

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

In the Matter of the Petition to Revoke
Probation Against:

PHOEBE OGUDA DACHA, M.D.

Physician's and Surgeon's
Certificate No. A 171183

Respondent.

Case No. 800-2023-098624

DECISION

The attached Stipulated Surrender of License and Order 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 October 31, 2023.

IT IS SO ORDERED October 24, 2023.

MEDICAL BOARD OF CALIFORNIA

JENNA JONES FOR
Reji Varghese,
Executive Director

1 ROB BONTA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
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Attorneys for Complainant

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9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke
13 Probation Against:

Case No. 800-2023-098624

14 **PHOEBE OGUDA DACHA, M.D.**
15 **9619 Quioccasin Road**
Henrico, VA 23238-4524

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

16 **Physician's and Surgeon's Certificate**
17 **Number A 171183**

Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Reji Varghese (Complainant) is the Executive Director of the Medical Board of
23 California (Board). He brought this action solely in his official capacity and is represented in this
24 matter by Rob Bonta, Attorney General of the State of California, by Colleen M. McGurrin,
25 Deputy Attorney General.

26 2. PHOEBE OGUDA DACHA, M.D. (Respondent) is representing herself in this
27 proceeding and has chosen not to exercise her right to be represented by counsel.

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1 3. On or about December 28, 2020, the Board issued a probationary Physician's and
2 Surgeon's Certificate Number A 171183 to Respondent. That license was in full force and effect
3 at all times relevant to the charges brought in Petition to Revoke Probation No. 800-2023-098624,
4 subject to probationary terms and conditions, and will expire on December 31, 2024, unless
5 renewed.

6 **JURISDICTION**

7 4. Petition to Revoke Probation No. 800-2023-098624 was filed before the Board, and is
8 currently pending against Respondent. The Petition to Revoke Probation and all other statutorily
9 required documents were properly served on Respondent on September 11, 2023. Respondent
10 timely filed her Notice of Defense contesting the Petition to Revoke Probation, but stated in the
11 Notice that she wished to voluntarily surrender her license in this matter. A copy of Petition to
12 Revoke Probation No. 800-2023-098624 is attached as Exhibit A and incorporated by reference.

13 **ADVISEMENT AND WAIVERS**

14 5. Respondent has carefully read, and understands the charges and allegations in Petition
15 to Revoke Probation No. 800-2023-098624. Respondent also has carefully read, and understands
16 the effects of this Stipulated Surrender of License and Order.

17 6. Respondent is fully aware of her legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Petition to Revoke Probation; the right to be
19 represented by counsel, at her own expense; the right to confront and cross-examine the witnesses
20 against her; the right to present evidence and to testify on her own behalf; the right to the issuance
21 of subpoenas to compel the attendance of witnesses and the production of documents; the right to
22 reconsideration and court review of an adverse decision; and all other rights accorded by the
23 California Administrative Procedure Act and other applicable laws.

24 7. Respondent freely, voluntarily, knowingly, and intelligently waives and gives up each
25 and every right set forth above.

26 **CULPABILITY**

27 8. Respondent understands that the charges and allegations in Petition to Revoke
28 Probation No. 800-2023-098624, if proven at a hearing, constitute cause for imposing discipline

1 upon her Physician's and Surgeon's Certificate.

2 9. For the purpose of resolving the Petition to Revoke Probation without the expense
3 and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
4 establish a prima facie factual basis for the charges in the Petition to Revoke Probation and that
5 those charges constitute cause for discipline. Respondent hereby gives up her right to contest that
6 cause for discipline exists based on those charges.

7 10. Respondent understands that by signing this stipulation she enables the Board to issue
8 an order accepting the surrender of her Physician's and Surgeon's Certificate without further
9 process.

10 CONTINGENCY

11 11. Business and Professions Code section 2224, subdivision (b), provides, in pertinent
12 part, that the Medical Board "shall delegate to its executive director the authority to adopt a ...
13 stipulation for surrender of a license."

14 12. Respondent understands that, by signing this stipulation, she enables the Executive
15 Director of the Board to issue an order, on behalf of the Board, accepting the surrender of her
16 Physician's and Surgeon's Certificate Number A 171183 without further notice to, or opportunity to
17 be heard by, Respondent.

18 13. This Stipulated Surrender of License and Disciplinary Order shall be subject to the
19 approval of the Executive Director on behalf of the Board. The parties agree that this Stipulated
20 Surrender of License and Disciplinary Order shall be submitted to the Executive Director for her
21 consideration in the above-entitled matter and, further, that the Executive Director shall have a
22 reasonable period of time in which to consider and act on this Stipulated Surrender of License and
23 Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands
24 and agrees that she may not withdraw her agreement or seek to rescind this stipulation prior to the
25 time the Executive Director, on behalf of the Medical Board, considers and acts upon it.

26 14. The parties agree that this Stipulated Surrender of License and Disciplinary Order
27 shall be null and void and not binding upon the parties unless approved and adopted by the
28 Executive Director on behalf of the Board, except for this paragraph, which shall remain in full

1 force and effect. Respondent fully understands and agrees that in deciding whether or not to
2 approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive
3 Director and/or the Board may receive oral and written communications from its staff and/or the
4 Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the
5 Executive Director, the Board, any member thereof, and/or any other person from future
6 participation in this or any other matter affecting or involving respondent. In the event that the
7 Executive Director on behalf of the Board does not, in his discretion, approve and adopt this
8 Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it
9 shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied
10 upon or introduced in any disciplinary action by either party hereto. Respondent further agrees
11 that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason
12 by the Executive Director on behalf of the Board, Respondent will assert no claim that the
13 Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review,
14 discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or
15 of any matter or matters related hereto.

16 **ADDITIONAL PROVISIONS**

17 15. This Stipulated Surrender of License and Disciplinary Order is intended by the parties
18 herein to be an integrated writing representing the complete, final and exclusive embodiment of
19 the agreements of the parties in the above-entitled matter.

20 16. The parties agree that copies of this Stipulated Surrender of License and Disciplinary
21 Order, including copies of the signatures of the parties, may be used in lieu of original documents
22 and signatures and, further, that such copies shall have the same force and effect as originals.

23 17. In consideration of the foregoing admissions and stipulations, the parties agree the
24 Executive Director of the Board may, without further notice to or opportunity to be heard by
25 Respondent, issue and enter the following Disciplinary Order on behalf of the Board:

26 **ORDER**

27 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate Number A 171183,
28 issued to Respondent PHOEBE OGUDA DACHA, M.D., is surrendered and accepted by the

1 Board.

2 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the
3 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
4 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
5 of Respondent's license history with the Board.

6 2. Respondent shall lose all rights and privileges as a physician and surgeon in
7 California as of the effective date of the Board's Decision and Order.

8 3. Respondent shall cause to be delivered to the Board her pocket license and, if one was
9 issued, her wall certificate on or before the effective date of the Decision and Order.

10 4. If Respondent ever files an application for licensure or a petition for reinstatement in
11 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
12 comply with all the laws, regulations and procedures for reinstatement of a revoked or
13 surrendered license in effect at the time the petition is filed, and all of the charges and allegations
14 contained in Petition to Revoke Probation No. 800-2023-098624 shall be deemed to be true,
15 correct and admitted by Respondent when the Board determines whether to grant or deny the
16 petition.

17 5. Respondent shall pay the agency its costs of investigation and enforcement the
18 amount of \$11,656.25 prior to the issuance of a new or reinstated license in California.

19 6. If Respondent should ever apply or reapply for a new license or certification, or
20 petition for reinstatement of a license, by any other health care licensing agency in the State of
21 California, all of the charges and allegations contained in Petition to Revoke Probation No. 800-
22 2023-098624 shall be deemed to be true, correct, and admitted by Respondent for the purpose of
23 any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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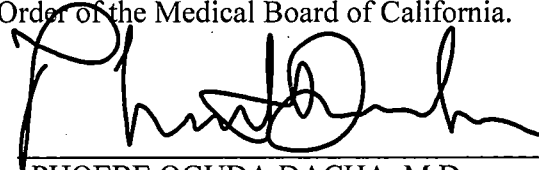
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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order freely, voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 9/30/2023



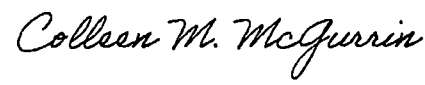
PHOEBE OGUDA DACHA, M.D.
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: October 3, 2023

Respectfully submitted,
ROB BONTA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General



COLLEEN M. MCGURRIN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Petition to Revoke Probation No. 800-2023-098624

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14 In the Matter of the Petition to Revoke
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Case No. 800-2023-098624

15 **PHOEBE OGUDA DACHA, M.D.**
16 **9619 Quioccasin Road**
Henrico, VA 23238-4524

PETITION TO REVOKE PROBATION

17 **Physician's and Surgeon's Certificate**
18 **Number A 171183,**

Respondent.

19
20
21 Complainant alleges:

22 **PARTIES**

23 1. Reji Varghese (Complainant) brings this Petition to Revoke Probation solely in his
24 official capacity as the Executive Director of the Medical Board of California (Board).

25 2. On December 28, 2020, the Medical Board of California issued probationary
26 Physician's and Surgeon's Certificate Number A 171183 to Phoebe Oguda Dacha, M.D.
27 (Respondent). That license was in effect at all times relevant to the charges brought herein
28 subject to five (5) years of probation on various terms and conditions, and will expire on

1 December 31, 2024, unless renewed.

2 3. In a prior disciplinary action titled *"In the Matter of the Statement of Issues Against*
3 *Phoebe Oguda Dacha"*, Case No. 800-2019-054708, the Board issued a decision, effective
4 October 23, 2020, in which Respondent's application for a full and unrestricted Physician's and
5 Surgeon's Certificate was denied. However, Respondent was issued a probationary license that
6 was placed on probation for a period of five (5) years with certain terms and conditions. A copy
7 of that decision is attached as Exhibit A and is incorporated herein by reference.

8 **JURISDICTION**

9 4. This Petition to Revoke Probation is brought before the Medical Board of California
10 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
11 references are to the Business and Professions Code unless otherwise indicated.

12 5. Section 22 of the Code provides, in pertinent part:

13 "Board" as used in any provisions of this code, refers to the board in which the
14 administration of the provision is vested, and unless otherwise expressly provided,
15 shall include . . . "department," "division," "examining committee," "program," and
16 "agency."

17 6. Section 477 of the Code states:

18 As used in this division:

19 (a) "Board" includes "bureau," "commission," "committee," "department,"
20 "division," "examining committee," "program," and "agency."

21 (b) "License" includes certificate, registration or other means to engage in a business
22 or profession regulated by this code.

23 7. Section 2004 of the Code provides, in pertinent part:

24 The board shall have the responsibility for the following:

25 (a) The enforcement of the disciplinary . . . provisions of the Medical Practice Act.

26 (b) The administration and hearing of disciplinary actions.

27 (c) Carrying out disciplinary actions appropriate to findings made by a panel or an
28 administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
disciplinary actions.

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(e) ... (g).

(h) Issuing licenses and certificates under the board's jurisdiction.

(i)

8. Section 2227 of the Code provides, in pertinent part:

(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 ... her license revoked upon order of the board.

(2) Have ... 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.

9. Section 2228 of the Code provides, in pertinent part:

The authority of the board ... to discipline a licensee by placing ... her on probation includes, but is not limited to, the following:

(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

1 (d) Providing the option of alternative community service in cases other than
2 violations relating to quality of care.

3 **COST RECOVERY**

4 10. Section 125.3 of the Code states:

5 (a) Except as otherwise provided by law, in any order issued in resolution of a
6 disciplinary proceeding before any board within the department or before the
7 Osteopathic Medical Board, upon request of the entity bringing the proceeding, the
8 administrative law judge may direct a licensee found to have committed a violation or
9 violations of the licensing act to pay a sum not to exceed the reasonable costs of the
10 investigation and enforcement of the case.

11 (b) In the case of a disciplined licensee that is a corporation or a partnership, the
12 order may be made against the licensed corporate entity or licensed partnership.

13 (c) A certified copy of the actual costs, or a good faith estimate of costs where
14 actual costs are not available, signed by the entity bringing the proceeding or its
15 designated representative shall be prima facie evidence of reasonable costs of
16 investigation and prosecution of the case. The costs shall include the amount of
17 investigative and enforcement costs up to the date of the hearing, including, but not
18 limited to, charges imposed by the Attorney General.

19 (d) The administrative law judge shall make a proposed finding of the amount
20 of reasonable costs of investigation and prosecution of the case when requested
21 pursuant to subdivision (a). The finding of the administrative law judge with regard to
22 costs shall not be reviewable by the board to increase the cost award. The board may
23 reduce or eliminate the cost award, or remand to the administrative law judge if the
24 proposed decision fails to make a finding on costs requested pursuant to subdivision
25 (a).

26 (e) If an order for recovery of costs is made and timely payment is not made as
27 directed in the board's decision, the board may enforce the order for repayment in any
28 appropriate court. This right of enforcement shall be in addition to any other rights
the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be
conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or
reinstate the license of any licensee who has failed to pay all of the costs ordered
under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion,
conditionally renew or reinstate for a maximum of one year the license of any
licensee who demonstrates financial hardship and who enters into a formal agreement
with the board to reimburse the board within that one-year period for the unpaid
costs.

(h) All costs recovered under this section shall be considered a reimbursement
for costs incurred and shall be deposited in the fund of the board recovering the costs
to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of
the costs of investigation and enforcement of a case in any stipulated settlement.

1 (j) This section does not apply to any board if a specific statutory provision in
2 that board's licensing act provides for recovery of costs in an administrative
disciplinary proceeding.

3 **BACKGROUND FACTS**

4 11. On or about May 7, 2018, Respondent filed an Application for a Physician's and
5 Surgeon's License, which was denied by the Board on or about March 25, 2019.

6 12. On or about July 8, 2019, the Board filed an action against Respondent titled *In the*
7 *Matter of the Statement of Issues Against Phoebe Oguda Dacha*, Case No. 800-2019-054708.

8 13. In or about July 2020, a hearing commenced on the Statement of Issues, which
9 concluded on July 24, 2020.

10 14. After the hearing, on or about October 23, 2020, the Board's Decision in the
11 Statement of Issues, Case No. 800-2019-054708, became effective at 5:00 p.m., providing that
12 Respondent's "probation will not commence until the applicant completes any remaining
13 requirements for licensure and the license is issued."

14 15. On or about December 28, 2020, the Board issued Respondent Certificate Number
15 171183, which was revoked, stayed, and placed on five (5) years of probation with terms and
16 conditions.

17 **FIRST CAUSE TO REVOKE PROBATION**

18 (Violation of Condition 10 - Non-Practice While on Probation)

19 16. At all times after the effective date of Respondent's probation in Case No. 800-2019-
20 054708, Condition 10 stated, in pertinent part:

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

1 In the event respondent's period of non-practice while on probation exceeds 18 calendar
2 months, respondent shall successfully complete the Federation of State Medical Board's Special
3 Purpose Examination, or, at the Board's direction, a clinical competency 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.

4 Respondent's period of non-practice while on probation shall not exceed two years.
5 Periods of non-practice will not apply to the reduction of the probationary term.

6 Periods of non-practice for a respondent residing outside of California, will relieve
7 respondent of the responsibility to comply with the probationary terms and conditions with the
8 exception of this condition and the following terms and conditions of probation: Obey All Laws;
9 General Probation Requirements; Quarterly Declarations.

10 17. Respondent's probation is subject to revocation because she failed to comply with
11 Probation Condition 10, referenced above. The facts and circumstances regarding this violation
12 are as follows:

13 18. Paragraphs 11 through 15, above, inclusive are fully incorporated and realleged
14 herein as if fully set forth.

15 19. On or about July 2, 2021, the Board¹ sent Respondent an email informing her that
16 time spent residing or practicing out-of-state would not apply to the reduction of her probationary
17 time in California and to notify the Board if she planned on returning to California. Respondent
18 replied that she was "still in a research post-doctoral fellow at Virginia Commonwealth
19 University." She further stated she intended to return to residency in 2022, but supplied no
20 additional information regarding the residency program.

21 20. On or about December 30, 2021, the Board sent Respondent a letter informing her
22 that if her period of non-practice in California while on probation exceeds 18-months she would
23 be required to complete an additional examination or an assessment program at the Board's
24 discretion. Respondent was further informed if it exceeded two years on December 28, 2022, that
25 would be considered a violation of probation and the Board would seek further discipline of her
26 license.

27 21. On or about March 16, 2022, the Board sent Respondent a letter reminding her that
28 her period of non-practice in California would exceed 18-months on June 28, 2022, and that she
would exceed two years of non-practice in California on December 28, 2022.

¹ The Board, in this context, includes the Board and its agents or designees.

1 22. On or about March 30, 2022, Respondent sent an email to the Board stating that she
2 planned to return to a Family Practice residency in 2023.

3 23. On or about June 28, 2022, Respondent's period of non-practice in California
4 exceeded 18-months.

5 24. On or about December 9, 2022, the Board sent Respondent an email requesting that
6 she provide the name, location, phone numbers and supervisor's information regarding her
7 intended return to residency. Respondent replied that she was an applicant for the class entering
8 in 2023; however, she provided no further details regarding the residency program.

9 25. On or about December 28, 2022, Respondent exceeded two years of non-practice in
10 California.

11 26. On or about February 1, 2023, the Board sent Respondent another email requesting
12 the information regarding the alleged family practice residency program she intended to return to
13 as she had never responded to the previous request for additional information concerning the
14 residency program from December 9, 2022.

15 27. On or about March 22, 2023, the Board sent Respondent another letter informing her
16 that her period of non-practice in California had exceeded 18-months and that she was required to
17 complete the Federation of State Medical Board's Special Purpose Examination, or, at the
18 Board's direction, a clinical competency assessment program prior to resuming the practice of
19 medicine in California. It further stated that she had exceeded two years of non-practice in
20 violation of her probation.

21 28. On or about April 25, 2023, the Board sent Respondent a Non-Compliance letter
22 again stating that her non-practice in California exceeded 18-months, and subsequently exceeded
23 two-years, and the consequences of such. A Request for Surrender a Probationary License form
24 was included with the letter.

25 29. As of the date of this Petition, Respondent has continued to exceed two-years of non-
26 practice in California and has not provided any additional information concerning the alleged
27 2022 and 2023 residency programs she intended to apply for or enroll in.

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1 SECOND CAUSE TO REVOKE PROBATION

2 (Violation of Condition 7 - Quarterly Declarations)

3 30. At all times after the effective date of Respondent's probation in Case No. 800-2019-
4 054708, Condition 7 stated:

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

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

9 31. Respondent's probation is subject to revocation because she failed to comply with
10 Probation Condition 7, referenced above. The facts and circumstances regarding this violation
11 are as follows:

12 32. Paragraphs 11 to 15, above, inclusive are incorporated and realleged herein as if fully
13 set forth.

14 33. On or about July 2, 2021, the Board sent Respondent an email informing her that in
15 order to bring her case up-to-date, she needed to submit declarations for the fourth quarter of
16 2020 (October to December), the first quarter of 2021 (January to March), and that her second
17 quarterly declaration for 2021 (April to June) was now due. Respondent was required to "submit
18 all original documents to the Board by July 10, 2021."

19 34. On or about July 9, 2021, the Board emailed Respondent that she needed to comply
20 with the following terms and conditions of probation during her period of non-practice in
21 California per Condition 10: Obey all laws; the General probation requirements; and the
22 Quarterly declaration requirements. Attached to the email was a blank quarterly declaration form,
23 the quarterly declaration due dates form², and the information summary form to complete.
24 Respondent was further informed that the original documents needed to be mailed to the Board.

25 _____
26 ² This form states: "One of the conditions of your probation requires you to submit **original**
27 quarterly declarations under the penalty of perjury on forms provided by the Board stating whether you
28 have been in compliance with all of the terms and conditions of your probation." It also lists the dates the
original declarations are due. It further provides that "Failure to comply with the reporting requirements is
a **violation of probation and is grounds for administrative action to revoke probation** and carry out
the Decision that was stayed." (Emphasis in original.)

1 35. On or about December 30, 2021, the Board sent Respondent a letter that it had not
2 received her delinquent quarterly declarations for the first, second and third quarters of 2021
3 (January to March, April to June, and July to September), and that her fourth quarterly declaration
4 (October to December) was due in the Probation unit by January 10, 2022. She was further
5 advised that failure to provide the declarations in a timely manner will be cause for further
6 discipline of her license.

7 36. On or about January 12, 2022, Respondent emailed two signed *quarterly declaration*
8 *due dates forms*, signed on October 10, 2021 and January 12, 2022, that were purportedly her
9 quarterly declarations signed under penalty of perjury. The forms Respondent emailed, however,
10 were not her original quarterly declarations as required, but instead the due dates forms specifying
11 the dates the quarterly declarations were due. The following day, the Board notified Respondent
12 that the forms were incorrect and the Board required her to submit quarterly declarations pursuant
13 to the terms and conditions of her probation.

14 37. On or about March 16, 2022, the Board sent Respondent a letter that her original
15 quarterly declarations were not received for the first, second, third, or fourth quarters of 2021, and
16 the original delinquent declarations were now due by March 26, 2022. It further informed her
17 that failure to submit the quarterly declarations as required is a violation of probation.

18 38. On or about April 22, 2022, the Board received Respondent's delinquent original
19 second, third and fourth quarterly declarations of 2021, and the first and second quarters of 2022
20 that were due by March 26, 2022; however, the declarations were defective as follows:

21 A. Unsigned Second and Third quarters of 2021;

22 B. An unsigned Fourth quarter of 2021, dated December 11, 2021, before the end of the
23 quarter of December 31, 2021;

24 C. First quarter of 2022 was signed on March 20, 2022, before the end of the quarter of
25 March 31, 2022; and

26 D. An unsigned Second quarter of 2022, dated April 2, 2022, before the end of the
27 quarter of June, and questions 9 through 16 were left unanswered.

28 39. On or about December 9, 2022, the Board sent Respondent an email that her

1 delinquent quarterly declarations received on April 22, 2022, were all invalid. Attached to the
2 Board's email were seven (7) blank quarterly declarations with the delinquent quarters required to
3 be completed, and the signature areas highlighted. Respondent was requested to fill out all
4 sections, mark all boxes that apply and return them via mail as soon as possible. That same day,
5 Respondent replied that she mailed all the signed paperwork.

6 40. On or about February 1, 2023, the Board sent Respondent an email that it had not
7 received her original signed seven delinquent quarterly declarations as required. Respondent was
8 informed that failure to provide quarterly declarations as required is a violation of probation.

9 41. On or about February 10, 2023, the Board received an email from Respondent with
10 her reported quarterly declarations; however, Respondent knew that the original signed
11 declarations were required to be mailed and received by the Board.

12 42. On or about February 13, 2023, the Board received Respondent's quarterly
13 declarations as follows:

14 A. First Quarter of 2021, covering the period of January to March that was originally due
15 no later than April 10, 2021. Respondent signed the declaration under penalty of perjury on
16 February 10, 2023, declaring that she had complied with each term and condition of her probation
17 when she had not;

18 B. Second Quarter of 2021, covering the period of April to June that was originally due
19 no later than July 10, 2021. Respondent signed the declaration under penalty of perjury on
20 February 10, 2023, declaring that she had complied with each term and condition of her probation
21 when she had not;

22 C. Third Quarter of 2021, covering the period of July to September that was originally
23 due no later than October 10, 2021. Respondent signed the declaration under penalty of perjury
24 on February 9, 2023, declaring that she had complied with each term and condition of her
25 probation when she had not;

26 D. Fourth Quarter of 2021, covering the period of October to December that was
27 originally due no later than January 10, 2022. Respondent signed the declaration under penalty of
28 perjury on February 9, 2023, declaring that she had complied with each term and condition of her

1 probation when she had not;

2 E. First Quarter of 2022, covering the period of January to March that was due no later
3 than April 10, 2022. Respondent signed the declaration under penalty of perjury on February 9,
4 2023, declaring that she had complied with each term and condition of her probation when she
5 had not;

6 F. Second Quarter of 2022, covering the period of April to June that was due no later
7 than July 10, 2022. Respondent signed the declaration under penalty of perjury on February 9,
8 2023, declaring that she had complied with each term and condition of her probation when she
9 had not;

10 G. Third Quarter of 2022, covering the period of July to September that was due no later
11 than October 10, 2022. Respondent signed the declaration under penalty of perjury on February
12 9, 2023, declaring that she had complied with each term and condition of her probation when she
13 had not; and

14 H. Fourth Quarter of 2022, covering the period of October to December that was due no
15 later than January 10, 2023. Respondent signed the declaration under penalty of perjury on
16 February 9, 2023, declaring that she had complied with each term and condition of her probation
17 when she had not.

18 43. On or about March 22, 2023, the Board emailed and sent Respondent a Non-
19 Compliance letter stating that she was delinquent in her fourth quarterly declaration that was due
20 no later than January 10, 2023. The letter informed Respondent that she must submit the original
21 declaration as required by April 1, 2023.

22 44. On or about April 1, 2023, Respondent emailed the Board her Fourth Quarterly
23 declaration covering the period of October to December 2022, due no later than January 10, 2023;
24 however, Respondent knew that the original declaration was required to be mailed and that an
25 email copy was not acceptable.

26 45. On or about April 3, 2023, the Board sent Respondent an email again notifying her
27 that she was required to submit original quarterly declarations to the Board and that the email
28 copies will not be accepted. She was further informed that failure to comply with her reporting

1 requirements is a violation of probation.

2 46. On or about April 25, 2023, the Board emailed and sent Respondent a Non-
3 Compliance letter stating that she was in non-compliance with the terms and conditions of
4 probation in that she failed to submit her quarterly declarations for 2022. Respondent was further
5 notified that the delinquent original declarations were required to be received by May 3, 2023.

6 47. On or about May 3, 2023, Respondent sent an email with the delinquent quarterly
7 declarations even though she had been previously notified that the original declaration was
8 required and an emailed copy was not acceptable.

9 48. On or about May 12, 2023, the Board received Respondent's Fourth Quarterly
10 Declaration of 2022, covering the period of October to December that was due no later than
11 January 10, 2023. Respondent signed the declaration under penalty of perjury on February 9,
12 2023, declaring that she had complied with each term and condition of her probation when she
13 had not.

14 **THIRD CAUSE TO REVOKE PROBATION**

15 (Violations of Probation - Condition 11)

16 49. At all times after the effective date of Respondent's probation in Case No. 800-2019-
17 054708, Condition 11 stated:

18 Failure to fully comply with any term or condition of probation is a violation of probation.
19 If respondent violates probation in any respect, the Board after giving respondent notice and the
20 opportunity to be heard, may revoke probation and deny the Application for a surgeon's and
21 physician's certificate. If an Accusation, or Petition to Revoke Probation, or an Interim
22 Suspension Order is filed against respondent during probation, the Board shall have continuing
23 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
24 is final.

25 50. Respondent's probation is subject to revocation because she failed to comply with
26 Probation Condition 11, referenced above. The facts and circumstances regarding this violation
27 are as follows:

28 51. Paragraphs 11 through 48, above, inclusive are fully incorporated and realleged
herein as if fully set forth.

//

1 DISCIPLINE CONSIDERATIONS

2 52. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that on or about October 23, 2020, in a prior disciplinary action titled *In the*
4 *Matter of the Statement of Issues Against Phoebe Oguda Dacha*, before the Medical Board of
5 California, in Case No. 800-2019-054708, Respondent's application for a full and unrestricted
6 license was denied and a probationary license was issued on five (5) years of probation on various
7 terms and conditions for incompetency, failure to maintain adequate and accurate records, and
8 unprofessional conduct. That decision is now final and is incorporated by reference as if fully set
9 forth.

10 PRAAYER

11 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Medical Board of California issue a decision:

- 13 1. Revoking the probation that was granted by the Medical Board of California in Case
14 No. 800-2019-054708, and imposing the disciplinary order that was stayed thereby revoking
15 Physician's and Surgeon's Certificate Number A 171183 issued to Respondent, Phoebe Oguda
16 Dacha, M.D.;
- 17 2. Revoking or suspending Physician's and Surgeon's Certificate Number A 171183,
18 issued to Respondent, Phoebe Oguda Dacha, M.D.;
- 19 3. Revoking, suspending or denying approval of Phoebe Oguda Dacha, M.D.'s authority
20 to supervise physician assistants;
- 21 4. Ordering Respondent, Phoebe Oguda Dacha, M.D. to pay the Board the reasonable
22 costs of the investigation and enforcement of this case, and, if placed on probation, the costs of
23 probation monitoring; and

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5. Taking such other and further action as deemed necessary and proper.

DATED: SEP 11 2023



REJI VARGHESE
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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Exhibit A

Decision and Order

Medical Board of California Case No. 800-2019-054708

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

In the Matter of the Statement of
Issues Against

Phoebe Oguda Dacha

Applicant.

Case No. 800-2019-054708

DECISION

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C), to correct a clerical error that does not affect the factual or legal basis of the Proposed Decision. The Proposed Decision is amended as follows:

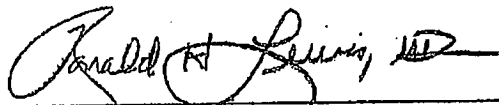
1. Page 18, paragraph 14, line 2; the Business and Professions Code section is corrected to read "2266."

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 October 23, 2020, although the probation will not commence until the applicant completes any remaining requirements for licensure and the license is issued.

IT IS SO ORDERED: September 25, 2020.

MEDICAL BOARD OF CALIFORNIA



Ronald H. Lewis, M.D., Chair
Panel A

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

In the Matter of the Statement of Issues against:

PHOEBE OGUDA DACHA, Respondent

Agency Case No. 800-2019-054708

OAH No. 2019120607

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearing (OAH), heard this matter by video and telephone on June 1-4, 2020, July 2, 2020, and July 17, 2020, in Los Angeles, California.

Colleen M. McGurrin, Deputy Attorney General, appeared by telephone and represented complainant William Prasifka, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

Tracy Green, Attorney at Law, appeared by telephone and represented respondent Phoebe Oguda Dacha, who was also present by telephone.

The record was held open for the parties to file concurrent closing briefs by July 24, 2020. Complainant filed a timely brief marked Exhibit 12 for identification.

Respondent filed no closing brief. The record was closed and the matter was submitted for decision on July 24, 2020.

FACTUAL FINDINGS

Jurisdictional Facts

1. On May 7, 2018, respondent filed with the Board an Application for a Physician's and Surgeon's License (Application). On March 25, 2019, the Board denied the Application.
2. On July 8, 2019, Kimberly Kirchmeyer brought the Accusation against respondent in her official capacity as Executive Director of the Board. Upon his appointment as the successor Executive Director of the Board, William Prasifka became the real party-in-interest as complainant in this proceeding.
3. Respondent timely submitted a Request for Hearing.

Educational Background

4. Respondent emigrated from Kenya in 1999. She enrolled at Virginia Union University, declaring her major in Biology and a minor in Chemistry. Respondent was awarded a Bachelor of Science degree in 2004, graduating with a 3.59 grade point average.
5. Respondent thereafter enrolled in three post-graduate programs. The University of the Virginia Commonwealth University School of Medicine awarded respondent a Master's of Science degree in Physiology and Biophysics in May 2008. Drexel University awarded respondent a Doctor of Medicine (MD) degree in 2013, and

a Masters of Business Administration (MBA) degree with a concentration in healthcare in 2016. (Ex. A.)

6. Respondent has completed and passed all three required steps of the United States Medical Licensing Examination (USMLE). She completed and passed the final step in July 2014.

7. Respondent has a seven-year-old son who was born by cesarean section just before respondent graduated from medical school.

Geisinger Anesthesiology Residency

8. On July 1, 2013, respondent entered the Geisinger Anesthesiology Residency Program (Geisinger Program). Respondent attended six clinical rotations and one self-study rotation during the first six months in the Geisinger Program.

9. For the rotation period July 1, 2013, through July 30, 2013, respondent was evaluated by Dr. Jonathan Hosey who scored respondent as meeting expectations in all categories, except with respect to two milestones in patient care and professionalism. With respect to patient care, Dr. Hosey observed that respondent's performance deteriorated and that she became "much more distracted and less involved with routine work." (Ex. 4, p. A88.) With respect to professionalism, Dr. Hosey noted a "dramatic deterioration" after the first two weeks of the rotation. (Ex. 4, p. A89.) For the same rotation, Dr. Abu Jalil and Dr. Azzul Roy evaluated respondent and scored her as meeting or exceeding expectations for all milestones.

10. For the rotation period August 1, 2013, through August 31, 2013, respondent was evaluated by Dr. Abbas Ali who scored respondent as needing improvement in three milestones relating to patient care and one milestone relating to

medical knowledge. Dr. Ali noted, "This is [respondent's] first [ICU] rotation and she showed daily improvement." (Ex. 4, p. A98.) For the same rotation, Dr. Karen Korzick, Dr. Mohammed Mogri, and Dr. Joseph Smith also evaluated respondent. Dr. Korzick scored respondent as needing improvement in numerous milestones relating to patient care and medical knowledge, observing that respondent was "struggling as an intern." (Ex. 4, p. A100.) Dr. Modri scored respondent as needing improvement with respect to two milestones, but noted that she "should catch up in the next few months." (Ex. 4, p. A105.)

11. On August 30, 2013, respondent was placed on "non-clinical" duties with no patient care responsibilities and no calls through October 1, 2013. For the rotation during that period, she was evaluated by Dr. Michael Entrup who notes: "I do not believe that [respondent] recognizes areas that need to be improved. When discussing this with her, she continues to react with denial, silence, and at times tears. She gives me the impression that she is only doing these measures because she is 'being forced to'. I believe that she either lacks insight into her limitations or is denying them. These comments also pertain to the area of practice-based learning and improvement." (Ex. 4, pp. A110-111.)

12. For the rotation beginning October 2, 2013 and ending October 31, 2013, respondent was evaluated by Dr. Kevin Maguire. Dr. McGuire scored respondent as meeting all expectations and noted that she "did a fine job, if only she were to stay in the medicine field." (Ex. 4, p. AG029.) Dr. Deepak Vedamurthy and Dr. Khurram Zakaria both scored respondent as meeting expectations for all but one milestone. Dr. Vedamurthy noted, "Good performance for a new intern in the first two weeks of inpatient medicine rotation. She is committed to learning and has great potential." (Ex.

4, p. A118.) Dr. Zakaria reported that respondent is "pleasant to work with." (Ex. 4, p. A124.)

13. For the rotation beginning November 1, 2013 and ending November 30, 2013, respondent met the expectations for all milestones according to four evaluators. Dr. Rohit Varghese scored respondent as needing improvement in three areas of evaluation, noting that respondent "lacked organization at times which ultimately led to her having a difficult time formulating assessments and plans." (Ex. 4, p. A131.)

14. For the rotation beginning December 4, 2013 and ending January 2, 2014, Dr. Kimberly Skelding scored respondent as needing improvement in patient care, commenting, "[Respondent] does not understand how to prioritize information in presentations, does not know how to make a plan to take care of patients in an organized fashion, does not know when to ask for help when a patient may be requiring higher level of care, cannot even formulate a well written note and plan of care." (Ex. 4, p. A140.) Other evaluators scored respondent as meeting expectations for the rotation, except in note-taking and general medical knowledge.

15. In January, 2014, the Geisinger Program "decided not to invite [respondent] to return for a second year in the program." (Ex. 4, p. A87.) In a final evaluation, it was noted: "The EM staff physicians were solicited for feedback for this evaluation. One common theme was that [respondent's] knowledge base was behind what would be expected for [her] education level; . . . This will take extra time and effort to catch up, but is not insurmountable. Another criticism from several staff members was that after presentation of the patient and discussion and agreement on the plan of care was reached, there was deviation from the plan that the staff found concerning and not in the best interests of optimal patient care." (Ex. 4, p. A151.)

16. Respondent's residency at the Geisinger Program ended on January 31, 2014. (Ex. 3.) At hearing, respondent explained that she was six weeks postpartum when she started the residency and was having medical issues resulting from the cesarean section. She testified that she was chronically fatigued and did her best, but that an anesthesiology program "wasn't the right fit" for her. Family medicine was more suited to respondent's interests in children and taking care of the elderly.

Riverside Family Medicine Residency

17. On July 1, 2017, respondent began training in the Riverside Family Medicine Residency program (Riverside Program).

18. After the first six months of the Riverside program, respondent demonstrated to the Clinical Competency Committee (CCC) that she was meeting or exceeding all milestones except two milestones in professionalism. Respondent was notably deficient in chart completion, and was placed on a performance improvement plan from January 2018 through March 2018 "to help her improve the timeliness of her documentation." (Ex. C, p. B8.) Among other terms to improve respondent's professionalism, respondent was scheduled four patients per half-day and given 72 hours to complete charts. (Ex. C, p. B10.) Respondent successfully completed this performance improvement plan by the time the CCC met for its year-end semi-annual evaluation on June 5, 2018, and she was promoted with her peers into the second year of residency. (Ex. C, p. B143)

19. Effective August 9, 2018, the Riverside Program implemented a remediation work plan for respondent based on observations that she was late for clinical and academic assignments and struggling to be present during clinical

encounters. The remediation work plan placed respondent on a modified work schedule and required weekly meetings to monitor her progress.

20. In November 2018, respondent requested a leave of absence from the Riverside Program to address personal family matters. Specifically, respondent was prohibited from bringing her child to California because the child's father obtained a court order preventing the child from being removed from the state of Virginia. During the first year of the Riverside Program, respondent traveled to Virginia monthly for weekend visitation, catching a "red-eye" flight on Friday night and returning to California on Sunday. However, at 11:30 p.m. on November 18, 2018, respondent notified faculty that she was flying to Virginia, and would not be at the clinic the next morning, as scheduled. Respondent sought leave under the Family and Medical Leave Act (FMLA), following the appropriate human resources process, and a leave of absence was approved. Respondent ceased performing clinical duties on November 19, 2018, and exhausted her paid time off before her leave of absence officially commenced on December 13, 2018. (Ex. D.) Respondent was scheduled to return to work on February 11, 2019.

21. On January 8, 2019, the Riverside Program held its semi-annual review and generally found respondent was performing satisfactorily with all competency milestones, except patient care and professionalism. An official milestone evaluation was not done because of the approved leave of absence. Respondent failed the "FMIS (pgy-2) rotation and FMP (continuity clinic – pgy-2)." (Ex. C. p. B22.) The review commented on areas needing improvement upon respondent's return to the program, including "medical knowledge, professionalism and patient care." (Ex. C, p. B22.) Respondent was going to be required to remediate several milestones relating to

patient care because she had not seen patients since November 18, 2019, and she continued to exhibit "unsatisfactory" results with chart completion. (Ex. C, p. B24.)

22. On January 16, 2019, the Board notified the Riverside Program that, although respondent had filed the Application, she had not yet satisfied the minimum licensing requirements for a California physician's and surgeon's license. At the time, Business and Professions Code section 2065 allowed medical school graduates to participate in a maximum of 24 months of accredited postgraduate training without a license.¹ Taking into account the seven months at the Geisinger Program, respondent was credited with a total of 23 1/2 months after 16 1/2 months at the Riverside Program. (Ex. 2, p. A041.) The January 16, 2019 notice warned that, unless respondent ceased all clinical and direct patient care duties, respondent and the Riverside Program would be subject to discipline for the unlicensed practice of medicine and aiding and abetting the unlicensed practice of medicine.

23. On January 18, 2019, the Riverside Program responded to the Board and confirmed that respondent had not participated in any clinical activities since November 18, 2018, and would not participate in future clinical activities until she obtained a license. In a follow-up letter to the Board, the program director explained that respondent "continued to face personal challenges, yet throughout her difficulties, [she] has been a caring and empathetic physician, safely and effectively

¹ Effective January 1, 2020, substantial modifications to Business and Professions Code section 2065 were enacted, extending the time limitations on the license exemptions for medical school graduates in residencies. (HEALTH CARE PROVIDERS—LICENSES AND PERMITS, 2018 Cal. Legis. Serv. Ch. 571 (S.B. 1480).)

handling acutely ill patients and has demonstrated skill in office based procedures and ultrasounds." (Ex. 6, p. A156.) The program director elaborated:

It is worth repeating that [respondent] has had serious extenuating circumstances for the duration of the time she has been a resident physician in this training program. Prior to moving to California [to enroll in the Riverside Program, respondent] resided in Virginia. Significant personal family stressors resulted from her move away from Virginia. This has caused [respondent] obvious personal strain and has certainly affected her ability to remain consistently present and engaged in her residency training.

(Ex. 6, p. A156.)

24. Based on the Board's January 16, 2019 notice that respondent was not authorized to perform clinical duties without a license and the terms of respondent's contract with the Riverside Program to perform clinical duties, the Riverside Program terminated respondent's employment effective February 11, 2019. (Ex. 9.)

Review of the Application

25. James Nuovo, M.D., who was then a member of the Board's Expert Review Committee, reviewed respondent's Application and records pertaining to respondent's residency training at the Geisinger and Riverside programs. Dr. Nuovo is a professor emeritus at University of California, Davis, School of Medicine, and currently serves as Chief Medical Consultant for the Board in its Enforcement Division. For 16 years, Dr. Nuovo served as the Associate Dean of the graduate medical school and participated in evaluations of residents at the school. He has served as a

consultant and medical expert for the Board since 1993. He has been board-certified in Family Medicine since 1983.

26. Dr. Nuovo reviewed the evaluations from the Geisinger Program and noted the recurring need for improvement in areas of patient care, professionalism, medical knowledge, system-based practice, practice-based learning and improvement, and interpersonal communication skills.

27. Dr. Nuovo also reviewed multiple evaluations from the Riverside Program. (Ex. C.) The evaluations generally indicate satisfactory performance in most milestones, and some evaluators rated respondent as "outstanding" in patient care and professionalism. (Ex. C, p. B81-82, B115.) Dr. Nuovo noted that, despite a series of positive evaluations through the first year of respondent's residency at the Riverside Program, respondent scored poorly in many performance evaluations. Respondent was untimely in completing her documentation and a performance improvement plan was implemented to help her improve. Other evaluators commented that respondent needed to continue to improve on punctuality and chart completion.

28. For the period beginning July 1, 2018 through September 30, 2018, an evaluator commented that respondent "demonstrated limited skills in obtaining an appropriate [history of present illness]." Dr. Nuovo testified that he found it "very concerning" for a resident who has previously gone through training to be deficient in this regard and that the deficiency "exhibits lack of competence in basic core skills."

29. For the period beginning October 1, 2018, through December 31, 2018, respondent received unsatisfactory evaluations for patient care, practice-based learning and improvement, interpersonal and communication skills, professionalism, systems-based practice and overall competence. Dr. Nuovo testified that it was

"extremely unusual" to see the nature of the comments in respondent's evaluations. He estimated that less than one percent of residents will exhibit these types of deficits. He considered it significant that respondent showed a lack of improvement after a performance improvement plan was implemented because the point of such a plan is to put a resident on notice that issues need to be corrected. Dr. Nuovo considered the reduction in respondent's number of scheduled patients to be highly unusual.

30. Dr. Nuovo took into account the personal life issues affecting respondent's performance. However, in his opinion, all residents have stressors and personal problems, and those problems cannot rise to the level of affecting patient safety. Dr. Nuovo considered the 72-hour grace period to complete charting to be "very generous," and yet, respondent was regularly completing notes two weeks late. Dr. Nuovo considered respondent's inability to complete charts timely to be "very unprofessional" because the risk of harm to a patient is heightened if another practitioner treats a patient without the information that would be available in a timely recorded medical note.

31. Dr. Nuovo concluded that respondent was not able to demonstrate that she is able to practice competently, independently, and without direct supervision. In his report to the Board dated March 4, 2019, Dr. Nuovo explained:

[Respondent's] evaluations show a pattern [of] inconsistent performance during her time in the Geisinger and Riverside programs. There were repeated efforts to inform [respondent] of these performance deficiencies and to help remediate these problems. Despite these efforts, [respondent] continued to demonstrate performance concerns that place patients under her care at risk for harm.

As an example, the performance evaluations cited above (from July 1-September 30th and from October 1-December 31st) show serious problems in multiple areas to include basic skills such as obtaining an appropriate history and physical, being able to present a case with pertinent details, inadequate documentation, and inability to identify acutely ill patients and persistent problems with professional conduct.

(Ex. 7, p. A299.)

32. Without expressly referring to Dr. Nuovo's report or findings, the Board denied the Application on March 25, 2019, "due to issues that occurred during respondent's training [at the Geisinger and Riverside Programs]." (Ex. 10.) The Board denied the Application under Business and Professions Code sections 480 and 2234 on the grounds of unprofessional conduct and incompetence. The Board inaccurately found that the Riverside Program "determined that [respondent would] not be promoted to the second year of training" (Ex. 10, p. A322), when in fact, she was promoted with her peers into the second year of residency. (Ex. C, p. B143, see also Factual Finding 18.) Furthermore, the denial letter inaccurately found that respondent was terminated from the Riverside Program on February 11, 2019 "due to not meeting the program's requirements." (Ex. 9, p. A322.) In fact, the Riverside Program terminated respondent's contract because the Board's demand that respondent be licensed to perform clinical duties prohibited respondent from fulfilling her contractual duties. (Ex. 9, p. A322, see also Factual Finding 24.)

Other Considerations

33. Respondent has continued to take continuing medical education courses through April 10, 2020. (Ex. E.) She became a Certified Coding Specialist on September 6, 2019. (Ex. F.)

34. On December 11, 2019, respondent was approved to participate in the Reserve Component Health Professions Stipend Program of the United States Department of the Air Force (Air Force). She enrolled in a Family Medicine Residency/Primary Care Clinical Research Fellowship at Virginia Commonwealth School of Medicine. Upon completion of her residency, she will have a 72-month commitment to the Air Force in a critical skill. (Ex. G.)

35. Respondent presented character reference letters in support of her appeal. Iman Fobia wrote that she is a family medicine resident in the Riverside Program and has known respondent for two years. Having worked together during their residency, Ms. Fobia observed respondent to be a "compassionate provider, a tireless advocate for the underserved and strongly committed to justice in every aspect of her life." (Ex. H.) John William McNeil II, a fellow resident at the Riverside Program wrote, "There is no question [respondent] is more than capable of handling the rigors associated with being a physician" and that he "value[s] [respondent's] honesty and the integrity she has demonstrated in stressful circumstances." (Ex. I, as amended.) Lucy Gitonga, a licensed nurse for 10 years, observed respondent during her residency at the Riverside Program and "came to admire the integrity and diligence with which she did her work." (Ex. J.) Nurse Gitonga further noted, "I was confident that my patients were taken care by a highly qualified doctor who took time to fully assess the patients and executed the plan of care to better their lives." (Ex. J.)

36. Koohszad Karimi, D.O., is a family medicine attending physician and clinical associate professor with the Riverside Program and supervised respondent during the second year of her residency. He wrote:

My experience with [respondent] has been pleasant and professional during patient rounds and management. [Respondent] performed her duties as a second year resident in my in-patient service appropriately to her level of training. I found her to be extremely respectful throughout [s/c] our interactions with other members of the staff and patients. I valued the productive learning environment she created with her fellow residents and in short, I believe this young physician has potential to excel in her field. During this time, she has shown great leadership, character, responsibility, and commitment to pursuing and advancing her career.

(Ex. K.)

37. In September 2019, respondent returned to Kenya to participate in a medical mission organized by a Christian organization. Because Kenya has no residency requirements, respondent was allowed to treat patients. Respondent participated in other medical missions to San Salvador in 2006 and 2014, serving primarily as a medical assistant.

38. Although respondent currently lives in Virginia, she is considering moving to California. If granted a license to practice medicine, respondent intends to complete her residency training at the Riverside Program.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. In a hearing to determine whether a license should be granted or issued, the applicant must show compliance with the statutes and rules governing the license by producing proof at the hearing. (Gov. Code, § 11504; *Coffin v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471, 475.)

2. The standard of proof upon the applicant for a license is a preponderance of the evidence. (Evid. Code, § 115.)

Governing Law

3. The Medical Practice Act governs the rights and responsibilities of the holder of a physician's and surgeon's certificate. (Bus. & Prof. Code, §§ 2000 et seq.) The state's obligation and power to regulate the professional conduct of its health practitioners is well settled. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564; *Fuller v. Board of Medical Examiners* (1936) 14 Cal.App.2d at p. 741.)

4. Protection of the public is the highest priority for the Board in exercising its disciplinary authority and is paramount over other interests in conflict with that objective. (Bus. & Prof. Code, § 2001.1.)

5. Every applicant for a physician's and surgeon's certificate must comply with the requirements of licensure unless other specific statutory requirements are applicable to a particular class of applicant. (Bus. & Prof. Code, § 2080, subd. (b).)

6. The Board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a

licensee to revocation or suspension of their license. (Bus. & Prof. Code, § 2221, subd. (a).)

Incompetence

7. The first cause for denial of the Application alleges respondent demonstrated incompetence during her residency training at the Geisinger Program and Riverside Program.

8. Unprofessional conduct includes incompetence. (Bus. & Prof. Code, § 2234, subd. (d).) Incompetence has been defined as a "general lack of present ability to perform a given duty as distinguished from inability to perform such duty as a result of mere neglect or omission." (*Pollak v. Kinder* (1978) 85 Cal.App.3d 833, 837-838.)

9. The Board has denied respondent a professional license on the grounds of unprofessional conduct that occurred during her residency training. Respondent did not dispute her lack of competency to practice anesthesiology, acknowledging the Geisinger Program was not a suitable fit for her. However, the Board essentially concluded that respondent was incompetent to practice family medicine based on the erroneous finding that she failed to meet the requirements of the Riverside Program. The weight of the evidence established that, before respondent took an approved leave of absence under the FMLA, she was meeting most milestones, but needed improvement in others. However, there is no evidence that the Riverside Program would have terminated respondent's training but for the warning from the Board that the program would be aiding and abetting in the unlicensed practice of medicine unless respondent ceased all clinical activities.

10. Nonetheless, despite a series of positive evaluations through the first year of respondent's residency at the Riverside Program, respondent scored poorly in

many performance evaluations even after reduction in the number of scheduled patients and generous time allowances to complete her documentation. The most recent semi-annual review reflected that respondent needed to improve her medical knowledge, professionalism and patient care, and would be required to remediate second-year rotations after a four-month leave of absence. Dr. Nuovo credibly testified about respondent's shortcomings and his opinion that respondent was not able to able to practice competently, independently, and without direct supervision is given full credit.

11. Accordingly, a preponderance of the evidence does not establish that respondent is presently able to independently perform the duties of a licensed surgeon and physician. Therefore, cause exists to deny the Application under Business and Professions Code sections 2221 and 2234, subdivision (d), on the grounds of incompetency.

Failure to Maintain Adequate and Accurate Records

12. The second cause for denial of the Application alleges respondent failed to maintain adequate and accurate medical records of her care and treatment provided to patients during her residency training at the Geisinger Program and Riverside Program.

13. The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients also constitutes unprofessional conduct. (Bus. & Prof. Code, § 2266.)

14. A preponderance of the evidence establishes that respondent was chronically untimely in the preparation of patient medical records at both the

Geisinger Program and Riverside Program. Therefore, cause exists to deny the Application under Business and Professions Code section 2226.

Unprofessional Conduct

15. The third cause for denial of the Application alleges respondent engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming of a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine.

16. Respondent has engaged in unprofessional conduct by exhibiting incompetency and by failing to maintain adequate and accurate medical records. Unprofessional conduct is unbecoming of a member in good standing of the medical profession, and demonstrates an unfitness to practice medicine.

17. Therefore, cause exists to deny the Application under Business and Professions Code sections 2221 and 2234.

Level of Discipline

18. An administrative law judge of the Medical Quality Hearing Panel is mandated, wherever possible, to take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence. (Bus. & Prof. Code, § 2229, subd, (b).) It is the intent of the Legislature that the division, the California Board of Podiatric Medicine, and the enforcement program shall seek out those licensees who have demonstrated deficiencies in competency and then take those actions as are indicated, with priority

given to those measures, including further education, restrictions from practice, or other means, that will remove those deficiencies. (Bus. & Prof. Code, § 2229, subd. (c).)

19. To implement these mandates, the Board has adopted the *Manual of Model Disciplinary Orders and Disciplinary Guidelines*, 12th Edition, 2016 (Guidelines). (Cal. Code Regs., tit. 16, § 1361, subd. (a).) For a licensee found guilty of unprofessional conduct, the Guidelines recommend a maximum penalty of revocation and a minimum penalty of stayed revocation with five years of probation. It follows that, for an applicant found guilty of unprofessional conduct, the Board is not mandated to deny the application outright.

20. The Board, in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation: (1) Practice limited to a supervised, structured environment where the licensee's activities shall be supervised by another physician and surgeon; (2) total or partial restrictions on drug prescribing privileges for controlled substances; (3) continuing medical or psychiatric treatment; (4) Ongoing participation in a specified rehabilitation program; (5) enrollment and successful completion of a clinical training program; (6) abstention from the use of alcohol or drugs; (7) restrictions against engaging in certain types of medical practice; (8) compliance with all provisions of the Medical Practice Act; and (9) payment of the cost of probation monitoring. (Bus. & Prof. Code, § 2221, subd. (a).) Moreover, the Board, in its sole discretion, may issue a probationary postgraduate training license to an applicant subject to similar terms and conditions. (Bus. & Prof. Code, §§ 2064.5 and 2064.7.)

21. The purpose of a disciplinary action is not to punish, but to protect the public. (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1416.) Outright denial of the Application is unduly punitive under the circumstances of this case. A preponderance of the evidence established that respondent has complied with the requirements of licensure by completing an application on the approved form, by having been awarded an MD degree from an approved medical school, and showing proof of having completed and passed all three required steps of the USMLE. Her inability to perform her duties at both postgraduate training programs was reasonably impaired by substantial family pressures. Although life stressors do not excuse unprofessional conduct, further education and other probationary conditions may remove those deficiencies when those stressors are lightened or better managed.

22. Respondent has demonstrated a desire to learn by continuing to take educational courses in medicine, by participating in a mission to Kenya in 2019, and by her commitment to the Reserve Component Health Professions Stipend Program of the Air Force. The character reference letters in support of the Application portray respondent as a caring and dedicated healthcare provider and do not indicate that any inherent character trait prevents her from performing the duties of a physician.

23. Because respondent has not yet successfully completed her residency training and has exhibited recurring deficiencies in core clinical skills, restrictions on the scope of practice are indicated. A probationary physician's and surgeon's certificate will protect the public and is more suitably calculated to aid in respondent's completion of her post-graduate residency training. Further education in medical recordkeeping and professional ethics are necessary measures to remove respondent's deficiencies in those areas. Because respondent currently lives in Virginia, the term of probation shall be tolled until she moves to California.

ORDER

The Application of respondent Phoebe Oguda Dacha for a full and unrestricted Physician's and Surgeon's Certificate is denied. However, a probationary license shall be issued for a period of five years on the following terms and conditions.

1. Practice Limitations

Until respondent presents proof of satisfactory completion of the postgraduate training required under Business and Professions Code section 2096 on a form approved by the Board, the probationary license shall be probationary postgraduate training license under Business and Professions Code sections 2064.5 and 2064.7. Respondent may engage in the practice of medicine only in connection with her duties as a resident physician in a board-approved program, including its affiliated sites, or under those conditions as are approved in writing and maintained in respondent's file by the director of her program. The failure to successfully complete a board-approved postgraduate training program under Business and Professions Code section 2096 shall be a violation of probation.

Upon the successful completion of a board-approved postgraduate training program and until the probation term ordered herein expires or is terminated, respondent's practice shall be limited to a supervised, structured environment where respondent's activities shall be supervised by another physician and surgeon:

2. Medical Recordkeeping Course

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in medical recordkeeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any

information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one year of enrollment. The medical recordkeeping course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical recordkeeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

3. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of California Code of Regulations (CCR), Title 16, section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after respondent's initial enrollment, and the longitudinal component of the program not

later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

4. Notification

Within seven days of the effective date of this Decision and throughout the term of probation, respondent shall provide a true copy of this Decision and Statement of Issues to the program director of any postgraduate training and to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to her, at any other facility where she 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 her. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall apply to any changes in hospitals, other facilities, or insurance carrier.

5. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

6. 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 payments and other orders.

7. 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.

8. 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 her 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, subdivision (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.

9. Interview with the Board or Its Designee

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

10. 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.

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 deny

the Application for a surgeon's and physician's certificate. 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 or not 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 and every 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. Completion of Probation

Respondent shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent shall be granted a full and unrestricted license.

DATE: August 19, 2020

DocuSigned by:
Matthew Goldsby
MATTHEW GOLDSBY

Administrative Law Judge

Office of Administrative Hearings

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8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 8 2019
BY R. Wong ANALYST

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

In the Matter of the Statement of Issues
Against:

Case No. 800-2019-054708

PHOEBE OGUĐA DACHA,

STATEMENT OF ISSUES

Applicant.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On May 7, 2018, the Medical Board of California (the Board) received an application for a Physician's and Surgeon's Certificate from Phoebe Oguda Dacha (the Applicant). On or about June 17, 2018 and December 12, 2018, Phoebe Oguda Dacha certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 25, 2019.

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1 JURISDICTION

2 3. This Statement of Issues is brought before the Board under the authority of the
3 following laws. All section references are to the Business and Professions Code (Code) unless
4 otherwise indicated.

5 4. Section 2221 of the Code states:

6 “(a) The board may deny a physician’s and surgeon’s certificate to an applicant
7 guilty of unprofessional conduct or of any cause that would subject a licensee to
8 revocation or suspension of his or her license. The board in its sole discretion, may
9 issue a probationary physician’s and surgeon’s certificate to an applicant subject to
10 terms and conditions, including, but not limited to, any of the following conditions of
11 probation:

12 “(1) Practice limited to a supervised, structured environment where the
13 licensee’s activities shall be supervised by another physician and surgeon.

14 “(2) Total or partial restrictions on drug prescribing privileges for controlled
15 substances.

16 “(3) Continuing medical or psychiatric treatment.

17 “(4) Ongoing participation in a specified rehabilitation program.

18 “(5) Enrollment and successful completion of a clinical training program.

19 “(6) Abstention from the use of alcohol or drugs.

20 “(7) Restrictions against engaging in certain types of medical practice.

21 “(8) Compliance with all provisions of this chapter.

22 “(9) Payment of the cost of probation monitoring.

23 “(b) The board may modify or terminate the terms and conditions imposed on
24 the probationary certificate upon receipt of a petition from the licensee. The board
25 may assign the petition to an administrative law judge designated in Section 11371 of
26 the Government Code. After a hearing on the petition, the administrative law judge
27 shall provide a proposed decision to the board.

28 “(c) The board shall deny a physician’s and surgeon’s certificate to an

1 applicant who is required to register pursuant to Section 290 of the Penal Code. This
2 subdivision does not apply to an applicant who is required to register as a sex
3 offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor
4 conviction under Section 314 of the Penal Code.

5 “(d) An applicant shall not be eligible to reapply for a physician’s and
6 surgeon’s certificate for a minimum of three years from the effective date of the
7 denial of his or her application, except that the board may, in its discretion and for
8 good cause demonstrated, permit reapplication after not less than one year has
9 elapsed from the effective date of the denial.”

10 5. Section 2234 of the Code, states, in pertinent part:

11 “The board shall take action against any licensee who is charged with
12 unprofessional conduct. In addition to other provisions of this article, unprofessional
13 conduct includes, but is not limited to, the following:

14 “...

15 “(d) Incompetence.

16 “...”

17 6. Section 2266 of the Code states:

18 “The failure of a physician and surgeon to maintain adequate and accurate
19 records relating to the provision of services to their patients constitutes unprofessional
20 conduct.”

21 7. Unprofessional conduct under section 2234 of the Code is conduct which breaches
22 the rules or ethical code of the medical profession, or conduct which is unbecoming a member in
23 good standing of the medical profession, and which demonstrates an unfitness to practice
24 medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 (Incompetence)

3 8. Applicant's application is subject to denial under sections 2221 and 2234, subdivision
4 (d), of the Code, in that Applicant demonstrated incompetence in her Anesthesiology residency
5 and her Family Medicine residency programs. The circumstances are as follows:

6 Anesthesiology Residency

7 9. On or about July 1, 2013, Applicant began an Anesthesiology residency program as a
8 post-graduate first-year resident. During the first six months of this program, Applicant attended
9 six clinical rotations and one self-study rotation.

10 10. From on or about July 1, 2013, through on or about July 30, 2013, Applicant
11 participated in a neurology rotation. Applicant's faculty evaluation for this rotation indicated
12 Applicant required improvement in numerous areas of practice, including but not limited to:
13 patient care and professionalism.

14 11. Regarding patient care, the neurology rotation evaluation indicated Applicant needed
15 improvement in the following areas, including but not limited to: analyzing information,
16 participating in formulating both diagnostic and treatment plans, and implementing these plans
17 while seeking appropriate assistance and guidance when necessary.

18 12. Regarding professionalism, the neurology rotation evaluation indicated Applicant
19 needed improvement in the following areas, including but not limited to: acting responsibly and
20 reliably, demonstrating a commitment to patient care that emphasizes the best interests of the
21 patient, being sensitive and recognizing patient's right to confidentiality, privacy and autonomy,
22 and treating patients and their families with compassion and respect.

23 13. From on or about August 1, 2013, through on or about August 31, 2013, Applicant
24 participated in a critical care medicine rotation. Applicant's faculty evaluations for this rotation
25 indicated Applicant required improvement in the following areas, including but not limited to:
26 patient care, medical knowledge, interpersonal and communication skills, and practice-based
27 learning.

28 //

1 14. Regarding patient care, the critical care medicine rotation evaluations indicated
2 Applicant needed improvement in the following areas, including but not limited to: performing
3 comprehensive and accurate history and physical examinations, gathering accurate and
4 appropriate data, reliably delivering appropriate information, analyzing information, recognizing
5 acutely ill or medically deteriorating patients, initiating basic medical/surgical care for common
6 acute events, organizing and prioritizing responsibilities to provide safe, effective and efficient
7 patient care, and more prudent note taking.

8 15. Regarding medical knowledge, the critical care medicine rotation evaluations
9 indicated Applicant needed improvement in the following areas, including but not limited to:
10 identifying medical problems, offering a basic differential diagnosis, demonstrating knowledge of
11 etiology, pathophysiology, diagnosis and treatment of common medical and surgical problems,
12 understanding indications for basic interpretation of information gathered from common
13 physiologic monitors including echocardiograms, blood pressure, pulse oximetry, capnometry,
14 temperature and invasive hemodynamic monitors, and understanding indications for basic
15 interpretation of information gathered from common diagnostic tests including blood chemistries,
16 hematologic studies, coagulation studies, arterial blood gasses, chest radiography, pulmonary
17 function testing, and urinalysis.

18 16. Regarding interpersonal and communication skills, the critical care medicine rotation
19 evaluations indicated Applicant needed improvement in the following areas, including but not
20 limited to: remaining professional, maintaining effective interpersonal and communicative skills
21 while functioning under stressful conditions, recognizing situations where conflict or
22 communication of information requires assistance of others, and seeking appropriate assistance.

23 17. Regarding practice-based learning, the critical care medicine rotation evaluations
24 indicated Applicant needed improvement in the following areas, including but not limited to:
25 ability to locate, access, appraise and assimilate appropriate medical information resources to
26 answer clinical questions and support decision making, ability to handle feedback and formative
27 evaluation favorably and incorporating the information in her practice, ability to self-analyze
28 strengths and weaknesses, and seeking help and guidance to improve areas of limitation.

1 18. During the Anesthesiology residency program, Applicant was also assigned a one-
2 month, off-cycle, independent, reading and study non-clinical rotation. According to her critical
3 care medicine rotation evaluation, this independent rotation was created specifically for Applicant
4 to assist her in addressing several challenges she was facing. The professional development
5 component was designed for Applicant to study and prepare for the USMLE Step 3 exam.

6 19. After Applicant's one-month, independent study, non-clinical rotation, Applicant
7 resumed and completed her remaining clinical rotations in the Anesthesiology residency program.
8 Applicant's faculty evaluations continued to indicate Applicant failed to meet the required level
9 of training, which faculty evaluators believed demonstrated Applicant's lack of insight into her
10 own performance and abilities.

11 20. From on or about November 1, 2013, through on or about December 3, 2013,
12 Applicant participated in a night float rotation. Applicant's faculty evaluation for this rotation
13 indicated Applicant met expectations, however, it expressly noted Applicant needed to continue
14 to read and broaden her medical knowledge.

15 21. From on or about December 4, 2013, through on or about January 2, 2014, Applicant
16 participated in an in-patient rotation. Applicant's faculty evaluation for this rotation indicated
17 Applicant needed improvement in the areas of patient care and interpersonal and communication
18 skills. Specifically, the evaluation indicated Applicant did not understand how to prioritize
19 information in presentations, did not know how to make a plan to take care of patients in an
20 organized fashion, did not know when to ask for help when higher level of care was needed, and
21 could not formulate notes or plan of care, finding Applicant's notes were often inaccurate or not
22 completed on rounds.

23 22. From on or about January 3, 2014, through on or about January 30, 2014, Applicant
24 participated in an emergency medicine rotation. Applicant's faculty evaluation for this rotation
25 indicated Applicant needed improvement in the areas of medical knowledge and interpersonal
26 and communication skills. Specifically, the evaluation indicated Applicant demonstrated a
27 limited knowledge base, failed to complete emergency department notes in a timely fashion, and
28 deviated from treatment plans that were not in the best interests of optimal patient care.

1 23. In or around January 2014, Applicant was not invited to return to the Anesthesiology
2 residency program as a post-graduate second-year resident.

3 24. On or about February 17, 2014, Applicant was placed on non-clinical duties.

4 Family Medicine Residency

5 25. On or about July 1, 2017, Applicant began a Family Medicine residency program as a
6 post-graduate first-year resident. Applicant was not given any advanced credit for her prior
7 participation in the Anesthesiology residency program.

8 26. During the semi-annual Clinical Competency Committee meeting, concerns were
9 raised regarding Applicant's issues with time management, sustained focus, effective
10 communication with faculty, and independently making medical decisions.

11 27. From in or around January 2018, through in or around March 2018, Applicant was
12 placed on a Performance Improvement Program based upon recommendations of the Clinical
13 Competency Committee. The objectives identified in her performance improvement plan,
14 included, but were not limited to: limiting Applicant's clinic schedule to four patients per half-
15 day, completing all clinical documentation within 72 hours of the clinical encounter, displaying
16 consistent professional behavior, minimizing distractions during work hours, and identifying
17 when clinical duties/documentation requirements have become overwhelming and requesting
18 assistance.

19 28. During the semi-annual review of Applicant's family medicine residency for her
20 performance from January 1, 2018 through June 30, 2018, Applicant met expectations and
21 completed her performance improvement plan, however, it also noted that Applicant needed to
22 continue her targeted study in order to improve her medical knowledge and her medical charts
23 still required improvement.

24 29. In or around June 2018, Applicant completed her first-year post-graduate residency
25 and was promoted with her peers to become a second-year post-graduate resident.

26 30. Applicant's evaluations as a second-year post-graduate resident from July 1, 2018
27 through December 31, 2018, revealed issues in numerous areas of practice, including, but not
28 limited to: obtaining an appropriate history and physical examination, presenting a case with

1 pertinent details, inadequate documentation, inability to identify acutely ill patients, and persistent
2 issues with professional conduct.

3 31. On or about November 19, 2018, Applicant took a leave of absence from the Family
4 Medicine residency program.

5 32. Applicant's faculty evaluation for November 2018 indicated unsatisfactory
6 performance in the areas of medical knowledge, interpersonal and communication skills, and
7 professionalism. On or about December 12, 2018, the evaluator updated the faculty evaluation to
8 indicate they subsequently discovered a "serious breach in patient communication" requiring a
9 change in status to "failure" of the rotation.

10 33. During the semi-annual review of Applicant's performance as a second-year post-
11 graduate resident from July 1, 2018 through December 31, 2018, it was determined Applicant had
12 failed her rotation and needed to improve in the areas of medical knowledge and patient care. It
13 was determined Applicant would not be promoted and instead needed to remediate the last six
14 months of her residency and a remediation plan was developed.

15 34. On or about February 11, 2019, Applicant was terminated from the Family Medicine
16 residency program for failing to secure licensure with the Board.

17 **SECOND CAUSE FOR DENIAL OF APPLICATION**

18 (Failure to Maintain Adequate and Accurate Medical Records)

19 35. Applicant's application is further subject to denial under sections 2221, 2234, and
20 2266, of the Code, in that Applicant failed to maintain adequate and accurate medical records of
21 her care and treatment provided to patients during her first year postgraduate Anesthesiology
22 residency program and her first year postgraduate Family Medicine residency program, as more
23 particularly alleged in paragraphs 8 through 33, above, which are hereby incorporated by
24 reference and realleged as if fully set forth herein.

25 **THIRD CAUSE FOR DENIAL OF APPLICATION**

26 (Unprofessional Conduct)

27 36. Applicant's application is further subject to denial under sections 2221 and 2234 of
28 the Code in that, during her first year postgraduate Anesthesiology residency program and her

1 first year postgraduate Family Medicine residency program, as more particularly alleged in
2 paragraphs 8 through 34, above, Applicant engaged in conduct which breaches the rules or ethical
3 code of the medical profession, or conduct which is unbecoming of a member in good standing of
4 the medical profession, and which demonstrates an unfitness to practice medicine.

5 PRAVER

6 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing, the Medical Board of California issue a decision:


8 1. Denying the application of Applicant Phoebe Oguda Dacha for a Physician's and
9 Surgeon's Certificate;

10 2. If placed on probation, revoking, suspending or denying approval of Applicant
11 Phoebe Oguda Dacha's authority to supervise physician assistants and advance practice nurses;

12 3. If placed on probation, ordering Applicant Phoebe Oguda Dacha to pay the Medical
13 Board of California the cost of probation monitoring; and

14 4. Taking such other and further action as deemed necessary and proper.

15
16 DATED: July 8, 2019

17 
18 KIMBERLY KIRCHMEYER
19 Executive Director
20 Medical Board of California
21 Department of Consumer Affairs
22 State of California

23 *Complainant*

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