

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

In the Matter of the Petition to Revoke
Probation Against:

Uzoamaka O. Nwoye, M.D.

Physician's and Surgeon's
Certificate No. A 97114

Case No. 800-2022-085879

Respondent.

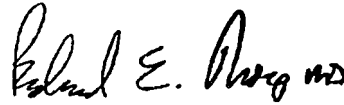
DECISION

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 September 7, 2023.

IT IS SO ORDERED August 8, 2023.

MEDICAL BOARD OF CALIFORNIA



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

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In the Matter of the Petition to Revoke Probation Against:

UZOAMAKA NWOYE, M.D.

**Physician's and Surgeon's Certificate No. A 97114,
Respondent.**

Agency Case No. 800-2022-085879

OAH No. 2022100482

PROPOSED DECISION

Julie Cabos Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 15, 2023. Reji Varghese (Complainant), Interim Executive Director of the Medical Board of California (Board), was represented by Jonathan Nguyen, Deputy Attorney General. Uzoamaka Nwoye, M.D. (Respondent) appeared and represented herself.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on May 15, 2023.

FACTUAL FINDINGS

Jurisdictional Pleadings

1. On June 9, 2022, Complainant's predecessor, William Prasifka, filed the Petition to Revoke Probation (Petition) in this matter while acting in his official capacity as the Executive Director of the Board.
2. Respondent filed a Notice of Defense requesting a hearing on the Petition.

License History and Probation Order

3. On August 30, 2006, the Board issued Physician's and Surgeon's Certificate Number A 97114 (license) to Respondent. That license was scheduled to expire on February 28, 2022. There was no evidence that the license has been renewed.
4. In a Decision and Order in Case Number 800-2018-040111, effective July 26, 2019 (Probation Order), the Board revoked Respondent's license, stayed the revocation, and placed Respondent on probation for seven years on specified terms and conditions. The Accusation underlying the Probation Order was filed in April 2018.
5. The terms of the Probation Order included: Condition 1 (completion of education course); Condition 2 (completion of clinical competence assessment program); Condition 3 (employment of a practice monitor); Condition 7 (obey all laws); Condition 11 (periods of non-practice not to exceed two years); and Condition 13 (violation of probation and continuing jurisdiction).

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6. Pertinent to this proceeding, Conditions 7, 11, and 13 specified:

7. OBEY ALL LAWS. Respondent shall obey all federal, state, and local laws, all rules governing the practice of medicine in California. Respondent shall remain in full compliance with any court-ordered criminal probation, payments, and other orders. [¶] . . . [¶]

11. 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[.]

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 (2) 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. [¶] . . . [¶]

13. 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.

(Exhibit 5, pp. A27-A30.)

7. The Probation Order arose from the United States Air Force's revocation of Respondent's clinical privileges. The Probation Order specified the underlying facts as follows:

5. Respondent joined the United States Air Force and began a urology residency through the San Antonio Uniformed Services Health Education Consortium in February 2011. She completed her residency in February 2015, and began serving as a staff urologist at Joint Base Elmendorf-Richardson, in Alaska, in March 2015. [¶] . . . [¶]

9. In November 2016, the Air Force opened a quality assurance investigation into respondent's surgical practice. After this investigation, a peer review panel concluded that respondent had made surgical errors in three cases. . . . In addition to these three surgical errors, the peer review panel identified concerns over respondent's complication

rate for [transurethral resection of the prostate (TURP)] surgeries and for vasectomies.

10. Respondent did not request a hearing with respect to these conclusions. She consented instead to temporary restriction of her surgical privileges, requiring her to have direct supervision for TURP surgeries. In addition, Respondent consented to undergo special monitoring and evaluation of all her surgical procedures for three months, beginning in February 2017.

11. In November 2017, the Air Force convened a further hearing panel to consider the three specific surgical errors described [above] as well as additional allegations that respondent had made medical errors. The panel concluded that the three errors described [above] had occurred, and that they had threatened or risked threatening patients' health. In addition, the panel concluded that respondent had misdiagnosed a patient on two occasions, and then had erred in inserting a suprapubic tube into that patient and in monitoring the tube's later position.

12. The Air Force panel viewed respondent's errors, taken together, as "a pattern of inattention to detail and clinical negligence." Because the panelists believed that "additional supervision beyond the eight years of formal surgical training already completed" would not improve respondent's "lack of insight and clinical judgment," the

panel recommended revocation of Respondent's Air Force clinical privileges.

13. Colonel Tandra L. Yates approved the panel's recommendation and revoked respondent's clinical privileges effective January 8, 2018. Respondent appealed this determination to the Air Force's headquarters. Air Force Surgeon General Dorothy A. Hogg concurred with Colonel Yates's decision in October 2018, upholding revocation of respondent's Air Force clinical privileges.

14. Respondent acknowledges that she made the errors the Air Force panel identified. She believes, however, that these errors resulted from her inexperience, compounded by poor support from her clinical team. She was and is willing to undertake additional training to improve her skills but disagreed with the Air Force's decision to revoke her clinical privileges rather than to support her in such additional training.

(Exhibit 5, pp. A21-22.)

Respondent's Attempts to Further Appeal the Air Force Discipline

8. In addition to the appeal noted in the Probation Order, Respondent has filed other appeals regarding her Air Force discipline. She detailed some of this history as follows:

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I filed an [Equal Employment Opportunity Commission (EEOC)] complaint against the individuals involved[;] however the result of the EEOC complaint was to regurgitate the commander's discriminatory beliefs, despite objective evidence in my military records to the contrary. The EEOC therefore did not find any of the allegations to be with merit. I filed with the [Inspector General (IG)]. The IG refused to take up the complaint citing that the EEOC evaluation found that my allegations did not have merit and referred me to the Air Force Board for correction of military records. In 2019, with the help of an attorney, I filed a request . . . to the Air Force Board for correction of military records (AF BCMR). [Six] months later I got a written response stating that there was nothing wrong with my honorable discharge . . . to be corrected. I immediately responded back . . . [and] 6 months later I got another response saying the case has been closed and that I needed to re-file if I was not satisfied with the results. In July of 2021 I filed [an] appeal . . . to the AF BCMR. . . . Later that year, Nov/Dec [2021], when I had not heard back and when the status web page continued to indicate that my case hadn't moved past the initial phase[,] I . . . contacted my congressman's office for an inquiry. They placed one but then insisted that I will have to wait to hear from the AF BCMR and not through them. I continued to check the status of the case via the website and . . . I recently . . .

discovered that the case has not even been looked at by the [AF BCMR]. It appears my case was not seen . . . or was lost.

(Exhibit I.)

9. In November 2022, Respondent filed another appeal to correct her military records with the Air Force. As of May 5, 2023, there had been no action on that appeal.

Respondent's Additional Medical Licenses and Application

10. Respondent holds medical licenses in Nebraska, North Dakota, and Alaska.

11. Prior to the Air Force discipline, Respondent and her infant were living in Alaska where Respondent was working as a physician. Before the revocation of her Air Force clinical privileges was upheld on appeal, Respondent moved to Massachusetts.

12. In July 2018, Respondent began a fellowship in minimally invasive urologic surgery at Beth Israel Deaconess Medical Center, in Boston, Massachusetts. Respondent applied for a medical license in Massachusetts, and she believed her fellowship training would address any concerns about the Air Force discipline and subsequent Probation Order. However, Respondent's application for a Massachusetts medical license was denied. Respondent believes, to obtain Massachusetts licensure, she must further appeal her Air Force discipline.

13. In November 2018, the Nebraska Professional Board, Department of Health and Human Services, declined to take action against Respondent's medical license following the Air Force revocation of her clinical privileges. (Exhibit B.)

14. In November 2019, the North Dakota Board of Medicine decided not to pursue disciplinary action against Respondent's medical license following the issuance of the Probation Order. (Exhibit D.)

15. In January 2022, the Alaska Division of Corporations, Business and Professional Licensing, declined to take disciplinary action against Respondent's medical license following her self-reporting of the Air Force's revocation of her clinical privileges. (Exhibit E.)

Probation Violation

16. On July 26, 2019, Respondent spoke by telephone to Board Management Services Technician (MST) Adrienne Smith (Smith) to discuss the terms and conditions of the Probation Order. During that call, Respondent told Smith she was currently residing in Massachusetts but did not have a medical license there. Smith informed Respondent she was in "non-practice" for purposes of her Probation Order because she was not practicing or being monitored by the licensing authority in Massachusetts.

17. On October 8, 2019, December 13, 2019, March 11, 2020, and June 29, 2020, the Board sent letters to Respondent at her address in Massachusetts, which reminded her that, pursuant to Probation Order Condition 11, she would exceed two years of non-practice on July 26, 2021. The letters also reminded Respondent that, if her period of non-practice exceeded 18 months (by January 26, 2021), she was required to complete a Board-approved clinical competency assessment program before resuming the practice of medicine. (Exhibits 7, 9, 10, and 11.)

18. On July 8, 2020, while in Lexington, Massachusetts, Respondent signed and subsequently submitted her Quarterly Declaration for the Second Quarter of 2020. The Quarterly Declaration form included spaces for Respondent to list her "Primary

Place of Practice," to "Indicate the number of hours worked this quarter at your primary place of practice," and to answer, "What is your work schedule at this place of practice? Include days and time." (Exhibit 12.) The form also included a space instructing Respondent to "List the name, address, and work schedule (hours/days) of any other locations where you practice medicine (i.e., convalescent/nursing homes, etc.), or indicate if there has been any change to your practice address, residence address and/or Address of Record. Provide the phone number of the Medical Director or Chief of Staff, if applicable." (*Ibid.*) Respondent wrote "N/A" in each of these provided spaces.

19. In the July 2020 Quarterly Declaration, a space was provided under the inquiry, "What question(s), if any, do you have for your probation monitor regarding your probation?" (Exhibit 12.) Respondent wrote, "Questions answered by phone by Adrienne Smith & Ruben Garcia." (*Ibid.*)

20. On or about July 9, 2021, while in Lexington, Massachusetts, Respondent signed a Quarterly Declaration wherein she wrote, "N/A," in the spaces provided for her to list her "Primary Place of Practice," and to "List the name, address, and work schedule (hours/days) of any other locations where [she] practice[s] medicine[.]" (Exhibit 13.)

21. In the July 2021 Quarterly Declaration, in the space under the inquiry, "What question(s), if any, do you have for your probation monitor regarding your probation?", Respondent wrote, "I recently filed an appeal to the decision that is the reason for this probation. I would like no further action be taken on my California license until the appeal is finalized. What do I need to do to arrange this?" (Exhibit 13.)

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22. On or about October 15, 2021, while in Lexington, Massachusetts, Respondent signed a Quarterly Declaration wherein she wrote, "N/A," in the space provided for her to list her "Primary Place of Practice." In the space that required her to "List the name, address, and work schedule (hours/days) of any other locations where [she] practice[s] medicine[.]" Respondent wrote, "I am unable to practice medicine due to the original issue which is still in litigation." (Exhibit 14.)

23. In the October 2021 Quarterly Declaration, in the space under the inquiry, "What question(s), if any, do you have for your probation monitor regarding your probation?", Respondent wrote, "N/A." (Exhibit 14.)

24. On December 27, 2021, the Board sent a letter to Respondent at her address in Massachusetts. The December 27, 2021 letter contained the same reminders about Probation Order Condition 11 and non-practice deadlines as in the October 8, 2019, December 13, 2019, March 11, 2020, and June 29, 2020 letters. At this point, Respondent had exceeded two years of non-practice.

25. On January 5, 2022, the Board sent Respondent a "Non-Compliance Letter" notifying her that she violated Condition 11 of the Probation Order and that on July 26, 2021, her period of non-practice exceeded two years.

26. On January 10, 2022, while in Lexington, Massachusetts, Respondent signed a Quarterly Declaration wherein she wrote, "N/A," in the spaces provided for her to list her "Primary Place of Practice," and to "List the name, address, and work schedule (hours/days) of any other locations where [she] practice[s] medicine[.]" (Exhibit 17.) In the space under the inquiry, "What question(s), if any, do you have for your probation monitor regarding your probation?", Respondent wrote, "None." (*Ibid.*)

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27. Rueben Garcia (Garcia) testified at the administrative hearing. His testimony was straightforward, and he presented as a credible witness.

28. Garcia is a manager of a Board probation unit. He oversees inspectors and MSTs who monitor Board probationers. Inspectors monitor cases for probationers residing in California, and MSTs monitor cases for probationers residing out-of-state. Garcia explained, when a probationer resides out-of-state and does not practice medicine, their probation is tolled, and their probation "clock" does not begin to run. Garcia further explained a physician may serve their Board probation while residing in another state if that state's licensing authority has also placed the licensee on probation.

29. Garcia noted, in this case, Respondent resides out-of-state and is not on probation in Massachusetts. She has been in non-practice status and her probation tolled since the effective date of the Probation Order. If she obtained a medical license in Massachusetts and was placed on probation there, her probation in California would "move forward." Garcia is unaware of any appeal that would affect the Proposed Order.

Respondent's Explanation for Probation Violations

30. Respondent testified at the administrative hearing. Her demeanor was calm but tenacious. Her credibility was lessened by her determination to blame others and to color facts in her favor.

31. Contrary to her admission at the hearing underlying the Probation Order (where she acknowledged she made the errors the Air Force panel identified), Respondent now insists the Air Force revocation of her clinical privileges "was mostly due to personality differences."

32. Respondent insists the Probation Order "was unjust and without due process, and the terms of probation are very harsh." She asserts she has applied for clinical, non-clinical, and research positions, but noted many employers will not hire her due to the Air Force Discipline, compounded by the Probation Order.

33. Respondent had secured employment in North Dakota. However, on July 11, 2019, that employment offer was withdrawn based on the Probation Order. (Exhibit M.)

34. On March 31, 2020, a potential job interview was canceled when recruitment was put on hold during the COVID-19 pandemic. (Exhibit K.) The potential employer was not disclosed.

35. Respondent has made job inquiries in various states. However, the evidence did not establish the specific inquiries she made in the states in which she holds a medical license (i.e., Nebraska, North Dakota, Alaska, and California).

36. Respondent reported she became homeless in 2020, and she had to figure out how to care for herself and her then two-year-old child. She was unable to secure housing until June of 2022.

37. Respondent insisted she spoke with MST Smith about her employment situation and asked how to comply with Probation Order Condition 11. However, Respondent feels she was provided with insufficient information about how to return to practice. She complained, "With the [Board], [they seem to say] 'if you try to talk with us about it, we will increase your probation.'"

38. Respondent understands that, to begin employment in California after January 26, 2021, she would need to complete the clinical competency assessment

program. She noted the program costs \$10,000, and she would need to first secure employment in California to care for herself and her child. She noted, "I cannot move to California and sit on the streets until I find work."

39. Respondent resides in Massachusetts. She has no plans to return to California because she has "no means to move to California." Respondent stated, "If California [Medical Board] wants me to leave Massachusetts and move to California for no job opportunities, what good does that do?"

40. Respondent currently has no plans to move to any of the other states where she holds a medical license. She testified, "If I got a job, I might move. I need a job before I move."

41. Respondent is presently unemployed in Massachusetts. She did not identify her means of income, if any. She did not explain how she pays for housing or other expenses. Respondent did not indicate whether she has sought non-medical employment or volunteer opportunities within the medical field in California or any other state where she holds a medical license.

42. Respondent is unsure how long it would take her to comply with Probation Order Condition 11, and she has no plan or timeline to comply with Condition 11.

43. Respondent is asking for more "time to figure this out," given the difficulty she has "moving forward with work without resolving [her] military case."

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LEGAL CONCLUSIONS

Jurisdiction

1. Business and Professions Code section 118, subdivision (b) provides:

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board . . . or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

2. Probation Order Condition 13 provides, "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."

3. Pursuant to Business and Professions Code section 118, subdivision (b), and Probation Order Condition 13, the Board retains jurisdiction over this matter.

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First Cause to Revoke Probation

4. Pursuant to Probation Order Condition 11, Respondent's period of non-practice must not exceed two years. However, Respondent has not practiced medicine for almost four years since the effective date of the Probation Order. Consequently, Respondent is in violation of Probation Order Condition 11.

5. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with the Probation Order, Condition 11 (for non-practice exceeding two years), as set forth in Factual Findings 3 through 42.

Second Cause to Revoke Probation

6. Cause does not exist to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with the Probation Order, Condition 7 (failure to obey all laws), since Complainant did not establish what law(s), if any, Respondent failed to obey, as set forth in Factual Findings 3 through 42.

Disposition

7. Respondent has been on probation since 2019, and she has been out of compliance (in violation of Condition 11) since July 2021. Although Respondent has suffered financial difficulties, this does not excuse her continued non-compliance. Respondent has chosen to reside in Massachusetts for the nearly four years of her probation, and she remains unemployed and unlicensed there. Respondent has made only minimal documented efforts to obtain work in the other states in which she holds a medical license. Furthermore, Respondent has no definitive plan to comply with Condition 11, other than once again appealing the Air Force discipline and further

pursuing Massachusetts licensure after denial. Her lack of a strategy to promptly commence medical practice bodes poorly for her compliance with, and successful completion of, her probation. The Board cannot allow Respondent to remain out-of-compliance with the Probation Order indefinitely. Given Respondent's foreseeable inability to comply with the Probation Order, revocation of Respondent's license, with an opportunity to later apply for reinstatement, is warranted.

ORDER

Physician's and Surgeon's Certificate Number A 97114, issued to Respondent, Uzoamaka Nwoye, M.D., is hereby revoked.

DATE: **06/08/2023**

Julie Cabos-Owen

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings