the medical students, residents, and fellows, the clinics, and address all issues.

Dr. Noble described the winter of 2021 in Los Angeles as “by far the worst” for patient deaths. Cedars-Sinai had the highest mortality of any month in its history. The “mortality scene was unprecedented.” There was the period of slight improvement with treating COVID patients, but then other COVID variants arrived which were worse and the deaths increased. Because of infection concerns, patients were seen by internal medicine and the pulmonary physicians, as the specialists would defer having their patients seen to internal medicine and pulmonary physicians. So, Dr. Noble was on the front line treating COVID patients.

Dr. Noble explained the events surrounding her DUI. During 2020-2021 her work was “challenging to say the least” due to the COVID pandemic. In Orange County, every single hospital was beyond capacity, there was nowhere to put patients, and “we cared for critically ill patients in parking lots and hallways.” The workload was more than reasonably would be expected. It was extremely difficult, there were young patients, they were alone, and “the circumstances were not the best.” She wondered, “If there was a different scenario, would the result be better? For example, if we were

not doing a code in the parking lot, would the result be better?" Dr. Noble contracted COVID in November 2020. She had symptoms but was "fortunate enough" not to require hospitalization. She was sick but her "bigger concern" was who would care for her children if she died, and what would happen if her children got sick.

Dr. Noble got her DUI in Laguna Beach on Valentine's weekend which also happened to be just before her birthday. Her mother thought it would be good for Dr. Noble and her husband to get away and she would watch the children. Dr. Noble and her husband drove to Laguna Beach. Both are pulmonologists who had been working a lot and not spending much time together. The plan was just to relax for the weekend. They drove to Laguna Beach in her husband's car, and arrived at the hotel too early for check-in, so their room was not ready. They went to the lobby in an outside area to wait. There was no food service because of COVID but they could order drinks so they ordered a bottle of champagne.

Dr. Noble estimated that she had approximately two and one-half glasses, but noted she was not paying attention to the number of glasses she was drinking. They were sitting in the hotel lobby drinking through the afternoon. They had a dinner reservation for 7:30 p.m. at a restaurant about 20 minutes away from their hotel on the beach. Her husband tried to call an Uber or taxi to take them to the restaurant but none were available. Her husband said that he would be fine as he did not plan to drink much. She "did not give it a thought" about driving back to the hotel until it was obvious after dinner they were both intoxicated. "It should have been obvious much sooner." Because her husband was going to drive to the restaurant, she left her purse at the hotel.

The restaurant seating was outside and it was chilly but she was happy to be at dinner as she had not eaten all day. They ordered food and a bottle of wine they

shared. At some point her husband was talking with their server about wines and the server mentioned a bottle of wine they must try, so her husband ordered a second bottle. Dr. Noble explained that for both she and her husband this was "a pretty dark time" and part of the weekend was an effort to escape from COVID and all they had been experiencing but "obviously that wasn't successful." Dr. Noble does not recall what she ate, but the restaurant receipt documents a fish entrée which is the type of food she will usually order so believes that is her dish.

After dinner her husband tried to call an Uber and was not successful. He said that if they were in another shopping area, they may have better success getting an Uber and could walk there. However, the "feeling was we needed to move the car." She has never gone back to the area to check to see if they needed to move the car. Dr. Noble does not know why she was the one driving, she presumes her husband was more intoxicated than her. Dr. Noble recalls going over the divider and recalls being pulled over. She did not see the divider before she drove over it. She does not recall the officer using a PA system to tell her to move to the side of the road.

Dr. Noble acknowledged feeling intoxicated before driving and explained that, while it would have been a "great idea to wait at the restaurant," she had no answer as to why they did not. She acknowledged, "I could have done better than to drive, I wish I could explain why, I don't have an answer." Dr. Noble has very little recall of her interactions with the police, testifying that while observing the officer's testimony, she did not recall ever seeing him before. She just recalls feeling an overarching fear and shock, it is a feeling she has never had before and is hard to explain. She had never been arrested or in trouble with the law before. The only other time she had ever been intoxicated was when she was 19 years old at her mother's birthday party at her mother's home where she did tequila shots.

Dr. Noble remembers "bits and pieces" of the evening. She does not dispute her BAC. She "thinks the officers were doing their jobs and she doesn't have any dispute" with them, "obviously I wish very much any number of things were different." She does not remember events written in the police report but believes the report to be true. After being released, she and her husband returned to the hotel. They picked up their car much later that day and that night just stayed in their hotel room, not going anywhere. Dr. Noble did not feel well the next day, "I guess I was hung over, that is the best way to describe it."

Dr. Noble was represented by an attorney and pled guilty to the DUI. At court she learned her BAC was 0.19 percent. She was "extremely surprised because it is extremely high and I can't imagine how I would allow that to get to there, I am very surprised and very disappointed in myself." Before the DUI, in social settings she drank maybe once a month on weekends, perhaps twice a month if there was a holiday, graduation or vacation during the month. She very rarely drank during weekdays, perhaps sometimes for a work dinner or if people were over, but not every night or even every week.

Her feeling about the DUI over time is the same as she feels at this hearing. "I feel terrible for what happened, I allowed it to happen, today I'm sitting here because I made a very poor decision. Not a day goes by that I do not have tremendous disappointment in myself." Dr. Noble described all that she "absolutely" learned from the court-ordered classes. It was "a very humbling experience because I realize that at any given time anyone can make mistakes but the question is how do we take away, how do we move forward, how do we take a terrible situation and move forward." Dr. Noble "has no excuse or explanation" for why she drove that evening. "I did it, I got behind the wheel, it was my choice, my choice alone, and no excuse for whatever the

circumstances.” She is aware of the “very significant consequences” that could have happened had she not been stopped by police that night and it is “difficult to accept as a physician who works to help people every day that I put people in danger.”

After her DUI, Dr. Noble did not stop drinking completely. She had a New Year’s glass of champagne celebrating 2022, and on a family vacation to Singapore in August 2022, their hosts served a bottle of wine to toast them and she drank half a glass because she “felt it was impolite to refuse” their offer. She also had a drink on her anniversary, her husband’s birthday, and maybe one other special occasion. She does not drink and drive. Once the board investigation began, “it became clear” that she “would have to show” she can be fully abstinent so has had no alcohol since August 2022. Not drinking is not a change in her lifestyle because she was not much of a drinker before. On New Year’s Eve 2023 she was the only one not drinking champagne and it was fine.

Since September 2022, Dr. Noble has voluntarily enrolled in random testing to demonstrate her abstinence. She voluntarily submits to random biological fluid testing and uses the Soberlink² device three times a day. Every morning she checks in to see if she has been selected. If called to test, she must go to the lab within a certain timeframe.

Dr. Noble also successfully completed the University of California San Diego (UCSD) School of Medicine PACE Program Ethics Course, which she described as “a

² Soberlink is a professional-grade breathalyzer system with facial recognition that automatically sends results in real-time to designated individuals. Its system is tamperproof and has been approved in all 50 states.

very, very good course." The course consisted of working with a small group where they shared their stories and discussed "how our actions affect us as professionals." The course discussed "the importance of always holding ourselves to the highest standards. Whatever mistake brought you here, how to learn from it, how to go forward, how not to repeat the mistake. In general, how every decision we make comes with significant consequences."

Dr. Noble completed all court-ordered terms and "did all right away." The DMV reinstated her license and her alleged refusal to do a breathalyzer was set aside because that did not occur. Other steps she has taken to demonstrate abstinence is undergoing an evaluation by an addiction medicine specialist. She did this because "it is not enough for me to say I don't have a problem; it is important to have an objective evaluation by someone who sees patients with this condition." Dr. Noble remains abstinent, works on continuing her self-improvement, and focuses on healthcare. Now that her gym has reopened, she and her daughter go together several times a week. She also enjoys hiking on weekends.

Dr. Noble is committed to never drink and to never get another DUI. She has many regrets for the choices she made that evening and they are "very hard life lessons." She has a career she holds dear and she has children and she should not have had even one DUI. She is very committed to her career, feels very passionate about it, it is hard to imagine doing something else. She acknowledges she did something bad.

On cross-examination Dr. Noble was asked about her prior alcohol use which was consistent with what is contained in her expert's report. One correction to that report she would make is that she did not say she "started drinking" alcohol in high school, she said she "tried" it in high school. She explained she was at a party and

some people had a beer and she tried it, perhaps two times in high school. It was not something she enjoyed and she was more focused on her studies and life goals. Other than the night of the DUI, she did not increase her alcohol use during COVID as she was working long hours and had two children at home. She has a routine at home and alcohol "does not enter what we typically do."

On the night of DUI, after drinking champagne on the Laguna Beach hotel terrace, they went to their room to change before dinner. Dr. Noble was shown the restaurant receipt which only indicates that one bottle was purchased.³ She had never seen it before so thought they paid for two bottles of wine, but perhaps their server did not charge them for the second bottle. Dr. Noble was not paying attention to how much she and her husband were drinking, she can only estimate what she drank. She does not recall making the statements that are attributed to her in the police report, but since they are in the report, she must have made them. During her board interview, she admitted drinking champagne and three to four glasses of wine.

Dr. Noble does not recall the conversation regarding her driving the car. It is "very unlikely" she was going to drive to the hotel. She would not have agreed to do that because she did not know the way. She recalls them thinking the car could not remain where it was parked. They were going to move the car, park it, and try to get an Uber from a nearby shopping center. Dr. Noble does not recall if she or her husband had the keys but explained the car will start if one of the occupants has the key, as it is an automatic start vehicle. Accordingly, no facts support complainant's

³ The receipt was obtained by complainant the day before the hearing began but not produced to respondent. It was first introduced during complainant's cross examination of Dr. Noble.

argument that some of the evidence showing that Dr. Noble is alcohol tolerant is because she was able to put the key in the door, in the ignition, and turn it, as none of that occurred.

Dr. Noble assumes she was disoriented because it does not make sense that she drove north from the restaurant when they intended to head south. She does not recall passing parking spots as she drove. She thought that from the restaurant she made an immediate left, but based upon the police report, she would have made a right, and driven along the frontage road before making her left. The left she made was too short, and she never realized she was in the oncoming lane. She did not see the median until she drove over it. She first noticed the police officer when he stopped behind her. In her mind, this all happened quickly, she does not recall driving a great distance. She does not recall putting on her indicator, but "I always do so, so I could see myself doing it." She does recall that the stretch of road was very dark with very few cars. Ironically, where she pulled over and eventually stopped is the area where she and her husband intended to park their car as it is marked public parking.

When questioned about the statements she made to officers that evening, Dr. Noble stated, "I think it's disgraceful I made those comments. I should not do that. I'm embarrassed, it's disgraceful, I was not aware of it and don't know how to [reply.] I feel awful, there is no excuse, it is unacceptable, I feel very ashamed. I should not have spoken to any officers in that manner. I was not aware that I did." Dr. Noble's husband sent a letter of apology for his behavior to the police officer.

Dr. Noble testified in a straightforward, contrite manner. She expressed sincere remorse for her actions and is clearly embarrassed by her behavior that night. Her testimony was credible, persuasive, and sincere.

Alcohol Testing Reports

9. A March 2, 2023, Soberlink Client Detail Report showed that between September 8, 2022, and March 2, 2023, Dr. Noble had 510 compliant tests, zero missed tests, and zero non-compliant tests.

Dr. Noble was unaware of any issues with her labs until reviewing the documents in preparation for this hearing. On September 17, 2022, at 1:30 a.m., a compliant test was received late as the 7:00 p.m. test was missed. On November 5, 2022, a positive test was received at 6:01 a.m. and a compliant retest was received at 6:16 a.m. Dr. Noble explained the circumstances surrounding the positive result. She had gotten up early that morning before it was time to test and used mouthwash without thinking. She immediately emailed her test site monitor and her attorney about what to do as she had never had a positive test. She was told to rinse her mouth with water and retake the test in 15 minutes, which she did, and that test was negative.

On January 16, 2023, a test was received at 3:13 p.m. and the identity was declined. A compliant test was received at 3:15 p.m. Dr. Noble explained that in addition to blowing into the Soberlink device, it also records her face, and cannot do so unless the lighting is proper. On that day, she took the test in an area with poor lighting, but then moved to a different location, and retook the test which was compliant.

10. A March 2, 2023, Spectrum Compliance Testing History Report documented that between September 21, 2022, and February 17, 2023, Dr. Noble had 21 negative urinalysis tests. One test was "rejected" on October 13, 2022, and one test was "value out of range" on November 4, 2022. The Soberlink tests on those two dates were negative.

11. Alex Schwipper, Ph.D., of Professional Monitoring, LLC, authored a letter under penalty of perjury on March 2, 2023, certifying that Dr. Noble voluntarily participated in a drug and alcohol monitoring program since September 8, 2022. "She has been fully compliant and in good standing with the monitoring program." Dr. Schwipper described the testing which consisted of testing for alcohol using Soberlink, a photo enabled device that tests for breath alcohol content twice daily with an optional mid-day test. As of the date of his letter, Dr. Noble had tested 176 days, a total of 510 tests, and all tests had been compliant. Dr. Noble also took randomized weekly "Urine Analysis" tests which test for a variety of substances, including ethanol. Dr. Noble had been randomly selected for 25 tests and of those, two "have yet to result." A test on October 13, 2022, was rejected because of collector error, and a test on November 4, 2022, resulted in a "value out of range for slightly low creatinine." However, all resulted "Urine Analysis" tests were negative. Dr. Schwipper wrote:

In summary, [Dr. Noble] has been fully compliant with her testing and has had no missed or positive tests over the course of his [*sic*] monitoring program. She has been diligent, positive and a pleasure to work with. Through the course of rigorous testing profile there are many challenges, and [Dr. Noble] has made the effort to deal with all issues as they have come up. She is highly communicative, motivated, and incredibly conscientious.

Complainant's Alcohol Use and Effects Expert

12. Complainant called Timur Shah Durrani, M.D., M.P.H., M.B.A., to testify regarding the metabolism of alcohol. Dr. Durrani received his Associate of Science in Medical Technology from George Washington University in 1997, and his Bachelor

of Science in Medical Technology from the University of Arizona in 2000. He received his medical degree and his Master of Public Health from the University of Arizona in 2004. He did a residency in family medicine at UCLA from 2006 to 2007, and received his M.B.A. from University of California, Irvine in 2008. He did a residency in public health and preventive medicine at California Department of Public Health from 2007 to 2008, a Fellowship in occupational and environmental medicine/medical technology at University of California, San Francisco (UCSF) from 2010 to 2012, and obtained his military and strategic studies degree from the United States Army War College in 2018.

Dr. Durrani has been licensed in California since 2005, and is board certified in family medicine, public health and preventive medicine, medical toxicology, and occupational medicine. He has a medical review officer certification, a certification required for federal drug testing, and is a workers' compensation qualified medical evaluator. Dr. Durrani has been a professor at UCSF since 2012. He was an emergency department attending physician at several facilities between 2006 and 2010, a preventative medicine physician in Kuwait in 2013, a senior medical officer with the US Army in Afghanistan in 2020, and has been a preventative medicine physician at the Womack Army Medical Center since 2015.

Dr. Durrani is presently the Medical Director of Health Services at Lawrence Berkeley National Laboratory. In his current role, he manages the Health Services Department, provides preventative care and treatment to the laboratory employees, precepts students, residents and toxicology fellows in the management of poisoned patients, serves as an attending consultant, treats outpatient toxicology patients, and provides clinical advice to physicians and the public. Dr. Durrani has received numerous honors and awards, given several presentations, and has had several publications, including papers in peer-reviewed journals.

13. Dr. Durrani authored two reports regarding how alcohol is metabolized in the body. As noted in his January 29, 2023, report, he was asked to address the effects of alcohol on the body, including mental and physical impairment; how alcohol is absorbed, metabolized and eliminated; to estimate the number of drinks Dr. Noble would have to consume to reach 0.19 percent BAC, including how much her BAC would rise with one drink and how many drinks would be in her system at the time of driving; and to comment on whether 0.19 percent BAC is high and what that says about Dr. Noble's "typical drinking habits" if she was able to "get into a car and drive away." The only documents Dr. Durrani reviewed were the Forensic Volatile Examination Report which listed Dr. Noble's BAC, and an email from complainant's counsel. He did not review the police report or Dr. Noble's interview with the board investigator.

Dr. Durrani wrote in his report that complainant's counsel's email provided the following details: Dr. Noble's sex, weight, and height, the time of driving and time of blood draw, the BAC results about which complainant's counsel wrote "I don't really understand this - it looks like a single sample was analyzed by two different people." Dr. Durrani also wrote that complainant's counsel stated in her email: "Unfortunately, we do not have much of a drinking pattern." Complainant's counsel's email also contained excerpts and summaries of some of the statements Dr. Noble made as documented in the police report and in her board interview. It did not appear he was provided with the entirety of her statements.

Dr. Durrani's report set forth the effects alcohol have on a person and how it is absorbed, metabolized and eliminated. Individuals will have a higher alcohol concentration if they have not eaten. His report contained information about what a "standard glass" of various types of alcohol would be and the percentage of alcohol in

each type, but did not contain information regarding what is considered a standard glass of champagne or its alcohol percentage. Dr. Durrani wrote: "It is unknown what time Dr. Noble started or stopped consuming alcohol." He referenced the time she was driving and her blood was drawn as documented in the police report, and "assuming" she began drinking two hours before driving or approximately four hours before her blood was drawn, she would have consumed six glasses of wine to achieve a BAC of 0.19 percent. Dr. Durrani wrote that the formula he used for his calculations "is an estimation only, and subject to some level uncertainty [*sic*]." Dr. Durrani referenced a California DMV chart which showed that someone with a BAC of 0.19 percent is "legally intoxicated." Dr. Durrani opined:

A person who is able to operate a motor vehicle at a level of 0.19 [percent BAC] may be exhibiting tolerance to alcohol. Tolerance to higher levels of alcohol is seen in people who consume alcohol on a regular basis.

Dr. Durrani concluded his first report by stating he reserved "the right to amend my opinions should additional information not known to me at this time become available."

14. In his supplemental report, Dr. Durrani was asked to address Dr. Noble's BAC at the time she was driving, approximately two hours before the blood draw. Dr. Durrani calculated her BAC when driving would have been 0.22 percent. He again reserved the right to amend his opinion if additional unknown information became available.

15. Dr. Durrani testified consistent with his reports. In his current role as Medical Director of Lawrence Berkeley National Laboratory, he works for UC, Berkeley

in a research lab with 5,000 employees. His role is to prevent workplace injuries and exposures. He continues to teach at medical schools and does a clinical toxicology rotation at clinics and hospitals. He is also an ad hoc reviewer for journals and performs oversight of the training of occupational medicine residents.

Dr. Durrani described his calculations, the formulas he used, and how the body absorbs, distributes, metabolizes, and excretes alcohol. There is a "standard elimination rate" that is used to calculate the rate at which the body eliminates alcohol. People who drink alcohol regularly increase their ability to excrete alcohol faster. Thus, higher elimination rates are seen in people who drink alcohol regularly. He explained how a "standard drink" depends on the type of alcohol and its concentration. When the type of alcohol consumed is known, the "dose" of alcohol consumed can be calculated.

Dr. Durrani explained that using a person's weight, gender, "ending BAC," and the time the person stopped drinking, it is possible to "work backwards" and calculate the person's BAC at the time of arrest. In this case, Dr. Noble's BAC when she was stopped by police would have been 0.22 percent. Given that percent, he would estimate that Dr. Noble consumed six glasses of alcohol. He opined it would be physically impossible to reach Dr. Noble's BAC with just one glass of alcohol.

Dr. Durrani was questioned regarding tolerance, explaining this is the idea that alcohol has no effect on the individual. He testified that a person who can function or operate a motor vehicle with a 0.22 percent BAC, has a greater tolerance than someone who does not drink regularly. Most people at a 0.22 percent BAC do not have "general acuity of their faculties" to operate a vehicle. So, an individual who could do so has a greater tolerance, and ability to tolerate alcohol more than someone who does not drink alcohol regularly.

On cross-examination Dr. Durrani testified that he has had addiction medicine training in his career but does not perform evaluations to determine if individuals suffer from substance use disorder. He explained this is "not generally the focus of what I do." In his role, he is dealing with the outcomes of the disorder, not trying to diagnose it. His role is to connect employees to assistance services and programs.

When asked about his tolerance opinions, Dr. Durrani acknowledged that he has no knowledge of Dr. Noble's consumption of alcohol before her DUI. He only reviewed the lab report, he was not provided with a copy of the police report. He does not know how Dr. Noble appeared at the scene. He does not know about her slurred speech. He does not know that she drove her vehicle over a raised median. He agreed that someone with a 0.19 or 0.22 percent BAC who could successfully operate a vehicle would be tolerant whereas someone with those same BACs who could not operate a vehicle would not be tolerant for alcohol. He also agreed that fine motor skills vary from person to person.

Dr. Durrani acknowledged that his report does not contain any calculations for champagne. He did not review any information indicating the number of alcohol beverages Dr. Noble consumed as he "didn't have access to that." His report does not include champagne calculations, but he estimated that two and one-half glasses of champagne would be equivalent to the same number of glasses of wine. He also acknowledged that when an individual stops drinking alcohol, the BAC continues to rise for some period of time before decreasing.

Dr. Noble's Fitness for Duty Expert

16. Gregory Skipper, M.D., received his Bachelor of Science in Psychology and Chemistry from the University of Alabama in 1971. He received his medical degree

from the University of Alabama School of Medicine in 1974. He completed a residency in physical medicine and rehabilitation at Spain Rehabilitation Center in Birmingham, Alabama, from 1974 to 1975, and an internal medicine internship at University of California, San Diego from 1975 to 1978. Dr. Skipper is board certified in internal medicine and addiction medicine. He is a Distinguished Fellow of the American Society of Addiction Medicine, and a Certified Medical Review Officer. Dr. Skipper is currently an Emeritus Advisor to professional recovery programs, a medical consultant and co-founder of PBI Education (formerly Professional Boundaries, Inc.), and a Medical Review Officer, Toxicology, Consulting. Dr. Skipper is licensed in California, Alabama, and Oregon.

Dr. Skipper was a Medical Director of a community clinic in San Diego from 1978 to 1980, practiced with an internal medicine and cardiology group in Oregon from 1980 to 1995, was an addiction medicine consultant at Springbrook Hazelden from 1993 to 1996, served as a Medical Director at several programs, and served as an assistant professor where he was the Director of the Addiction Medicine Fellowship Program at Oregon Health Sciences University, School of Medicine. Dr. Skipper has had multiple appointments, served on numerous committees and task forces, made several presentations, and has numerous publications and papers to his name.

17. Dr. Skipper evaluated Dr. Noble and authored a Fitness for Duty and Comprehensive Diagnostic Evaluation report on September 16, 2022. Dr. Skipper reviewed the court documents, the police report, arrest report and court records, drug testing performed at Quest Lab (which was negative), the results of the Cambridge Brain Science cognitive screen, and letters of support from three physicians. He also interviewed Dr. Noble's husband and two colleagues, one who is her supervisor. Dr. Skipper administered the Cambridge Brain Science, a cognitive screening test. Dr.

Noble's mental status exam was normal. Dr. Skipper performed Internet, social media, and board website searches of Dr. Noble, and took a lengthy history from her. Dr. Skipper concluded that Dr. Noble does not have a substance use disorder.

Dr. Skipper documented his discussions with Dr. Noble regarding her arrest. Her statements to him were consistent with her testimony at this hearing. In summary, she and her husband are both pulmonologists and were on the front lines of the COVID pandemic, witnessing "much more death among their patients than usual." Dr. Noble had recently had COVID and was recovering. She and her husband were overwhelmed, stressed, and overworked. Her mother suggested they get away for a couple days to decompress and offered to watch Dr. Noble's two children. She and her husband drove to a hotel in Laguna Beach for a joint Valentine's Day/Dr. Noble's birthday retreat. At the hotel they ordered a bottle of champagne and Dr. Noble may have consumed two and one-half glasses. Her husband said he was okay to drive to the restaurant. She felt a bit tipsy, and she trusted his judgment. At the restaurant she thinks she drank about three glasses of wine. Dr. Skipper's interview with Dr. Noble's husband confirmed he ordered more wine than they typically do because they were at a great restaurant which had interesting Italian wines he wanted to try.

After dinner Dr. Noble's husband said he had too much to drink and could not drive. They tried to get an Uber but could not because of the pandemic. They had to move the car because it could not be left where it was in the parking lot so they decided to move it across the street and walk to an area where they thought they might be able to could get a taxi or Uber. Dr. Noble did feel intoxicated but only needed to drive the car a short distance. She drove, "turned and veered over the divider," and was pulled over by police. Dr. Noble told Dr. Skipper that her DMV license suspension was set aside because police body cameras proved she did not

refuse a breathalyzer. Dr. Noble completed all her court-ordered requirements. She immediately notified her colleagues at the clinic of her arrest, who were both supportive and surprised. At the time of Dr. Skipper's evaluation, Dr. Noble had been interviewed by a board investigator, but an accusation had not yet been filed. Attorney Belfour advised her to undergo drug testing, remain abstinent, perform Soberlink testing three times a day, and undergo this diagnostic evaluation.

In his "Summary of Findings from Evaluation," Dr. Skipper noted that Dr. Noble's account of events "is not exactly consistent with police report and upon discussion with [Dr. Noble] concerning this issue she states that she was so intoxicated she may not remember the events accurately."

Dr. Skipper took a substance abuse history. Dr. Noble first drank in high school, she first got intoxicated on November 28 at age 19 when a friend taught her how to do tequila shots. This was the first and last time she did that and she denies being drunk since that day, except for the day of the DUI. Dr. Noble did not party much in college because she was a competitive athlete and serious about school. Her first husband was into wine and on weekends she would drink wine, but only a glass or two at most. She never drank hard liquor. For special events she would drink occasionally, but never to excess. She had not been drinking much since her DUI. On New Year's 2022, she had one glass of champagne, and over the past six months had almost no alcohol, only sips of a glass of wine at her husband's insistence that she try. She last drank a glass of wine in July 2022⁴ on a trip to Singapore when it was offered by the

⁴ Dr. Noble said the trip was in August 2022.

host. She specifically did not take opioids after hernia surgery because "she wanted to return to work ASAP." Dr. Noble reported being happily married.

The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, (DSM-5) contains the diagnostic criteria that must be met in order to make a diagnosis of Substance Use Disorder. Dr. Skipper used the DSM-5 in his evaluation of Dr. Noble. In the section of his report marked "Discussion of Findings," Dr. Skipper wrote:

Based on her history and discussions with her [Chief Medical Officer] and fellow physicians, Dr. Noble is a very dedicated and successful physician who has chosen to work in a setting with indigent patients. She is a valued faculty member at Cedars-Sinai Medical Center. She and her husband, who is also a pulmonologist, were in the throes of the Covid-19 epidemic in February 2021 and both were burned out and overwhelmed. They took a weekend off and drank champagne and wine, and in this setting, they drank too much and she made the poor decision to drive. She had a very elevated [BAC of 0.19 percent]. She has no history of previous problems with alcohol.

Regarding the DUI arrest, in the absence of any prior history of alcohol-related difficulty and since there has been no recurrent or subsequent problem with alcohol, the DUI appears to have been an aberrant event for Dr. Noble. Her current negative drug screens are consistent with no current substance use disorder. Collateral interviews with her husband and colleagues suggest she does not have an

alcohol problem. By history she is very healthy. She has excellent cognitive function based on screening cognitive testing.

Concern regarding public safety should be focused on whether there is risk of further irresponsible alcohol use. The presence or absence of Alcohol Use Disorder thus becomes relevant as it is a significant predictor of recidivism. Studies show that depending on the criteria used for diagnosis (DSM III, DSM IV or DSM 5) the statistical chance of a first-time DUI offender having any significant Alcohol Use Disorder is from 42% to 46% [Citation]. A report from the California Department of Motor Vehicle [sic] dates that although higher blood levels, up to [0.29 percent BAC] are predictive of recidivism, most 2nd DUIs occur within the following year [Citation]. It has been 17 months since Dr. Noble's DUI. The fact that she has had no further difficulty is a very positive sign.

Using the DSM-5 criteria, Dr. Skipper concluded that Dr. Noble "does not have an Alcohol Use Disorder, now or in the past." (Emphasis in original.) She also does not meet the DSM-5 criteria for "any other psychiatric disorder," and she "has no prior history of alcohol (or any drug) related problem." Dr. Skipper has no recommendations and determined Dr. Noble is "fit to continue practice without restriction."

18. Dr. Skipper performed a Follow-Up Fitness for Duty and Comprehensive Diagnostic Evaluation on February 7, 2023. In addition to the documents previously reviewed, Dr. Skipper also reviewed drug test and Soberlink reports. In the "Interim

History since previous evaluation in September 2022" section of his report Dr. Skipper wrote:

[Dr. Noble] has been testing with Soberlink TID (three times per day) and all tests have been negative. She has only had one late test, otherwise, she's been conscientiously testing three times daily. She has also continued random urine testing, approximately weekly, including alcohol metabolites and all tests have been negative. Despite it being inconvenient she has adapted her work schedule to allow random urine collections on time.

Dr. Noble was doing well at work, and the clinic was expanding services for indigent patients and had added an orthopedic clinic. "The leadership at the clinic had been very supportive to her. She has had excellent annual reviews." Dr. Noble and her husband were "getting along well and he is very supportive to her." Her two children are doing well and Dr. Noble "cooks dinner almost every night and the family eats together nightly." She had resumed exercising regularly, goes to the gym with her daughter, and most weekends the family hikes together. Dr. Noble had completed all court-ordered requirements.

In the "Discussion of Findings" section of his report, Dr. Skipper wrote: "This current follow-up evaluation confirms that Dr. Noble continues to do well. She has had no further problem with alcohol. Her prognosis is excellent. She continues to be fit for duty." Dr. Skipper reiterated his opinion that Dr. Noble does not have an Alcohol Use Disorder, noting it "has now been 22 months since Dr. Noble's DUI. The fact that she has had no further difficulty is a very positive sign." He wrote: "She continues to be fit-for-duty without restriction."

19. Dr. Skipper testified consistent with his reports. He described his lengthy 30 year career in addiction medicine, focusing on working with professionals. He was the Medical Director and Chief of Staff at Springbrook Hazelden in Oregon for six and one-half years, served as the Medical Director of the Alabama Physician Health Program for almost 12 years, and worked in Los Angeles. He developed and oversaw treatment programs for professionals. As a medical review officer, he reviews drug test results consistent with federal laws. Dr. Skipper explained the various biomarkers examined to determine alcohol use and the evolution of tests to determine alcohol use. He has evaluated more than 2,000 physicians in his career, evaluating approximately 100 physicians per year during the last five years.

Dr. Skipper obtained all the records at issue in this matter, including the complete police report, interviewed Dr. Noble, her husband, and other individuals, deciding who to interview after reviewing all the documents and conducting a comprehensive interview of Dr. Noble. Dr. Skipper performed a cognitive function test and did extensive drug testing, consisting of bloodwork, extensive hair testing, and extensive urine testing. He reviewed numerous websites to obtain any information posted online regarding Dr. Noble. Dr. Skipper reviewed literature in medical journals. He then put all this information together to formulate his plan for further evaluation.

Dr. Skipper explained the DSM-5 criteria for substance use disorder. There are 11 criteria that must be reviewed to determine if a patient meets the diagnosis. The amount of alcohol consumed is not one of the criterion. The disorder ranges from mild, moderate, to severe. Dr. Skipper sees his role as "trying to determine accurately if there is a diagnosis." He equated his work to what a cardiologist does to diagnose patients, pointing out that chest pain does not always mean a heart attack, just like a DUI does not always mean a substance use disorder. He does not see his job as an

advocate for Dr. Noble, his job is to determine accurately if Dr. Noble meets the criteria for a substance use disorder under the DSM-5.

Most physicians who are referred to Dr. Skipper do have a diagnosis of substance abuse disorder. If there is a diagnosis, he "absolutely" recommends treatment because substance use disorder is a chronic condition and can recur so the goal is to decrease future trouble. Dr. Skipper clearly explained how the various tests he reviewed worked and he demonstrated a vast knowledge regarding the tests. The Quest lab tests "look back three to four weeks to see how much alcohol someone has been drinking." Other tests measure alcohol consumption at various points in time. Dr. Skipper is very familiar with the Soberlink system. He was approached by the Soberlink company in 2011 to help conduct their study to determine when testing would be more likely to detect alcohol use. As a result, he has reviewed hundreds of cases of individuals who are using Soberlink.

Dr. Skipper's understanding of the DUI events is that Dr. Noble and her husband are both pulmonologists who were heavily involved in the early period of COVID. There were lots of deaths, long hours, and it was "a crisis time in our country." Dr. Noble and her husband "were on the front line of that, stressed out, and overworked." They were encouraged to take a break and Dr. Noble's mother agreed to watch the children so Dr. Noble and her husband took a short break to a hotel in Laguna Beach. They arrived at their hotel, had champagne, then had wine with dinner, and clearly Dr. Noble drank too much. It was in a setting of having been stressed and then having a break that both Dr. Noble and her husband overused alcohol. Her husband drove to the restaurant but had too much to drink so Dr. Noble was attempting to drive the car after dinner.

The DUI was "a terrible thing that happened, an error in judgment." There are some discrepancies in Dr. Noble's reporting, but Dr. Skipper opined that can "be chalked up to" the fact that Dr. Noble was intoxicated and does not recall exact details. Dr. Skipper explained it is common for there to be a discrepancy in the facts when someone is this intoxicated because intoxicated brains do not function normally, so not recalling the number of drinks or what one did can be caused by either cloudy memories or an absence of memory. Sometimes individuals will try to fill in the gaps and guess what occurred. "It is the nature of intoxication not to remember."

Dr. Skipper testified that a 0.19 percent BAC is very high which means that "unless someone is a chronic, chronic heavy drinker," this level of alcohol will cause drunkenness. The "person is intoxicated and not in their right mind." It is not a lethal level. It does not cause unconsciousness but it is getting close to that level. It indicates that approximately eight to ten standard drinks of alcohol were consumed, or it could be six drinks that were consumed because often people do not know how much alcohol was consumed, and people pour different amounts into glasses. In any event, the police report documented objective signs that Dr. Noble was intoxicated.

The reason that the DSM-5 criteria do not contain an amount of alcohol consumed category is because persons without an alcohol substance abuse disorder can overdo their drinking, that is the nature of alcohol, especially in times of stress, and then the alcohol itself can cause the individual to lose judgment and drink more, but that is not alcoholism or alcohol use disorder. Dr. Skipper explained that a one episode DUI does not fit the criteria for alcohol substance abuse disorder which requires a pattern of use, something which was not established here. Dr. Skipper opined that Dr. Noble only met one of the 11 criteria for substance abuse disorder,

using a substance that put you in danger, as evidenced by her DUI, but one criterion is insufficient to make the diagnosis. Two criteria must be met to make the diagnosis.

Based upon his review of the evidence and the evaluation he performed, Dr. Skipper opined that this was a one time, limited basis incident, it was not alcohol use disorder. It was excessive alcohol use with this consequence of committing a crime, a DUI, and yet Dr. Skipper could not find any history of chronic long-term use that met alcohol use disorder criteria. Dr. Noble's event was "a one-off, it was very unusual."

Dr. Noble's history of alcohol abuse was "not much," and limited social use. Since her DUI, she had a glass of wine at New Year's, a glass of wine while on holiday in Singapore, but almost no other alcohol. Dr. Noble's husband corroborated Dr. Noble's statements regarding her minimal alcohol use. He has seen her drink some wine but had never seen her intoxicated until the night of the DUI. Both work associates whom Dr. Skipper contacted "had never seen her drink hardly at all" and she never had any trouble at work.

Dr. Noble was very remorseful about the DUI, and that she had over consumed alcohol, and was not sure why that happened. Another reason Dr. Skipper ruled out alcohol use disorder was because Dr. Noble accepted responsibility for her actions as opposed to denying them which is more likely to occur with an alcohol use disorder. In addition to not meeting the criteria, all of Dr. Noble's test results were negative, suggesting she had no recent alcohol use of any significance. Her positive performance as a physician also played a role in Dr. Skipper's opinions because Dr. Noble's peers all corroborated her competence which would deteriorate if she had a substance use disorder.

As to recidivism, a diagnosis of alcohol use disorder makes it much more likely a DUI will occur again. The disorder is chronic making it likely there will be another DUI. A higher BAC level also increases the risk. However, the research shows that a second DUI happens most often within one year of the first DUI, which did not occur here. Dr. Skipper did not diagnose substance use disorder or find any psychiatric disorder, thereby reducing the likelihood of a second DUI. Without that diagnosis, it is less likely the individual will have recurrent problems.

In September 2022, Dr. Skipper opined that Dr. Noble was fit to continue practice without restrictions. He then did a follow-up and wrote a report in February 2023 to see if there had been any changes or current problems, which there were not, and her negative test results further supported his opinions, confirming that she is not using alcohol and does not have a substance use disorder. Given his recent evaluation, there is a "very low likelihood" of a second DUI, and further support for his finding that Dr. Noble does not have a substance use disorder, and is not a risk to patients.

On cross-examination Dr. Skipper was shown an excerpt from his website which discusses how comprehensive evaluations use a "team approach" and PowerPoint slides he used during an Arizona Medical Board presentation in 2018. Dr. Skipper credibly explained that if a case involves more complexity and he thinks a team evaluation is needed, he will request one, but such was not the case here, which is why only he did the evaluation. He explained that a fitness for duty examination and a comprehensive evaluation are "really the same thing"; "they are two sides to the same coin." As to his 2018 Arizona presentation, he was "trying to enlighten attendees as future evaluators, I was trying to break it down and make it simple" and adjusting his methods for the Arizona medical board, doing a presentation to fit the request of how they have their system set up. Nothing in this testimony refuted Dr. Skipper's opinions.

Similarly, attempts to undermine Dr. Skipper's DSM-5 opinions were also unpersuasive. Dr. Skipper explained that when using the DSM-5 to make a diagnosis, he looks at all the facts and "it is a matter of judgment and expertise to evaluate." Just like with a cardiologist, one time chest pain does not automatically mean heart disease, a cardiologist will look at all the facts. Similarly, here, one DUI does not mean substance use disorder. Making the diagnosis "is an art, it is not cut and dry." Otherwise, all DUIs would mean the person is an alcoholic, and "the research does not bear that out." In this same vein, Dr. Skipper also refuted the notion that Dr. Noble's inconsistent statements demonstrated alcoholism or made her a non-reliable subject. As Dr. Skipper credibly explained, her inconsistencies were due to her intoxication and failure to remember what occurred, something which "is very common with intoxicated individuals as that is the nature of intoxication." Similarly, Dr. Noble denying she had a substance use disorder does not establish that she has one. She did not meet the criteria for that diagnosis.

Dr. Skipper acknowledged that although he wrote in his report that Dr. Noble immediately informed her colleagues at the clinic about her DUI, he was not aware that Dr. Arshakyan testified he did not learn about it until sometime before writing his August 2022 letter. However, Dr. Skipper was not asked if this changed any of his opinions and he never testified that it did. Dr. Skipper was also questioned about his conclusion that "all tests have been negative." He maintained that was an accurate statement because all tests were negative. If a urine sample is diluted, the lab will report it as diluted, not rejected, as was reported here, and varying creatinine levels caused by drinking water can affect the test. The one "positive" test was later shown to be negative (the mouthwash incident). Dr. Noble had one late test because of a work conflict. None of these tests changed Dr. Skipper's opinions, and he credibly explained how lab values, lab ranges, and drinking water can affect lab results.

Dr. Skipper also explained that “lots of products” contain ethanol alcohol, such as perfume, hand sanitizer, insect repellent, and mouthwash, so Dr. Noble’s explanation of her “positive” test was reasonable. Moreover, when she retok the test 15 minutes later it was negative, further verifying the validity of her statement that she mistakenly used mouthwash. Had she been drinking alcohol, when she retested 15 minutes later, the test would not have been negative. He explained that these are the types of issues he addresses as a medical review officer.

Dr. Skipper does not think that Dr. Noble is tolerant of alcohol. She was grossly intoxicated at this high level of alcohol use which would not demonstrate tolerance. If she were tolerant, she would be able to operate the motor vehicle without getting a DUI. The “fact that she is not tolerant is that she could not function normally.” In fact, the police report shows that she drove the wrong way, drove over a median, stopped in a traffic lane, showed clear signs of intoxication, and could not perform field sobriety tests, all of which suggest she is not tolerant of alcohol. Her BAC levels do not prove tolerance; her behavior that evening “shows quite the opposite.” Based on the DUI and the statements contained in the police report, Dr. Noble did not exhibit tolerance to alcohol on the evening of her DUI.

Considering all the facts, the DSM-5 criteria to make a diagnosis of substance abuse disorder were not met. Dr. Skipper does not believe that Dr. Noble has a substance use disorder.

Certificate of Attendance at PACE Ethics Course

20. As noted, Dr. Noble successfully completed the UCSD Physician Assessment and Clinical Education (PACE) Program “Ethics for Medical Professionals Course” on December 15 to 16, 2022. Dr. Noble voluntarily attended this course.

Employment Documents

EMAIL ANNOUNCEMENT OF DR. NOBLE'S PROMOTION

21. Dr. Noble was promoted at work.⁵ An email dated July 8, 2021, written by Armen Arshakyan, M.D., announced Dr. Noble's promotion to Associate Medical Director for Academic Affairs and Medical Subspecialty Clinics at Saban Community Clinic. The email referenced Dr. Noble's education and employment experience, noting that during her residency, Saban Community Clinic was her continuity clinic for primary care and that after "a stint in private practice," Dr. Noble "felt a need to come back to Saban and work with the underserved populations." Dr. Arshakyan wrote further:

Within one year of her hire, she has proved to be a great asset to the Medical Team, not only as a Primary Care Provider, but with her experience, we have been able to add Pulmonary sub-specialty clinics and provide much needed services to our patients in an area that wasn't available before. Because of Dr. Noble's experience as a resident fellow, and her relationship with Cedars, this promotion will solidify and enhance our relationship with our community partners while allowing me to focus on strategically planning for Saban's success in the future.

⁵ Her promotion occurred after her DUI.

With Dr. Noble's assistance, we been able to make great strides in new areas, examples of which are:

- We opened a pulmonary specialty care clinic (which rapidly expanded within a few months after establishing it).
- Began the process for expanding the Rheumatology Clinic.
- Restructured the residency clinic's workflow which will not only improve the continuity for residents and, most importantly, for patients, but also open doors to educate our residents and other trainees.
- Reestablished our partnerships with the USC Keck School of Medicine and the UCLA David Geffen School of Medicine for medical student rotations at Saban.

PERFORMANCE EVALUATION

22. Dr. Noble's 2022 annual performance review covering the period from July 1, 2021, through June 30, 2022, was performed by her supervisor, Dr. Arshakyan. At that time, Dr. Noble had been employed by Saban Community Clinic for two years, eight months, and 16 days. The review evaluated several competencies and a description of each competency was listed.

In the Clinic I Manager – Job Knowledge category, Dr. Noble received a rating of "far exceeds standards," the highest rating. Her supervisor wrote: "Dr. Noble truly leads

by example. Moreover, she is extremely responsible, making sure to meet deadlines at work. Dr. Noble uses her skills to positively influence the work environment."

In the Clinic I Manager – Work Performance category, Dr. Noble received a "far exceeds standards," the highest rating. Her supervisor wrote: "Dr. Noble is always ready to suggest new ideas and innovative solutions that work. Moreover, she demonstrates a great willingness to continuously learn new skills to improve patient care outcomes. Overall, Dr. Noble is an outstanding team member and is always ready to take on new responsibilities when needed."

In the Clinic I Manager – Professionalism category, Dr. Noble received a "far exceeds standards," the highest rating. Her supervisor wrote: "Dr. Noble is a true professional. She consistently achieves high standards at work. Dr. Noble is an extremely knowledgeable physician who truly cares for her patients. For instance, she not only addresses health concerns but also is extremely aware of social detriments of health. Overall, additionally, she is extremely responsible and I can trust her to complete any necessary tasks, etc. on time.

In the Clinic I Manager – Interpersonal and Communication Skills category, Dr. Noble received a "far exceeds standards," the highest rating. Her supervisor wrote: "Dr. Noble truly has strong communication skills. I appreciate how she is always ready to listen to feedback from others. Moreover, I know I can get honest feedback from her that will help improve workflows, etc. She always communicates with others clearly, no matter the situation. Dr. Noble is always ready to help others."

In the Clinic I Manager – Leadership category, Dr. Noble received a "far exceeds standards," the highest rating. Her supervisor wrote: "Dr. Noble is a great leader. She

does a great job at providing the necessary structure, direction, and feedback to team members.”

In the Goals from Prior Review Period category, Dr. Noble received a “far exceeds standards,” the highest rating. Her supervisor wrote: “Dr. Noble exceeded all goals with a prior review period.” Dr. Noble’s overall score on her evaluation was “100%.”

Character Witnesses’ Testimony and Character Reference Letters

ARMEN ARSHAKYAN, M.D.

23. Armen Arshakyan, M.D., authored a letter to the board under penalty of perjury on August 29, 2022, in which he wrote:

It is with great pleasure that I am writing this recommendation letter for Dr. Anna Noble. I am aware that Dr. Noble has pleaded guilty to DUI. However, I wish to express that she is of an exemplary and responsible character, and this unfortunate situation was undoubtedly one of a kind. As Chief Medical Officer at Saban Community Clinic, I have been overseeing Dr. Noble’s responsibilities at the clinic for two years. I maintain that Dr. Noble is extremely responsible and has never demonstrated unlawful behavior at the workplace.

Saban Community Clinic is a federally qualified healthcare Center that provides high-quality care to underserved patients. At Saban, we strongly believe that healthcare is

not a privilege, but a right. We strive to maintain this belief in our everyday efforts at the clinic. Great physicians such as Dr. Noble make it easy to accomplish our mission. Since her first day at the clinic, it was evident that Dr. Noble's values and aspirations closely aligned with the clinic's vision. She has been working tirelessly to provide quality care to our patients.

Dr. Noble's work habits are excellent. She is dependable, responsible, and organized. During her time at Saban, Dr. Noble has established an excellent rapport with her patients and care team. She is highly dedicated to providing comprehensive care to each of her patients, creating individualized care plans designed to fit each patient's unique needs. I have received positive feedback from many patients regarding her empathetic bedside manner. She has also been a thorough and knowledgeable clinician, operating independently and efficiently since she joined the clinic. Within a short period, Dr. Noble was appointed Associate Medical Director for Academic Affairs and subspecialty clinics due to her extraordinary medical knowledge and administrative skills. For instance, Dr. Noble implemented new work processes at the clinic, which significantly improved the continuity of patient care and residency and subspecialty clinics.

Dr. Noble is always prepared to take on new responsibilities and tasks. Throughout the pandemic, Dr. Noble has been the only pulmonary expert at the clinic. She not only cares for COVID-positive patients but also manages a busy pulmonary clinic.

In addition to her excellent clinical work, Dr. Noble is highly interested in education. She enjoys working with medical students and residents and is creating a positive learning environment for them.

I hope this letter will give you insight into Dr. Noble's good moral character and help her obtain a second chance to prove that this was an unusual occurrence.

Please do not hesitate to contact me with any questions.

24. Dr. Arshakyan testified consistent with his letter. He received his undergraduate education in Armenia and his medical degree from the University of Southern California (USC). He did a residency in internal medicine and then an infectious diseases fellowship, both at UCLA/Cedars-Sinai. He is the Chief Medical Officer of Saban Community Clinic. His duties include supervising clinicians in the medical departments, prescribing, overseeing behavioral health, providing services to adult and pediatric patients, and overseeing administration which involves supervising all regulatory work involved with running the clinic. He also practices at the clinic and supervises physicians, preceptors residents, and operates the infectious diseases clinic.

Dr. Arshakyan first met Dr. Noble during his infectious disease fellowship. Currently he is her supervisor at the clinic. On a daily basis he observes her clinical

skills and ability. He described her as an "extremely smart and knowledgeable physician who has always impressed me since fellowship." Dr. Noble is a physician who is an example to all other physicians with her clinical knowledge, her bedside manner, her professionalism and overall, she is an exemplary clinician, a smart and knowledgeable doctor. She has developed and created clinics at Saban which have greatly assisted the clinic in accomplishing its missions and goals. He described Dr. Noble as "dependable, responsible, extremely knowledgeable and she confers all this to residents. We get lots of positive feedback from residents" about Dr. Noble.

Dr. Noble brought pulmonary medicine to the clinic. Her vision is always aligning with the clinic's vision. She provides care to those in the highest need and is the only pulmonologist at the clinic. She has great experience and has been able to implement "so many new work products at the clinic because of her extraordinary knowledge" and has increased the quality of care and outcomes at the subspecialty clinics. Dr. Noble is always ready to take on new responsibilities and bring it to a desirable outcome. At the pulmonary clinic the number of patients she is serving is "so impressive." He gets calls from patients who want to switch care to Dr. Noble's primary care clinics after those patients finish at the pulmonary clinic.

Dr. Arshakyan reviewed the accusation "just quickly," and first learned of the DUI when Dr. Noble brought it to his attention because he is her supervisor. When talking with her, he could tell she felt extremely bad about it and his first reaction was that it did not happen in a clinical setting, did not involve patient care, and was not in Los Angeles. He appreciated that Dr. Noble came to him directly to communicate what occurred. He was surprised by the DUI because he has always known her to be extremely responsible. He believes the DUI happened "extremely accidentally," based on her personality and her level of responsibility that she has always demonstrated.

Overall, he was not concerned about the DUI because he knows her and knows that nothing similar had ever happened to her before. This is not the type of event that will ever occur again for Dr. Noble.

Dr. Arshakyan did Dr. Noble's performance evaluation and "she absolutely" far exceeds all standards. Dr. Noble's promotion was based on her hard and impressive work, and most importantly because of her patient care. Dr. Noble is a valuable asset for the clinic. It would be extremely unfortunate if the clinic were to lose Dr. Noble and would have a very negative impact on the clinic and the patients. He can "confidently state" that he would be unable to find a replacement for Dr. Noble.

Dr. Arshakyan testified that Dr. Noble drank alcohol more than she usually consumes on the night in question. Her actions that night is behavior she has never demonstrated. At social gatherings he has only ever seen her drink one a small glass of wine. He did not know the details of the DUI. He first learned of it "probably a little bit earlier than his [August 29, 2022] letter." He did not know an expert opined that Dr. Noble's BAC when driving would have been 0.22 percent.

Dr. Arshakyan was not concerned that the DUI will recur. But he was concerned because Dr. Noble felt extremely bad about it so he was concerned for her. He was the one a few months ago who put in the order for her blood to be tested for alcohol. She is the first employee under his supervision to have a DUI. He ordered the tests to ensure patient safety and to make sure "the clinic was in compliance," but he did not have a concern that Dr. Noble would demonstrate similar behavior.

GEORGE GIRGIS, M.D.

25. George Girgis, M.D., of Chest & Critical Care Consultants, authored a letter to the board under penalty of perjury. Dr. Girgis has known Dr. Noble since 2011,

first becoming acquainted with her during their medical training at Cedars-Sinai. They shared several patients during that time, "eventually becoming co-fellows, colleagues, and close friends." Dr. Girgis wrote that "Dr. Noble had a reputation among her colleagues as a no-nonsense, thorough, dedicated, and passionate care provider." "She was the type to never take no for an answer when advocating for patients, always leaving no stone left unturned in terms of care. To this day, this remains unchanged." He wrote that he and Dr. Noble had many rotation blocks together as co-fellows and "often worked side-by-side for periods of up to six months caring for dozens, if not hundreds, of patients together." Dr. Girgis wrote:

Dr. Noble was, in every instance, a fund of medical knowledge and an eager learner as she expanded her procedural abilities. While others sometimes may have been rushing to end the workday, Dr. Noble would worry first about the patient and later about the time - all this despite caring for a young child at home.

I again had the pleasure of working with Dr. Noble after graduation in the same medical group, Chest and Critical Care Consultants in Orange County, CA. Among our group colleagues as well as in the Orange County community as a whole, Dr. Noble quickly earned a reputation of being the "go to physician" for the latest updates in patient care and up-to-the-minute research in our field. She continued to provide superior care for her patients. When Dr. Noble relocated back to the Los Angeles area in 2019, as always, her true character and dedication was evident as she

continually assisted the group throughout the COVID pandemic. Without obligation to do so, and while working a full-time job in Los Angeles (as the world shut down and everyone feared for their lives bunkered at home) Dr. Noble assisted during her few weekends off. She did not hesitate to risk her life and taking time away from her family in the middle of a global pandemic in order to support her colleagues and the community. She was there for us, in a big way, helping with ICU patients when volumes at Orange County hospitals were literally overflowing into the parking lots with critically ill patients. This speaks volumes to her character and dedication to both the medical community and patients.

Over the past decade we have shared numerous social gatherings, both work and family related. I have never known Dr. Noble to partake in excessive alcohol consumption, or frankly drink very much all [*sic*]. A DUI conviction came as a complete shock as this was completely unexpected and out of character. Dr. Noble is prudent, dedicated, and, above all, careful and wise in her decisions. She is, without a doubt, one of the greatest physicians I know. She would absolutely be my choice to care for myself and/or immediate family members if we required critical care. I consider her one of my best friends - more like family. I've always been proud to have her in my life as a source of both knowledge and support.

I am pleased to have the opportunity to write this letter on her behalf, hoping it sheds light on Dr. Noble's true character. I would be happy to address any further questions or clarification needed from the board. Please don't hesitate to contact me.

26. Dr. Girgis testified consistent with his letter. Dr. Girgis graduated from UCLA and received his medical degree from Ross University Medical School in 2007. He did an internal medicine residency at USC from 2007 to 2010. He was chief resident at USC from 2010 to 2011. He did a pulmonary critical care fellowship from 2011 to 2014 after which he did another fellowship at Cedars-Sinai. He then began practicing at Chest & Critical Care Consultants in Orange County, a multidisciplinary group.

Dr. Girgis met Dr. Noble at Cedars-Sinai and shared 95 percent of his rotations with Dr. Noble. They later worked together at Chest & Critical Care Consultants until she returned to Los Angeles to be closer to family. However, his group was "fortunate enough for her assistance when COVID hit." He described how he and she treated patients in parking lots on ventilators, each handling 15 to 20 patients or more at a time. Dr. Noble was kind enough to continue assisting the group "until things lined up and we could get our heads above water" towards the end of 2021.

He described Dr. Noble as "stellar." She is "known as the person you go to for the accurate, latest, and greatest information." It is always, "ask Anna, what does Anna think, she's the one" to ask. He and Dr. Noble are also close friends. He has known her for more than a decade and their families get together. He is aware of the DUI, having first heard about it the following day when she called and let him know what had occurred. It surprised him "very much so." He explained that as pulmonary critical care physicians, "we work hard, play hard, and always get together at social gatherings

where we all let loose." However, he never saw Dr. Noble drink at those events, not even a single sip, "she is always the quiet, reserved, go home early type." He has never seen her intoxicated. At some social gatherings he has seen her have a single drink, but never become intoxicated.

He has reviewed the accusation filed against Dr. Noble and "with knowledge of the DUI and the accusation, I stand behind all [I wrote in my letter] 100 percent." He would feel comfortable having Dr. Noble treat anyone in his family and she does all the time, most recently treating his uncle who is a stroke patient. When his uncle suffered a stroke, she was his first telephone call. He has a "running joke" with her that if he gets COVID he wants her to treat him at the hospital. "Without reservation" his group would welcome her return to Orange County.

On cross-examination Dr. Girgis acknowledged that when Dr. Noble called him and they discussed her arrest, she did not tell him she had been driving the wrong way in traffic or that her BAC was 0.19 percent. (Of note, the toxicology report is dated February 23, 2021, 10 days after her arrest, so Dr. Noble would not have known her BAC results when she spoke with Dr. Girgis the day after her arrest.) Dr. Girgis and Dr. Noble also did not discuss how much she drank, but as far as he knows it was "a little bit of wine." He did not ask her why she was driving. He explained that his statement in his letter that she "does not take no for an answer," referred to her advocacy in the ICU where sometimes a physician has to "push a little bit" to get a consultant to come to the ICU to examine the patient.

CAROLYN ALEXANDER, M.D.

27. Carolyn Alexander, M.D., Reproductive Endocrinology and Infertility, Clinical Associate Professor, UCLA, authored a letter to the board under penalty of

perjury on August 31, 2022. Dr. Alexander wrote that she was the Associate Residency Program Director in Obstetrics and Gynecology and Medical Student Clerkship Director at Cedars-Sinai for almost eight years before assuming her current position at Southern California Reproductive Center. She has known Dr. Noble since 2007 when she was a medical student rotating on her OB/GYN clerkship during her third year of medical school at UCLA. Dr. Alexander wrote that Dr. Noble "is one of the most outstanding physicians with great integrity and dedication to her patients and community. I have mentored her over her excellent career. She helps our community as the Medical Director at Saban Clinic and teaches the next generation of internal medicine residents." Dr. Alexander wrote further:

[Dr. Noble] leads by example and her compassion is quite evident to all who know her. I referred many patients to her who have received impeccable care and I would refer my family to her. I have watched her grow her own family with two healthy pregnancies. She is the most caring Mother and her dedication to her children is inspirational. Our children attend the same school and she led the COVID-19 committee for our entire school. She spent countless hours speaking with worried parents about masking our kids, the vaccine for adults and then children, precautions for air ventilation to protect teachers. She went above and beyond for our school. I have attended many get-togethers over the past 15 years and [Dr. Noble] has never been impaired. She is one of the most responsible individuals I know.

I am writing this as a character reference and am aware she is under investigation by the Board due to a possible DUI. I'm available anytime to discuss any questions (cell phone number). [Dr. Noble] is a true asset to the medical field and to our community.

VICTOR F. TAPSON, M.D., F.C.C.P., F.R.C.P.

28. Victor F. Tapson, M.D., F.C.C.P., F.R.C.P., Professor of Medicine, Division of Pulmonary and Critical Care, Cedars-Sinai Medical Center, authored a letter to the board under penalty of perjury on December 13, 2022, "strongly attesting to [Dr. Noble's] character." Dr. Tapson has been teaching, doing research, and treating patients for more than 30 years. He has evaluated and written recommendations for hundreds of individuals. He has "worked with countless patients with alcohol addiction" and has "guided and advised colleagues with true problems with alcohol." He wrote further:

I have had the pleasure of working with Dr. Noble many times over the years during her training and since she completed her pulmonary and critical care training, we have shared in the care of numerous patients. We, as faculty get to know our trainees very well based upon rounding in the hospital, conferences several times per week, and frequent medical social events, including dinners, holiday parties and teambuilding. I know Dr. Noble very, very well, and she is an absolutely, outstanding individual. Her work ethic is phenomenal and her dedication to her patients is simply unrivaled by any physician that I know. Her medical

colleagues rely on her as a tremendous resource, and she is an exceptionally patient and kind individual. We all know that we can count on her anytime; she is a superb resource for the latest medical data for complex medical decisions.

Her work ethic transitioned very naturally into the COVID epidemic during which Dr. Noble worked and sacrificed hundreds of hours of overtime covering these sick patients who required tremendous dedication and exceptional clinical judgment. Her commitment to such critically ill patients and helping their families cope with death and illness was not remotely surprising to me; this is simply who she is.

Regarding her personal life, she is a wonderful mother and serves as a superb example to her children. Having attended countless social events with Dr. Noble at which alcohol was served, I can attest that at such events she either drinks minimally or not at all. I have never once seen her drink to excess. I was naturally, very surprised to learn about this DUI, and strongly believed that she does not have any issues regarding alcohol. She is an incredibly responsible individual who I feel very fortunate to know. I cannot think of a finer person based on her attributes as a physician, her dedication as a mother, and her outstanding character. She serves as an inspiration to younger physicians, and trainees.

I hope that this letter offers some useful insight for the Medical Board into Dr. Noble's character. I would be very happy to answer any further questions about this superlative individual.

ZAB MOSENFIR, M.D., F.C.C.P., F.A.C.P.

29. Zab Mosenfir, M.D., F.C.C.P., F.A.C.P., a Chair in Pulmonary and Critical Care Medicine, Professor and Vice Chairman Department of Medicine, and Medical Director at the Women's Guild Lung Institute, Cedars-Sinai, authored a letter on December 6, 2022. Dr. Mosenfir was the Chief of the Pulmonary and Critical Care Division for 20 years, having been licensed in California for over 46 years, and practicing pulmonary medicine at Cedars-Sinai for 44 years. He wrote:

I met Dr. Noble in 2008 when she was a house officer [sic] at Cedars-Sinai and later, she joined our pulmonary and Critical Care Fellowship program. Throughout these years I was her mentor, attending physician and supervisor. I watched her on many occasions during rounds, reading Pulmonary functions and seeing patients in my clinic.

I can comfortably say that she was one of the top 5 pulmonary fellows that I've ever trained in the last 45 years. For several years, she lived not from [sic] my wife and I and we have socialized with her and her family on many occasions. My wife and I were present at the baptism of her son. My observation has been that she is not an excessive drinker, I recall vividly that when they were over our house

for lunch or dinner, she would not finish the whole glass of wine. That is why I am somewhat surprised and shocked of this unfortunate episode.

She is a very competent pulmonary Critical Care Physician, a caring mother and loyal wife and a good friend. My wife has become very fond of Dr. Noble and her children. She is always in awe that how *[sic]* Dr. Noble is able to be such a caring mother and very hard-working Critical Care physician at the same time.

She is one of the most thorough and pleasant Physicians that I have ever encountered over my 50-year career. She is hard-working, diligent and always has a smile on her face. I can comment on her character and attest to the fact she has never had an issue with alcohol. She has been an exemplary mother and a physician and has practiced the art of medicine in a professional manner. She aids others and does not shy away from volunteering.

Overall, she is an incredible physician with high standards, and I would hope this letter sheds some light on her character and I would be very happy to answer any questions the board might have appear *[sic]* even in person to vouch for her character if you deemed necessary.

PAUL W. NOBLE, M.D.

30. Paul W. Noble, M.D., Dr. Noble's husband, wrote a letter to the board under penalty of perjury on September 7, 2022. Dr. Noble is a pulmonologist and has been the chair of the Department of Medicine at Cedars-Sinai since 2013. He has known Dr. Noble since 2016 when she was a fellow and has "witnessed her character both as a professional as well at [sic] home where she is the mother of two outstanding children." He was in the passenger seat the night Dr. Noble was arrested "during the height of the pandemic." He wrote:

Dr. Noble emigrated from Ukraine with her mother at the age of 9 speaking not a word of English. She went to public schools in Santa Monica and then attended UCLA on an academic scholarship for undergraduate work and then UCLA Medical School. She did her internal medicine residency and pulmonary and critical care fellowship at Cedars-Sinai. I worked with her both in the inpatient and outpatient clinical settings. She is an extraordinary physician. You would want her to take care of your family. After she finished her training she joined a private practice group in Orange County and raised her two children as a single parent. In 2019 she decided to move to Los Angeles and she began working at the Saban Community Clinic as the first pulmonologist. If you are not familiar with Saban, it is a philanthropically and publicly supported clinic that cares for uninsured, underinsured, and underrepresented minority patients, essentially patients that no one else want

[s/c] to care for. She took a sizable reduction in compensation from her private practice position. We were married in 2020.

As pulmonologists, Dr. Noble and myself were deeply involved on the front lines of caring for COVID-19 patients in the medical intensive care units. In fact, in the month of January 2021 alone, Dr. Noble cared for countless COVID-19 patients in Orange County helping her former colleagues on weekends. She herself contracted COVID-19. The month of January recorded the largest number of deaths at Cedars-Sinai Hospital in one month in the history of the hospital. It was following this enormously stressful period that we decided to take our first break since the pandemic and spend the night at an Orange County hotel and celebrated Valentine's Day on February 14, 2021. There was no Uber service that evening and the plan was for me to drive. We bonded with our waiter and there was a special bottle of wine that I had never had that we shared with him. Subsequently, I was not a candidate to drive. Dr. Noble had far less to drink and our car was parked in a location we thought could not remain overnight. The plan was to move the car to an area across the street from the restaurant where we could leave it. We left the parking lot to pull into that area where we could leave the care [s/c] and the police stopped us and aggressively handcuffed both of us and took us to jail.

The DMV did not revoke Dr. Noble's license but have detailed a comprehensive program that I can attest she has religiously adhered to. In my professional role I have had to deal with physicians with alcohol-related issues and in my personal life I lived with someone who was an alcoholic. Dr. Noble is not an alcoholic and does not drink excessively. Neither she (nor I) have ever had an alcohol-related driving incident.

Dr. Noble is an extraordinary mother and person of outstanding character. Her husband does not measure up. Finally, I would say while it is of utmost importance for the Medical Board to protect the community from physicians with addiction problems, she is not one of those with an alcohol problem. I would respectfully submit that impeding Dr. Noble from caring for the underserved at the Saban Clinic who [*sic*] do more harm than good to our community. We do not treat all lung cancers the same. Aggressive chemotherapy for a localized lung cancer would be inappropriate care. DUI is not acceptable, but not all circumstances are identical. I would encourage you to consider the larger picture that Dr. Noble contributes to the health of the community and is of outstanding character without previous incident. The events of the night of

February 14, 2021⁶ were a mistake and the failure of her husband and circumstances related to COVID-19. I am not excusing the mistake but encourage the Board to allow her to continue to care for the patients and our community.

FARAH GINTER

31. Farah Ginter authored a letter to the medical board under penalty of perjury on January 11, 2023. She described Dr. Noble as her oldest friend, having known her since they were both 12 years old. They went to middle school and high school together, and were deeply involved in clubs and sport teams. They attended different colleges but studied abroad in the same program. Ms. Ginter's family had no concerns about letting Ms. Ginter travel abroad for the first time because they regarded Dr. Noble as their daughter's "most dependable and responsible friend." Ms. Ginter wrote that she and Dr. Noble traveled together and "instead of going out to party, we went to the market to gather fresh ingredients to make our dinners from scratch. This is where we developed an appreciation for clean and healthy food, which continues to this day." She wrote further:

After undergrad, [Dr. Noble] continued her studies while I jumped right into my career. While she was in medical school, we didn't participate in the bar scene because she had early mornings with school and needed to be focused, so instead, we spent countless nights grabbing take-out, heading back to her apartment, and just catching up on life.

⁶ The events occurred on February 13, 2021.

[Dr. Noble] was the maid of honor at my wedding, and I recall being so proud when she took the responsibility seriously to make sure she was composed and eloquent so she could deliver a one-of-a-kind maid of honor speech to all my family and friends.

A couple of years later, I celebrated her med school graduation with her just two months after we both had our first children. Our firstborns, now teenagers, are only two weeks apart. I distinctly remember this was the first event where I had to leave my newborn. However, I could not miss the opportunity to celebrate this tremendous achievement in her life because, since we were children, I knew [Dr. Noble] would become a great doctor. During high school, while others were playing video games and going to parties, she volunteered at the hospitals on the weekends to learn more. She has been dedicated to being the best doctor she could be since she was a teenager. She is always up-to-date on the latest studies and understands the weight of her job and her responsibility as a medical professional. This is why I trust her medical guidance with my life and everyone I love. During COVID, I would rely on her for up-to-date information and advice to share with my family and friends.

[Dr. Noble] is brilliant, classy, and one of the most responsible people I know. We have shared many firsts in

our 30+ year friendship. However, excessive drinking was not one of them. We hardly ever drink at all, which is why I was surprised and shocked to hear of this unfortunate episode. She has never had an issue with alcohol. [Dr. Noble] is a responsible mother and generous and loving friend, always making careful decisions to ensure her children and friends are safe. I hope this brief summary of our friendship gives you some insight into her character. I would be very happy to answer any questions the Board might have or appear in person to vouch for her character.

OXANA SHAGIN

32. Oxana Shagin, Dr. Noble's mother, authored a letter to the board on January 11, 2023, under penalty of perjury. Ms. Shagin wrote the letter "to attest that [Dr. Noble] is one of the most deserving, hard-working, dependable and accountable individuals and a highly esteemed professional. She has been incredibly dedicated and passionate about her mission of saving lives and helping people." She wrote how Dr. Noble knew she would become a doctor since kindergarten. Ms. Shagin wrote that as a single mother and immigrant, she faced many challenges and did not have the ability to pamper or supervise Dr. Noble. However, she was lucky enough to be "blessed with a wonderful child" who "always was a great student, never in any kind of trouble, always focused on her goal to become a doctor and always finding ways on her own to make her dream come true."

Ms. Shagin wrote that Dr. Noble volunteered at a clinic in middle school and later volunteered at the emergency room in high school. Even though she was too young to be admitted into the program, she convinced the hospital administrators to

give her an opportunity. All medical personnel “praised her for her incredible maturity and dependability, as well as her readiness to help with some difficult patients and resourcefulness as [a] young adult in challenging situations.”

At UCLA she volunteered with Doctors Without Borders in vaccination clinics for poor people across Mexico and Tanzania. Dr. Noble “put an incredible amount of hard work and dedication into her [medical school] studies and later juggling her commitment to her medical profession with her motherhood.” Dr. Noble left a lucrative and very successful private practice to work at a free clinic. In addition to being an accomplished professional, she is also an incredible mother who is fully dedicated to her two children. Dr. Noble’s children excel in their interests, a testament to the amount of time Dr. Noble devotes to them. Ms. Shagin wrote further:

Covid changed our lives forever. [Dr. Noble] was a front-line worker under tremendous stress juggling commitments to sick patients and taking care of her family.

When we finally got together at Christmas of 2020, I suggested [Dr. Noble] and her husband “getaway” for Valentine’s Day in 2021 and her upcoming Birthday to distance themselves from the stress and tribulations of the preceding pandemic year while I watched the children.

It was a double celebration for her and a major release of pent up stress, anxiety and fears, as we all experienced coping with the Covid pandemic.

Apparently this is why the unfortunate DUI incident took place. I am perplexed by this event since I've rarely seen my daughter drink and never more than a glass.

I just can't imagine that it can overshadow her impeccable reputation.

She is the best mother anyone can wish for, loving daughter and dedicated doctor and definitely deserves your consideration.

The Medical Board's Disciplinary Guidelines

33. Official Notice was taken of the board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition 2016). The board's Uniform Standards for Substance Abusing Licensees (2015) were not offered in evidence but were considered as set forth below.

Essential Workforce Document

34. Complainant offered, and Official Notice was taken of, a document entitled "Essential Workforce" which referenced Gov. Newsom's March 19, 2020, Executive Order N-33-20 designating "essential critical infrastructure workers" to assist during the COVID pandemic. Healthcare providers were listed as the first sector.

Costs of Investigation and Enforcement

35. Complainant seeks recovery of the investigation and enforcement costs pursuant to Business and Professions Code section 125.3.

36. The Department of Consumer Affairs representative designated to certify the investigation costs provided a declaration identifying the investigator, the total number of hours spent, the hourly rate, and attached the investigator's log which set forth the number of hours spent performing specific tasks. Total investigation costs incurred were \$2,288.

37. The Deputy Attorney General who prosecuted the case signed a declaration and a supplemental declaration requesting costs for legal work billed through March 13, 2023, totaling \$16,453.75. Attached to the declarations were documents entitled "Matter Time Activity by Professional Type." The documents identified the tasks performed, the dates legal services were provided, who provided the services, the time spent on each task, and the hourly rate of the individuals who performed the work.

38. California Code of Regulations, title 1, section 1042, subdivision (b), requires that any declaration seeking costs include "specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs." The declarations with the attachments for the costs complied with the regulation and those costs of \$18,741.75 are found to be reasonable.

39. No evidence regarding Dr. Noble's ability to pay costs was offered.

Closing Arguments

40. Complainant argued that the causes for discipline alleged in the accusation had been proven. Complainant asserted the following factors stood out: many drunk drivers cause head on collisions, the most dangerous type, and it was sheer luck the officer was able to intervene; Dr. Noble had an extremely elevated BAC; and Dr. Noble "needs to rely heavily on Dr. Skipper's so-called comprehensive

diagnostic evaluation," which was "anything but comprehensive" in order to rebut the presumption that she is a substance abusing licensee and the board's substance abuse guidelines do not apply. Complainant argued that the documents shown during Dr. Skipper's cross examination contain examples of what Dr. Skipper considers a comprehensive diagnostic evaluation, and the one he performed here did not qualify. Complainant argued that when confronted with those documents, Dr. Skipper was "adapting his version to the evidence" and nowhere in the documents used on cross-examination had he ever described the type of evaluation he performed here.

Complainant argued about the methods Dr. Skipper used, asserting that the collateral witnesses he spoke to were insufficient, and he did not speak to anyone to corroborate Dr. Noble's statements regarding her drinking history. Complainant argued that the testing that Dr. Noble undergoes is insufficient to demonstrate her alcohol use and does not indicate what is being tested. Complainant argued that Dr. Skipper "is clearly an advocate for Dr. Noble. He did a half-baked evaluation" where he is "just relying on what Dr. Noble told him." Complainant argued that Dr. Skipper's opinion that Dr. Noble does not have a substance abuse disorder should be discounted as it was not properly derived.

Complainant argued that Dr. Noble minimized her behavior during the DUI "for obvious reasons" and "adopted her versions to suit the evidence." Complainant argued that when intoxicated to the point of having memory losses, a person will have gaps in memory, but not recall things incorrectly. Complainant argued that Dr. Noble had demonstrated insufficient rehabilitation and did nothing more than obey the criminal court order and follow the suggestions of her counsel. Following the DUI, she did not immediately cease drinking. During the height of COVID when all healthcare providers were stretched, Dr. Noble "decides to get a DUI" and has done nothing to make

amends for it. Given her testimony that she rarely drank in the past, her not drinking now is "hardly an earth shattering sacrifice."

Complainant argued that Dr. Noble has not met her burden to rebut the presumption that she is a substance abuser, and even if she had, she should still be placed on probation with terms and conditions. Complainant requested that Dr. Noble undergo a proper comprehensive diagnostic evaluation and "then let the chips fall where they may." Complainant requested five years of probation, or at least three years be ordered, with terms and conditions.

41. Dr. Noble argued that she "sees it very differently." There has been ample testimony by Dr. Noble that she is taking responsibility for her actions. She admitted her great regret for what took place. She admitted she was intoxicated and made a "number of terrible decisions." She took responsibility in her criminal case, pleading guilty and completing all court-ordered requirements as soon as possible. She testified about all that she learned from her classes.

She is not making any excuses for what happened; she cannot come up with any reasonable explanation for why she drove that evening. She acknowledged that she should not have done so. Her poor recollection of the evening and certain portions of it is explained by her intoxication and shock at being arrested. One would "expect a poor recollection and nothing Dr. Skipper said contrasts with that." Her behavior at the DUI is because she was intoxicated. She has apologized for her disgraceful conduct. The testimony of her colleagues and letters of support are wholly consistent with her life and career and inconsistent with what occurred that evening. The individuals who support her have known her for years and/or have worked with her for years.

The "real question is do we have evidence she will commit a second DUI and Dr. Skipper has opined we do not." Dr. Noble has also asserted it will never happen again. Dr. Skipper has evaluated 2,000 physicians in his 30 year career. He evaluated and provided intervention for physicians for the Alabama medical board. He has evaluated physicians for the California medical board since 2011. Dr. Skipper explained how evaluations can include a team in cases that are much more complicated than Dr. Noble's situation. Given Dr. Skipper's thousands of evaluations and his three decades of experience, he did not feel he needed a team to evaluate Dr. Noble; if he did, he would have done so. There is "no evidence from anywhere" of a concern of a psychiatric disorder or a mental health concern. All the evidence speaks strongly against any such inference.⁷

Dr. Noble asserted that Dr. Skipper did perform a comprehensive diagnostic evaluation. It was a very detailed evaluation. There were 10 different forms of history taken, Dr. Skipper spoke with collateral witnesses, and he had Dr. Noble come back six months later for a follow-up evaluation. Dr. Skipper spent sufficient time evaluating Dr. Noble. Dr. Skipper also administered the appropriate biological fluid tests and all have been negative. Dr. Noble argued that that the board's own guidelines which reference a "clinical diagnostic evaluation" do not designate the specialty of the person providing the evaluation, other than requiring it be performed by someone with at least three years of experience diagnosing substance use disorder which "is Dr.

⁷ If complainant were truly concerned Dr. Noble has a psychiatric disorder that affects her ability to practice medicine safely, complainant could have requested an examination as authorized by Business and Professions Code section 820. No such examination was ever sought.

Skipper." The guidelines also require the individual be someone who is board approved, which is again Dr. Skipper. Here the board did not send Dr. Noble for the evaluation, she went on her own. Dr. Noble got an evaluation "by one of the preeminent experts in the field," Dr. Skipper.

Dr. Noble noted that Dr. Skipper provided clear testimony. He spent almost five hours being examined at hearing and his answers were consistent. He opined that there is a very low likelihood that Dr. Noble will have a second DUI. He also opined that she does not have a substance abuse disorder, and he is the only expert who testified using the DSM-5 criteria in this hearing. Dr. Skipper clearly and intentionally set forth the DSM-5 criteria, explaining how Dr. Noble did not meet the criteria so does not have a substance use disorder diagnosis. Dr. Skipper also explained how the DUI does not show evidence of tolerance and that Dr. Noble's actions and behaviors on the night of the DUI shows that she was a very intoxicated, they did not show tolerance, especially as the officer observed signs of intoxication "from the instant he came up to the car." Dr. Noble does not dispute the DUI, her BAC, the number of drinks she apparently consumed, or that she was intoxicated, the question is does she have an alcohol use disorder and Dr. Skipper opined she does not.

Dr. Noble has taken significant steps to show this behavior will never recur. She clearly stated her great regret. She does Soberlink three times per day and has undergone random biological fluid testing. She has done all this voluntarily. She also successfully completed the PACE Ethics program, again on her own. That course addressed issues regarding lapses in judgment, as occurred here.

Dr. Noble does not dispute Dr. Durrani's opinions regarding her BAC. Given her BAC, it is much more likely they did have two bottles of wine at the restaurant and likely that the server "comped" one of the bottles which is why it is not on the receipt.

As Dr. Durrani opined, two and one-half glasses of champagne and three to four glasses of wine would give an individual a 0.19 percent BAC, as occurred here. However, Dr. Noble believes Dr. Durrani “overstepped” when he rendered opinions regarding tolerance. Even if those opinions were within his area of expertise, his opinions were not based on the facts of this case. He did not review the arrest report, he did not know how Dr. Noble was driving the car; he just used “generic information regarding driving” and inferred from that generic information that Dr. Noble was alcohol tolerant, but the generic information was contrary to the true facts. As such, Dr. Noble asserted that Dr. Durrani’s tolerance opinion should be given little or no weight.

Dr. Noble asserted that she had rebutted the presumption that she is a substance abusing physician. There is no need for her to undergo a second comprehensive diagnostic evaluation. Dr. Skipper is firm in his opinions that Dr. Noble is safe to practice without restrictions. She does not need additional testing to confirm or document that conclusion. Dr. Noble is a very well trained physician who was on the front lines of COVID. COVID was “an exceedingly stressful time, but very few of us were actually providing care to COVID patients” like Dr. Noble. Before COVID, Dr. Noble had made the decision to return to Saban Community Clinic to help poor patients. She works with underserved patients, at half the salary she was making in Orange County, because she finds the work rewarding and has the opportunity to train students in residency and medical school. Her supervisor has high praise for her and is looking to promote her again. Dr. Noble argued that the appropriate discipline in this matter is a public reprimand.

42. Dr. Noble also submitted a trial brief which set forth similar arguments, and was considered.

43. In complainant's rebuttal closing argument, complainant disputed Dr. Noble's claim of "significant rehabilitation," arguing that it "boils down to six months of abstinence, maybe." Complainant argued that the assertions by the "significant amount of people surprised at the DUI and the level of alcohol" were unpersuasive because just as they opined it would never happen again, they also would never have expected it to happen at all. Complainant argued that this surprise indicated that "something was going on that Dr. Noble did not reveal." Because Dr. Noble has not undergone a psychiatric evaluation or attended therapy, the board "would be gambling with patient safety" given Dr. Noble's "unwillingness to show what is going on."

Complainant asserted that Dr. Skipper had been paid to give a "watered down" report which provided "nothing about rehabilitation." Complainant asserted that Dr. Skipper "is an expert but is relying on his reputation and expertise and then produced a half-baked report and says his expertise and reputation is going to carry him over the line but it is not enough." Complainant also asserted that because Dr. Noble did not object to Dr. Durrani's testimony regarding tolerance, she cannot object to it in her closing argument.⁸ Complainant argued "the picture before the court did not make sense." "It was extraordinary that a novice drinker could function at 0.22," and there was "an extraordinary lapse in judgment that was not explained so there was a risk of a

⁸ This argument is incorrect. A party may argue about the bases of an expert's opinion at hearing. A party may not raise that argument on appeal if the party did not object at the hearing. (*People v. Williams* (2008) 43 Cal. 4th 584, 619–20; *People v. Dowd* (2013) 57 Cal. 4th 1079, 1087–88.) Complainant cited to no case that requires the objection to be made when the expert is offering the opinion.

second DUI." Complainant did not believe that Dr. Noble "told us why she did it," and she failed to take responsibility for her actions. Complainant argued that respondent had not done sufficient rehabilitation, that not having incidents at work did not matter because "the workplace is the last place those issues become apparent," and that the "issue is what is going on at home." Additionally, Dr. Skipper did nothing more than give "lip service" to the DSM-5 criteria and did not objectively apply them. Complainant requested that terms of probation include psychiatric testing, psychotherapy, abstinence, biological fluid testing, and costs paid in full.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. The purpose of administrative discipline is not to punish, but to protect the public by eliminating those practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

2. Business and Professions Code section 2229 states: "Protection of the public shall be the highest priority" for the medical board.

The Burden and Standard of Proof

3. Complainant bears the burden of establishing that the causes pled in the accusation are true. (*Martin v. State Personnel Medical Board* (1972) 26 Cal.App.3d 573, 582.)

4. The standard of proof in an administrative action seeking to suspend or revoke a physician and surgeon's certificate is "clear and convincing evidence."

(*Ettinger v. Medical board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

5. Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.) The requirement to prove by clear and convincing evidence is a "heavy burden, far in excess of the preponderance sufficient in most civil litigation. [Citation.]" (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.) "The burden of proof by clear and convincing evidence 'requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind.' [Citation.]" (*Ibid.*)

Applicable Code Sections

6. Business and Professions Code section 2227 states:

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

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

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

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

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

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

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

7. Business and Professions Code section 2234, states in part:

The medical board shall take action against any licensee who is charged with unprofessional conduct. In addition to

other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

[¶] . . . [¶]

8. Business and Professions Code section 2236 states:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

[¶] . . . [¶]

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

9. Business and Professions Code section 2239, subdivision (a), states:

The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the

dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

Applicable Regulations

10. California Code of Regulations, title 16, section 1360, provides that a crime or act is substantially related to the qualifications, functions, or duties of a physician and surgeon if, to a substantial degree, it evidences present or potential unfitness to perform the functions of a physician and surgeon in a manner consistent with the public health, safety, or welfare.

11. California Code of Regulations, title 16, section 1361, states:

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the Medical Board of California shall consider the disciplinary guidelines entitled "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (12th Edition/2016) which are hereby incorporated by reference.

Deviation from these orders and guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines by adoption of a proposed decision or stipulation that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), the Board shall use the Uniform Standards for Substance-Abusing Licensees as provided in section 1361.5, without deviation, for each individual determined to be a substance-abusing licensee.

(c) Nothing in this section or section 1361.5 shall be construed as a limitation on the Board's authority to seek an interim suspension order against a licensee pursuant to section 11529 of the Government Code.

12. California Code of Regulations, title 16, section 1361.5, states in part :

(a) If the licensee is to be disciplined for unprofessional conduct involving the use of illegal drugs, the abuse of drugs and/or alcohol, or the use of another prohibited substance as defined herein, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code.

(b) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation that

are specific to a particular case or that are derived from the Board's disciplinary guidelines referenced in section 1361 that the Board determines is necessary for public protection or to enhance the rehabilitation of the licensee.

(c) The following probationary terms and conditions shall be used without deviation in the case of a substance-abusing licensee: [those terms are then set forth in the regulation].

Case Law Regarding Unprofessional Conduct

13. In *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575, the appellate court noted that "unprofessional conduct" as that term was used in Business and Professions Code section 2361 (now section 2234), included certain enumerated conduct. (*Id.* at p. 575.) The court further stated (*Ibid.*):

This does not mean, however, that an overly broad connotation is to be given the term "unprofessional conduct;" it must relate to conduct which indicates an unfitness to practice medicine. [Citations.] Unprofessional conduct is that conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession. [Citation.]

Evaluation of the Experts' Opinions

14. Clear and convincing evidence did not demonstrate that Dr. Noble has a substance use disorder or that she is unfit to practice. Dr. Durrani did not perform a

fitness for duty evaluation or render any opinions regarding Dr. Noble's ability to safely practice medicine. He did not reference or apply the DSM-5 substance abuse criteria. His opinion that her ability to operate a motor vehicle with a 0.19 percent BAC shows she "may be exhibiting tolerance to alcohol" as written in his report, does not constitute "clear and convincing evidence," which is the standard of proof complainant must meet.

Dr. Durrani's testimony that Dr. Noble has a tolerance to alcohol was pure conjecture. It was not based on any facts other than she drove a vehicle with a high BAC. Dr. Durrani did not review all the materials of record. He did not review the police report, did not review Dr. Noble's board interview, did not know Dr. Noble drove over the median, and did not know how she appeared to officers at the scene. California courts repeatedly underscore that an expert's opinion is only as good as the facts and reason upon which that opinion is based: "Like a house built on sand, the expert's opinion is no better than the facts on which it is based." (*Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 923.)

While Dr. Durrani's credentials are impeccable, other than his opinions regarding alcohol elimination, Dr. Noble's BAC levels, and that Dr. Noble's BAC indicated she consumed six drinks, opinions which Dr. Noble did not refute, his other opinions were speculative and insufficient to meet complainant's burden of proof. Accordingly, Dr. Durrani's opinions regarding substance abuse and tolerance are given no weight.

In contrast, Dr. Skipper's opinions were based on all the evidence of record and were not refuted. Dr. Skipper has spent over 30 years of his medical career diagnosing and treating professionals suspected of having a substance abuse disorder. His credentials are impeccable, and he performed a thorough evaluation of Dr. Noble. He

also reviewed all the evidence at issue in this matter. Dr. Skipper's opinions were clear, convincing, credible, well-supported, and persuasive.

Evaluation of the Causes for Discipline Alleged

15. Dr. Noble violated Business and Professions Code sections 2234 and 2236 and California Code of Regulations, title 16, section 1360, because she was convicted of a substantially related crime. On February 13, 2021, she drove under the influence of alcohol in violation of Vehicle Code section 23152, subdivisions (a) and (b). Physicians are expected to exercise good judgement and her conviction demonstrated a lack of judgment, and an inability to perform the functions of a physician and surgeon in a manner consistent with the public health, safety, or welfare.

16. Dr. Noble violated Business and Professions Code sections 2234 and 2239, subdivision (a), when she used alcohol in a manner that was dangerous to herself or others. Her BAC was 0.19 percent, and she was visibly intoxicated.

17. Dr. Noble violated Business and Professions Code section 2234, subdivision (a), because she suffered a substantially related conviction and used alcohol in a dangerous manner. Each of those acts, alone, demonstrated unprofessional conduct.

Evaluation of the Degree of Discipline

DISCIPLINARY GUIDELINES

18. With causes for discipline having been found, the degree of discipline to impose must now be determined. There are two sets of guidelines the board has promulgated that must be considered in this matter to fashion any discipline with appropriate terms and conditions: The board's Manual of Model Disciplinary Orders

and Disciplinary Guidelines (12th Edition 2016) (Guidelines), and the board's Uniform Standards for Substance Abusing Licensees (2015) (Substance Abusing Guidelines).

19. The Guidelines are intended to be used in the physician disciplinary process but "are not binding standards." Further,

The Board expects that, absent mitigating or other appropriate circumstances such as early acceptance of responsibility, demonstrated willingness to undertake Board-ordered rehabilitation, the age of the case, and evidentiary problems, Administrative Law Judges hearing cases on behalf of the Board and proposed settlements submitted to the Board will follow the guidelines, including those imposing suspensions. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure.

20. The Guidelines contain the factors to be considered in determining discipline as set forth California Code of Regulations, title 16, section 1360.1:

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 board, 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.

Those factors were considered in this decision.

21. The Substance Abusing Guidelines contain additional terms and conditions that are to be ordered for substance abusing physicians as authorized by California Code of Regulations, title 16, section 1361.5. Here, Dr. Noble established that she is not a substance abusing physician, rebutting the presumption set forth in California Code of Regulations, title 16, section 1361.5, subdivision (a). Dr. Skipper persuasively testified that Dr. Noble does not meet the criteria for a substance use disorder diagnosis. His extensive career the past three decades working with professionals in treatment programs and with medical boards overseeing professionals eminently qualified him to render the opinions that he did. His opinions were well-supported by the results of the evaluation he performed, which included an extensive history, a cognitive exam, a review of all the documents at issue, interviews with

collateral witnesses, and obtaining biological fluid test results. No expert testimony or reliable evidence refuted Dr. Skipper's testimony regarding how he performed his evaluation or the conclusions he reached. Complainant's arguments against Dr. Skipper's opinions were just that, arguments, and arguments are not evidence, let alone clear and convincing evidence.

Dr. Noble, credibly, in turn, testified she does not have a substance use disorder. Her testimony was also substantiated by the numerous letters written on her behalf and the testimony of two colleagues, all of whom have known her for many years, some even decades. Complainant's email to Dr. Durrani advising him that: "Unfortunately, we do not have much of a drinking pattern" is because there is no pattern to be found. Dr. Noble's DUI was an aberration in an otherwise exemplary life and an act she is deeply remorseful about.

The circumstances of her DUI must be examined in context: she and her husband had been working long and exhaustive hours treating COVID patients at the height of the pandemic. One year into the pandemic, they took a night off, drank to excess, and Dr. Noble made the regrettable decision to drive. Her use of alcohol that evening was a situational event not likely to recur. She expressed sincere remorse for her actions and has taken steps, on her own, to address her behavior and demonstrate her abstinence, including successfully completing the PACE Ethics program, three times daily Soberlink testing, random biological fluid testing, and abstinence. It is highly unlikely her behavior will ever reoccur. Accordingly, because Dr. Noble rebutted the presumption applicable to a substance abusing licensee, the additional terms set forth in the Substance Abusing Guidelines will not be ordered.

REHABILITATION

22. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

23. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period of time that she is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.)

24. The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070.)

25. Since persons under the direct supervision of judicial or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Compliance with the law while one is on court ordered probation "does not necessarily prove anything but good sense." (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473.) When a person is on criminal probation or parole, rehabilitation efforts are accorded less weight "[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion . . ." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

26. Dr. Noble is currently on criminal probation, which is set to end in 2025, so little weight may be given to her "good behavior."

Disposition

27. Based on the totality of the evidence, a period of probation with terms and conditions is needed to protect the public. This conclusion is made notwithstanding all the work Dr. Noble has done to remedy her wrong including taking early responsibility for her actions, successfully completing all criminal probation terms ordered as would be expected, using Soberlink to verify she is not drinking, and participating in random biological fluid screenings, and noting she has the full support of colleagues, family and friends, and Dr. Skipper's opinions that she can practice without restriction. However, a period of probation is warranted because Dr. Noble consumed an excessive amount of alcohol and then drove a motor vehicle putting herself, her husband, and the public, at risk. It was pure luck Officer Kraus was nearby and able to prevent a head on collision. Dr. Noble drove while intoxicated at a level at least twice the legal limit, and she was convicted of a DUI, a crime substantially related to the practice of medicine.

The Disciplinary Guidelines for each violation committed by Dr. Noble (violation of Business and Professions Code sections 2234, 2236, and 2239), call for a minimum of five years' probation along with special and standard terms and conditions. However, deviation from the Disciplinary Guidelines is warranted in this case given the evidence set forth above, but a public reprimand is insufficient to protect the public, given the nature and seriousness of Dr. Noble's misconduct, because it does not permit the board to monitor Dr. Noble's behavior and commitment to remain sober and pursue further rehabilitation. Consequently, it is determined that a 35-month

period of probation with appropriate terms and conditions corresponding with the violations Dr. Noble committed is appropriate to protect the public.

Based upon the evidence of record, the following standard term of probation will not be ordered:

- Dr. Noble will not be prohibited from supervising physician assistants and advanced practice nurses because this condition is not necessary in this case for public protection. Dr. Noble has enjoyed an exemplary career and reputation based on her hard work and dedication. She is a valued leader and trains others. Ordering this term would be unduly punitive. The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

Based upon the evidence of record, the following optional terms of probation will not be ordered:

- Dr. Noble will not be ordered to undergo a psychiatric evaluation, psychotherapy, or a medical evaluation. Dr. Noble underwent a thorough and comprehensive evaluation and a re-evaluation performed by Dr. Skipper, a board-approved expert. There is no evidence she suffers from any type of psychiatric condition or requires ongoing treatment. Her DUI was an isolated, anomalous event by an individual who rarely drank. Her explanation for how it occurred was plausible and indicated it is unlikely to recur. Dr. Skipper found Dr. Noble able to practice safely "without restrictions." The terms being ordered here are sufficient to ensure public protection.

Ordering a psychiatric evaluation, psychotherapy or a medical evaluation would be unduly punitive.

- Dr. Noble has already successfully completed the PACE Ethics for Medical Professionals Course, so that term will not be ordered.

The Reasonable Costs of Investigation and Prosecution

28. Business and Professions Code section 125.3 permits complainant to request that an administrative law judge "direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

29. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court decided that in order to determine whether the actual costs of investigation and prosecution sought by a regulatory board under a statute substantially identical to Business and Professions Code 125.3 are "reasonable," the agency must decide: (a) Whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

30. Complainant established the causes for discipline alleged; but Dr. Noble rebutted the presumption she is a substance abusing physician and demonstrated that all of the terms and conditions requested by complainant are not required. Accordingly, a reduction in costs is warranted. In addition, Dr. Noble took a 50 percent pay cut to work in a community clinic providing care to underserved and indigent patients. Based upon the evidence of record, costs shall be reduced to \$10,000.

ORDER

Physician's and Surgeon's Certificate Number A 115913 issued to Respondent Anna Skor Noble, M.D., is revoked. However, the revocation is stayed and Dr. Noble is placed on thirty-five (35) months' probation under the following terms and conditions:

1. 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. Respondent shall not resume the practice of medicine until the final decision on an Accusation and/or a Petition to Revoke Probation is effective. An Accusation and/or Petition to Revoke Probation shall be filed by the board within 30 days of the notification to cease practice. If respondent requests a hearing on the Accusation and/or petition to revoke probation, the board shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the board within 15 days of submission of the matter. Within 15 days of receipt by the board of the Administrative Law Judge's proposed decision, the board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the board, the board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the

board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the board does not file an Accusation or Petition to Revoke Probation within 30 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

2. 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 as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to 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. Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the board within 30 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the board

shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the board within 15 days of submission of the matter. Within 15 days of receipt by the board of the Administrative Law Judge's proposed decision, the board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the board, the board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

3. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon 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. Prior to practicing medicine, respondent shall contract with a laboratory or service approved in advance by the board or its designee that will conduct random, unannounced, observed, biological fluid testing. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the board or its designee within four hours of the

results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the board and respondent.

If respondent fails to cooperate in a random biological fluid testing program within the specified time frame, respondent shall receive a notification from the board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the board within 30 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the board shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the board, the board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide

respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

4. Notification

Within seven days of the effective date of this Decision, respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

5. Obey All Laws

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

6. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

7. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the board's probation unit.

Address Changes

Respondent shall, at all times, keep the board informed of respondent's business and residence addresses, email address (if available), and telephone number.

Changes of such addresses shall be immediately communicated in writing to the board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

Respondent shall immediately inform the board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the board or its designee in writing 30 calendar days prior to the dates of departure and return.

8. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

9. Non-practice While on Probation

Respondent shall notify the board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the board. If respondent resides in California and is considered to be in non-practice, respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the board or its designee shall not be considered non-practice and does not relieve respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete the Federation of State

Medical Board's Special Purpose Examination, or, at the board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two years.

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

Periods of non-practice for a respondent residing outside of California, will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Controlled Substances; and Biological Fluid Testing.

10. Completion of Probation

Respondent shall comply with all financial obligations (i.e., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

11. 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. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during

probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

12. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender her license. The board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

13. Probation Monitoring Costs

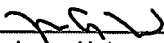
Respondent shall pay the costs associated with probation monitoring each year of probation, as designated by the board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the board or its designee no later than January 31 of each calendar year.

14. Investigation and Enforcement Costs

Respondent shall pay the costs associated with the investigation and enforcement of this matter in the amount of \$10,000. Respondent may negotiate a payment plan with the board and the costs may be adjusted. Such costs shall be

payable to the Medical Board of California and delivered to the board or its designee no later than January 31 of each calendar year.

DATE: April 17, 2023


Mary Agnes Matyszewski (Apr 17, 2023 08:25 PDT)

MARY AGNES MATYSZEWSKI

Administrative Law Judge

Office of Administrative Hearings