

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

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

Spencer Hoostal, M.D.

Case No. 800-2021-077311

**Physician's and Surgeon's
Certificate No. PTL 3602**

Respondent.

**In the Matter of the Statement of Issues
Against:**

Spencer Hoostal, M.D.

Case No. 800-2023-099724

Respondent.

DECISION

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

- 1) The public reprimand is hereby applied to Dr. Hoostal's Postgraduate Training License No. 3602 only.
- 2) Dr. Hoostal shall be issued a full and unrestricted Physician's and Surgeon's Certificate once all licensing requirements are met.

This Decision shall become effective at 5:00 p.m. on April 17, 2024.

IT IS SO ORDERED March 18, 2024.

MEDICAL BOARD OF CALIFORNIA



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

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

In the Matter of the Accusation Against:

SPENCER THOMAS HOOSTAL, M.D., Respondent

Agency Case No. 800-2021-077311

OAH No. 2023030887

and

In the Matter of the Statement of Issues Against:

SPENCER THOMAS HOOSTAL, M.D., Respondent

Agency Case No. 800-2023-099724

OAH No. 2023110002

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this consolidated matter by videoconference and telephone on July 26, 2023, and November 13, 2023.

Robert W. Lincoln, Deputy Attorney General, represented complainant, Reji Varghese, Executive Director of the Medical Board of California (board), Department of Consumer Affairs, State of California.

Robert W. Frank, Attorney at Law, represented respondent Spencer Thomas Hoostal, M.D., who was present throughout the hearing.

The matter was consolidated for hearing and decision with Agency Case No. 800-2023-099724, OAH No. 2023110002. At the hearing the parties agreed to a consolidated decision for these matters. Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 13, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 22, 2020, the board issued Postgraduate Training License No. PTL 3602 to respondent. The Postgraduate Training License was in full force and effect at all times relevant and expired on June 30, 2023.

2. On August 8, 2022, the board received respondent's application for a Physician's and Surgeon's Certificate.

3. On January 26, 2023, complainant filed the accusation (Agency Case No. 800-2021-077311 and OAH No. 2023030887) seeking revocation or suspension of respondent's Postgraduate Training License based on three causes for discipline, namely: (1) respondent's January 20, 2022, conviction, on his guilty plea in the Superior Court of California, County of San Diego, in Case No. M276048 for violation of Vehicle

Code section 23152, subdivision (b), driving under the influence of alcohol with a 0.08 percent or greater blood alcohol content (BAC), a misdemeanor; (2) use of alcoholic beverages to the extent to be dangerous or injurious to himself or others for his underlying actions on April 16, 2021, resulting in his conviction; and (3) general unprofessional conduct based upon his conviction and the underlying circumstances of his conviction. Respondent timely filed a notice of defense to this accusation.

4. On July 26, 2023, the record was open in the matter of the accusation (Agency Case No. 800-2021-077311 and OAH No, 2023030887) regarding respondent's Postgraduate Training License, oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on July 26, 2023.

5. On August 4, 2023, OAH received respondent's request to reopen the record and consolidate proceedings for a statement of issues related to respondent's application for a Physician's and Surgeon's Certificate, which was pending with the board.

6. On August 10, 2023, OAH granted respondent's request to reopen the record, and staying the issuance of a proposed decision in the accusation matter. The order issued by OAH directed the complainant to provide written notice to OAH when a Request to Set and Statement of Issues regarding the denial of respondent's application for a Physician's and Surgeon's Certificate was filed with OAH. The order provided that the parties must file a request for consolidation within 15 days from the date of the Request to Set and if no such motion was filed then the record in the accusation matter would be closed and a proposed decision issued within 30 days.

7. On August 16, 2023, the board denied respondent's application for a Physician's and Surgeon's Certificate. On August 17, 2023, respondent requested an administrative hearing to contest the denial of his application.

8. On October 31, 2023, complainant filed with OAH a Request to Set the Statement of Issues regarding the denial of respondent's application for a Physician's and Surgeon's Certificate. The statement of issues (Agency Case No. 800-2023-099724 and OAH No. 2023110002) was signed on October 18, 2023, and alleged as a basis for denial of respondent's application the same three allegations as alleged in the accusation related to respondent's Postgraduate Training License.

9. On November 6, 2023, respondent filed a request to consolidate the accusation and statement of issues matters in this case. On November 7, 2023, OAH issued an order granting consolidation of these matters and setting the second day of hearing on November 13, 2023.

10. On November 13, 2023, the second day of hearing commenced, oral and documentary evidence was received, the record was closed, and the consolidated matter was submitted for a consolidated decision.

Respondent's January 20, 2022, Conviction

11. On January 20, 2022, respondent was convicted in the Superior Court of California, County of San Diego in Case No. M276048 on his plea of guilty of violation of Vehicle Code section 23152, subdivision (b), driving under the influence of alcohol (DUI) with a 0.08 percent or greater BAC, a misdemeanor. As a result of this conviction respondent was sentenced to three years of summary probation with terms and conditions including completion of 56 hours of community service, successful

completion of a three-month DUI course, completion of a presentation by Mothers Against Drunk Driving (MADD), and payment of fines and fees.

12. Respondent completed all the terms of his probation early, and after about a year-and-a-half of summary probation he petitioned for expungement pursuant to Penal Code section 1203.4. On July 21, 2023, the court granted respondent's petition for dismissal pursuant to Penal Code section 1203.4 and respondent's plea of guilty was withdrawn, a plea of not guilty entered, and the charges against respondent were dismissed with no fees imposed.

Underlying Circumstances of Respondent's Conviction

13. The circumstances underlying respondent's conviction were taken from a California Highway Patrol arrest report, which was received pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448, 461-464, which held that portions of a law enforcement officer's report are admissible in an administrative proceeding over a hearsay objection.

14. On April 16, 2021, at 1:45 a.m., California Highway Patrol officers were dispatched to the scene of a traffic accident at the exit ramp from Interstate 8 onto Texas Street in San Diego. Upon arrival, officers observed respondent's vehicle in the dirt area adjacent to the exit ramp with respondent standing near the left side of his vehicle. The officers observed that respondent emitted an odor of alcohol from his person and his breath, had bloodshot/watery eyes, and had slurred speech. Respondent admitted to the officers that he had been driving the vehicle at the time of the accident. In response to the officer's question of how much alcohol he had consumed that evening, respondent answered that he had two-and-a-half Pacifico beers. The officers administered field sobriety tests, which respondent failed to perform as demonstrated. Respondent's vehicle sustained damage to its front-end

bumper, headlight assembly area, large dents and scratches along the entire right side of the vehicle, damaged rear bumper, and undetermined undercarriage damage. The driver's side airbag had deployed during the accident. Respondent told the officers that he was driving the vehicle on his way to the North Park area and believed that he was traveling on Interstate 5 in an unknown direction when he ran off the road.

Based on the totality of the circumstances observed, the officers determined that respondent was driving the vehicle while under the influence of alcohol and was unable to safely operate the vehicle. Accordingly, the officers placed respondent under arrest and advised him of his rights. After arriving at the San Diego County Sheriff's Department, respondent agreed to undergo a blood test for alcohol, and at 2:53 a.m. a blood sample was taken from respondent. The laboratory service report for that blood sample indicates that respondent's BAC was 0.19 percent.

Respondent's Testimony

15. Respondent is 33 years old. He completed his undergraduate education and obtained a Bachelor of Science degree in English Literature and Biology from the University of Wisconsin, La Crosse. He thereafter obtained his Doctor of Medicine degree from the University of Minnesota Medical School in December 2019. Respondent recently completed his Internal Medicine internship and residency from Scripps Mercy Hospital (Scripps) in San Diego on June 30, 2023. He is currently not working as a physician because of the pending accusation and statement of issues in this matter affecting his licensure.

16. Respondent testified about his alcohol consumption habits while pursuing his undergraduate degree, during medical school, and throughout his residency. He stated that he first started drinking alcohol sometime in high school

when he was 16 or 17 years of age. During his freshman year of college, he did drink alcohol, which he described as "the typical college experience of drinking a lot" with friends and at parties. Thereafter, during his sophomore, junior and senior years of college he drank much less than his friends because he was more interested in his studies and his girlfriend. During medical school, respondent did not drink often. He stated during that time he drank, "maybe once or twice per month and sometimes I went months without any alcohol." He never drank to excess during medical school. Respondent stated that he has a low alcohol tolerance, does not drink alcohol often, does not enjoy drinking alcohol, and does not crave alcohol. He does not go out to drink or drink at home. He does not believe he has an alcohol use disorder.

17. Respondent testified about the circumstances leading to his arrest on April 16, 2021. On April 15, 2021, he worked at the hospital in the emergency room department and finished working at 5:00 p.m. that day. Respondent had a good friend visiting from out of town, who was planning to propose to his girlfriend that night. His friend was staying in the Pacific Beach area. At about 8:00 p.m. on April 15, 2021, respondent met his friend and the friend's girlfriend at "The Fat Fish," which is a bar/restaurant in Pacific Beach. Respondent stated that he does not normally go to Pacific Beach or Mission Beach because those areas have a reputation of being the places young people go to drink to excess, which was not like him. He usually only goes to Pacific Beach to surf. While at the Fat Fish, respondent consumed two beers. Respondent also stated that he practices intermittent fasting, and on that day he had only had breakfast with no other food other than some chips and guacamole at the Fat Fish. After the Fat Fish, respondent and his friends went to the Grass Skirt, a tiki bar in Pacific Beach, where respondent consumed two mixed drinks, one of which contained rum. After the Grass Skirt, respondent and his friends went to another bar called Mavericks, where respondent ordered beers. Respondent stated that he does not

remember anything after that because he "blacked out," and the next thing he remembered was standing next to his car in the dirt next to the Interstate 8 exit ramp talking to the California Highway Patrol officers.

After his arrest, respondent reached out to his friend to find out what had happened. His friend informed him that respondent "was pretty drunk" and his friend "got him an Uber" to get home. Respondent does not remember being in the Uber vehicle, but he did have a receipt from that Uber ride, which was received in evidence. Respondent obtained that receipt directly from Uber by email after making a request to Uber for it. The receipt shows a map of the ride that night showing that respondent was picked up on Garnet Avenue in Pacific Beach at 12:42 a.m. on April 16, 2021, and the Uber driver dropped him off only one block away prior to Hornblend Street at 12:45 a.m., with the ride lasting three minutes and a distance of 0.36 miles and a total cost of \$14.10. Respondent does not recall the Uber drive and does not recall getting into his own vehicle to drive that night.

18. Respondent testified that he has successfully completed all the required courses, presentations, and paid all of the fines and fees related to his criminal summary probation. In addition to the requirements of his criminal probation, respondent has voluntarily completed more requirements above and beyond his criminal sentence to "help him through the DUI experience," and in anticipation and preparation for the board's disciplinary allegations. Specifically, respondent installed a interlock ignition device in his vehicle for a total of 13 months, attended Alcoholics Anonymous (AA) meetings for about 25 hours, completed an ethics course approved by the board, completed an additional 40 hours of community service, obtained a psychiatric evaluation from Kaimana MacDonald, M.D., attends monthly therapy sessions with his psychologist, documented his sobriety with quarterly hair tests and

the use of Soberlink (a handheld breathalyzer device) used throughout the day, and also completed a Comprehensive Diagnostic Evaluation (CDE) from the Center for Professional Recovery (CPR) program as recommended by the board prior to any accusation or statement of issues being filed. Respondent testified that prior to his DUI arrest, he was seeing a psychologist for therapy since the Fall of 2020 for issues related to stress during his residency. After the DUI arrest, respondent continued to see the psychologist for therapy sessions once per month.

With regard to the CDE from the CPR program, respondent testified that the board recommended that he voluntarily complete that assessment after respondent submitted his application for a Physician's and Surgeon's Certificate in August 2022. Respondent had sent emails regarding the status of his application, and the board responded by recommending that he undergo that assessment, which he did in April 2023. Further information regarding that assessment is detailed below from the testimony of Gregory Skipper, M.D.

19. Respondent testified that between the time of his arrest on April 16, 2021, to the date he attended the CDE at CPR in April 2023, he consumed alcohol on two occasions only and after consultation with his criminal defense attorney. Respondent explained that his girlfriend is Peruvian, and her parents live in Peru. In July 2021 respondent went with his girlfriend to Mexico on a vacation with his girlfriend's parents visiting from Peru. Respondent had not told his girlfriend's parents about his DUI arrest at the time of this vacation, and his girlfriend and he decided that it would be best not to tell her parents about his arrest at that time. During that vacation, the girlfriend's parents wanted respondent to try their Peruvian beer and some wine, which he did. Respondent stated that he did not drink alcohol to excess or to intoxication. He simply did not have the courage to tell the girlfriend's parents

about the DUI arrest at that time. Since that time, he has informed the girlfriend's parents about the DUI arrest and conviction. The only other time respondent consumed alcohol was on September 25, 2021, on the occasion of a co-resident's birthday party at a rooftop bar in Little Italy. On that occasion, all of the residents were drinking alcohol, and one resident offered respondent a sip of her cocktail, which he took. He stated he only took a few sips of her mixed drink and did not consume an entire mixed drink. Those two occasions are the only occasions that respondent has consumed alcohol since April 16, 2021.

20. Respondent provided documentation of his results from using the Soberlink breathalyzer, which was received in evidence. The report from Soberlink was from testing performed from October 22, 2021, to February 21, 2022. The report showed that respondent was compliant for 605 tests, missed zero tests, and had 11 "non-compliant" tests. Respondent explained that he discovered during the time he was preparing for his criminal court case that if he submitted a breathalyzer sample in a dimly lit room, that the device does not recognize his face and considers the sample to be "non-compliant." After learning this information respondent contacted the Soberlink representative and opted to get text message alerts notifying him of the "non-compliant" problem. After doing that, respondent had no more non-complaint tests. He also explained that he stopped doing Soberlink testing because it was becoming very expensive and challenging to give a sample during the time he was working. After talking to Dr. Glassmoyer of the University of California San Diego (UCSD), who was the individual overseeing the Soberlink testing, respondent opted for a less expensive alternative of quarterly hair testing to demonstrate his sobriety. Respondent provided documentation of his hair testing results dated May 13, 2022, August 4, 2022, and February 3, 2023. All three reports were negative for the presence of alcohol. Respondent explained that he participated in the Soberlink breathalyzer

testing from October 2021 to February 2022, and thereafter submitted quarterly hair samples beginning in May 2022 and again in August 2022. Respondent stated that in July 2022 he was interviewed by the board and after the August 2022 hair sample submission, respondent decided to "hold off" on further hair testing because it was expensive, and he was anticipating "hearing back from the board." After receiving the accusation in this matter from the board, respondent submitted another hair sample in February 2023. Respondent stressed that he has not consumed alcohol since September 2021, which is not difficult for him because he feels no compulsion to consume alcohol.

21. Respondent testified that his actions resulting in this DUI arrest and conviction was the "worst mistake of his life." He stated that he could have killed himself or someone else. He felt embarrassed, guilty, and shameful after his DUI arrest, and it was challenging for him to tell others, such as his coworkers and supervisors. But he did tell the supervising clinicians of his residency, namely Dr. Han, Dr. Dodge, and Dr. Jackson, about the details of his arrest and ultimately his conviction. He has had a lot of time to reflect on his actions, deal with his pain, and he is working through that process with his therapist, family, and God. Respondent stated he is a changed person because of the DUI. He stated he will forever have a scar on his soul because of that terrible mistake.

22. Respondent testified that he was open, honest, and truthful with Dr. MacDonald during his evaluation of respondent, as well as with Dr. Skipper from CPR and others who evaluated him. He also wrote a letter to the board, which mirrored his testimony at the hearing and was received in evidence.

23. With regard to his employment, respondent testified that since completing his residency in June 2023, he has attempted to obtain employment with

primary care practice groups in the community. However, because of the pending accusation and statement of issues, he has no job offers. There is one particular practice group that is very interested in hiring him, but their malpractice insurance does not allow any physicians to be on probation with the board. Given that the outcome of this hearing is unknown, no job offer has been made. Respondent wants to be a primary care physician and wants to practice in California.

Testimony of Experts

TESTIMONY OF KAIMANA SCOTT MACDONALD, M.D.

24. Dr. Kaimana MacDonald is board certified as a psychiatrist and board certified in addiction medicine. Dr. MacDonald received his Doctor of Medicine degree in 1997 from the University of Minnesota Medical School. He completed a combined residency program in family medicine and psychiatry in 2002 at UCSD. Dr. MacDonald has worked in private practice as a psychiatrist since 2002. In addition, from 2008 to 2022 he worked as the Medical Director of Lasting Recovery Outpatient Substance Abuse Treatment Center; from 2010 to the present, he also works as faculty at UCSD Physician Assessment and Clinical Education (PACE) program performing forensic psychiatric fitness for duty examinations on referred physicians. Additionally, since 2018 Dr. MacDonald has worked as a psychiatric clinical partner at the Headstrong Project providing psychiatric evaluation and treatment of veterans. Dr. MacDonald has testified as an expert in board proceedings approximately 10 times. Dr. MacDonald evaluated respondent for fitness for duty as a physician and to determine if respondent met the criteria for alcohol-use disorder.

25. Dr. MacDonald met with respondent through a secure teleconference portal due to the COVID-19 pandemic on November 7, 2021, for about two hours for a

psychiatric and substance abuse disorder evaluation. Additionally, he spoke with respondent by telephone for about 30 minutes on July 18, 2023, as a follow-up in preparation for this hearing. Dr. MacDonald summarized his opinions regarding his evaluation of respondent in a report dated November 25, 2021, which was received in evidence. Dr. MacDonald explained that the two hours spent with respondent on November 7, 2021, was sufficient time for him to assess and evaluate respondent and make a valid conclusion on whether respondent has an alcohol or substance abuse problem, particularly because Dr. MacDonald also spoke with collateral informants (Dr. Jackson and Dr. Han), reviewed collateral documents, and reviewed laboratory reports from Soberlink, AA attendance, self-reporting questionnaires, and the police report.

26. Dr. MacDonald testified, and wrote in his report, that the diagnosis of a substance abuse disorder is made upon consideration of diagnostic criteria provided in the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM 5). After his review and consideration of all information discussed above, Dr. MacDonald concluded that there is no evidence that respondent suffers from any psychiatric disorder or substance use disorder, and that respondent does not meet the criteria for an alcohol use disorder. Dr. MacDonald spoke with respondent at length about his DUI arrest and conviction and noted that respondent was "believably emotionally distraught" when discussing the DUI. Dr. MacDonald has conducted formal evaluations of over 300 physicians, with about 50 to 60 of those physicians evaluated for alcohol use disorder. Dr. MacDonald noted that respondent was emotionally wrecked by the DUI and was absolutely sincere in his responses to questioning. Dr. MacDonald does not think that respondent meets the diagnostic criteria for depression or anxiety but noted that respondent's emotional distress regarding his DUI stood out in Dr. MacDonald's memory.

27. Dr. MacDonald also stressed in his report and during his testimony that respondent is "not even a marginal or 'near threshold' case" for having an alcohol use disorder. He testified that applying the DSM 5 criteria, respondent does not have any recurrent alcohol use, has no pattern of alcohol use, and other than the DUI at issue has no single episode of use of alcohol with negative consequence. He explained that a "near threshold" case is one where the person has at least two incidents and you attempt to determine if there is a recurrent situation. Respondent's case does not present a close call with regard to application of the DSM 5 criteria.

28. Dr. MacDonald also reviewed the report from the CDE of respondent conducted at CPR, and a letter from Dr. Skipper of CPR, regarding their evaluation of respondent in April 2023 and conclusion that respondent does not have an alcohol use disorder. Dr. MacDonald agrees with the conclusions of the report and letter. Dr. MacDonald also agrees with Dr. Skipper's conclusion that respondent is safe to practice medicine without the need for any monitoring by the board. Dr. MacDonald also stressed that respondent has provided evidence of alcohol testing for a significant amount of time showing he did not use alcohol and has no alcohol use disorder requiring monitoring. Dr. MacDonald also noted that during his interview of respondent, respondent admitted to an incident when he was in college and got a citation for underage drinking of alcohol. Dr. MacDonald noted that respondent did not have to volunteer that information, but respondent did so anyway, which shows that respondent has integrity and was forthcoming and truthful with Dr. MacDonald. He opined that to impose a random biological testing requirement on respondent would be punitive in light of the fact that respondent meets no criteria for an alcohol use disorder and has already provided significant documentation of his sobriety since 2021.

29. Dr. MacDonald also opined that his professional opinion is that respondent has a "lower than base rate of the general population or average physician" chance of ever engaging in such behavior again. He testified that because respondent does not have an alcohol use disorder and is an extraordinarily conscientious individual, who has "had his bell rung" by his DUI arrest and conviction, respondent will have an extreme level of caution about another incident like this one moving forward. Dr. MacDonald was aware of the fact that respondent had a BAC of 0.19 percent on the night of his arrest. He noted that respondent is not a heavy drinker and has a low tolerance to alcohol and demonstrated poor judgment on that night resulting in the DUI conviction. Overall, based on his review of all information and his evaluation of respondent, Dr. MacDonald opined that respondent has no alcohol use disorder and no psychiatric diagnosis, and respondent is safe to practice with no restrictions.

TESTIMONY OF GREGORY SKIPPER, M.D.

30. Dr. Skipper is board certified in internal medicine and board certified in addiction medicine. He has practiced exclusively in the field of addiction medicine since 1990 with about 33 years of experience. Dr. Skipper received his Doctor of Medicine degree from the University of Alabama, and he completed a residency in Internal Medicine at UCSD in 1979. He was first certified by the American Society of Addiction Medicine, and thereafter became board certified by the American Board of Addiction Medicine. He is currently a distinguished fellow of the American Board of Addiction Medicine. Dr. Skipper worked from 1999 to 2011 for the Alabama Board of Medicine running their physician impairment program. Thereafter, he moved to Los Angeles and in 2011 started a substance abuse evaluation and treatment program now called the Center for Professional Recovery (CPR). The purpose of CPR is to be an

evaluation program and treatment program for individuals, primarily physicians, with substance abuse disorders and concurring mental disorders. Dr. Skipper was the Medical Director of CPR until one year ago when he became a Senior Advisor to CPR. Dr. Skipper stated that he "backed off" from daily work there since the COVID-19 pandemic and because he is now 73 years of age and "semi-retired." Dr. Skipper stated that CPR focuses on professionals and primarily works with physicians. He has evaluated over 3,000 physicians in his career.

31. Dr. Skipper testified that from time to time the board makes referrals to CPR for physicians to come there for a CDE for licensing purposes. Sometimes such referrals can result in physicians entering CPR's treatment program as well. Dr. Skipper testified that respondent was referred to CPR by the board for a CDE. Dr. Skipper stated that the CDE consists of a four-day process with himself, and two other clinicians. Respondent was evaluated at CPR from April 23, 2023, to April 27, 2023. Dr. Skipper explained that the CDE is an exhaustive process using a number of different evaluators and different techniques to determine if an individual, in this case respondent, has a diagnosable disorder. If there is a diagnosis, then CPR will conduct a treatment program on the individual. Dr. Skipper stressed that the CDE process is intensive, which he believes is very important because with substance use disorders people are ashamed, fearful, and frequently in denial, and there is a need for an accurate diagnosis.

Dr. Skipper explained that with respondent, and all individuals evaluated, the program manager of CPR, who has a master's degree in counseling makes a decision on what kind of team is needed to evaluate respondent. Typically, the team or panel consists of an addiction medicine physician, a psychiatrist, psychologist, and a counselor. Each of those people interviews the individual separately, which ensures

that you get a more accurate history from the person. CPR also conducts cognitive screening tests and personality tests, extensive laboratory tests (typically urine, blood, and hair), develop a list of collateral individuals to interview to determine what those people think of the person and their alcohol use. Additionally, the individual attends a physician's recovery group meeting, and CPR reviews the individual's medical history. All of these processes occurred for the CDE of respondent other than the attendance of the physician's recover group meeting because they did not believe that respondent has a substance use disorder. Dr. Skipper stated that for many individuals, CPR will obtain a physical examination of the individual, but in respondent's case that was not done because there were recent lab tests and there was no need for further physical examination. Additionally, all records available, such as police reports and court documents, are reviewed by the panel of evaluators, which was done in respondent's evaluation. At the conclusion of the CDE process, the panel of evaluators meet and confer to determine if there is a diagnosis. Thereafter, CPR summarizes their findings in a report, which Dr. Skipper edited and reviewed along with the other panel members. The CPR report regarding respondent's CDE was received in evidence.

32. Dr. Skipper testified, and the CPR report reflected, that respondent does not have any substance use disorder or alcohol use disorder. He stated that CPR uses the DSM 5 criteria for this determination, which consists of 11 criteria. Respondent did not meet any of the 11 criteria. He stated that there was only possible criterion he might have met, which was having legal consequences of drinking, and respondent has had the DUI arrest and conviction. However, in order to meet that one criterion regarding legal consequences, DUIs have to be recurrent, and in this case, there was only one episode of DUI. Accordingly, respondent did not meet that one criterion. Respondent's hair, blood, and urine tests were all negative for alcohol, which Dr. Skipper stated was significant because those tests show that respondent has not been

drinking. Dr. Skipper stated that the team or panel also conducted collateral interviews of respondent's family, coworkers including his residency program director, and his psychologist. Dr. Skipper stressed that during these collateral interviews, if there is an alcohol use disorder, usually "someone will say they are concerned." He stated, "we are good at doing these interviews and the goal is to get the truth." In respondent's case, nobody ever suspected alcohol use and each of the individuals was shocked at the DUI. Respondent's residency program director was also shocked by the DUI and described respondent as "one of the best residents he has ever had." All of the collateral interviews conducted for respondent resulted in nothing to indicate respondent had any issues with alcohol.

33. Dr. Skipper stated that CPR also conducted cognitive screening tests of respondent, and respondent performed well indicating that he does not have an alcohol use disorder. Dr. Skipper testified, and the CPR report showed, that it was the unanimous decision of the CPR team that respondent's CDE showed that respondent does not suffer from an alcohol use disorder and that he is safe to practice medicine without any restrictions. Dr. Skipper noted, and the CPR report reflects, that it was recommended that respondent obtain "clinical monitoring through a private source and not through board action" in order to document his safety and that he does not have an alcohol use disorder. Dr. Skipper explained that this recommendation comes from the "physician health programs" from states other than California. He stated that in those states this is a "clinical arm" that is not disciplinary in nature. He stated that this recommendation is for the physician to further document that they do not have an alcohol use disorder and to "further solidify our opinion." However, Dr. Skipper stressed that respondent should not be required to do any further monitoring based on his CDE.

34. Dr. Skipper also wrote a letter, which was received in evidence, that reflected his testimony at the hearing. Dr. Skipper also testified that he believes that respondent is "safer than the average doctor" because respondent has been through "this horrific experience" and he will be more careful than most doctors with alcohol because of that.

35. Dr. Skipper testified that he believes that the board rightfully referred respondent to CPR because they were legitimately concerned about respondent practicing safely. He stated that CPR is a program designed to make a diagnosis of alcohol use disorder, and it is the opinion of CPR that respondent has no such disorder. Accordingly, respondent is at very low risk of repeating the behavior that resulted in his DUI, and the public is sufficiently protected from such harm by allowing respondent to practice without restrictions.

Testimony of Clinical Instructors of Respondent

TESTIMONY OF PAUL JIN HAN, M.D.

36. Dr. Han is the Program Director for the Scripps's Internal Medicine Residency program, a position he has held for the past four years. Prior to holding that position, Dr. Han was one of the Associate Program Directors for the Internal Medicine Residency program at Scripps, a position he held for about six years. Prior to that he was the Chief Resident in the Internal Medicine Residency at Scripps, and prior to that he was simply a resident in the program. Dr. Han is board certified in internal medicine and received all of his residency training in internal medicine at Scripps. Dr. Han obtained his Doctor of Medicine degree from Drexel University in Philadelphia, Pennsylvania. As the Program Director of the program at Scripps, Dr. Han is responsible for the administrative aspects of the program, as well as all inpatient and

outpatient clinical care. He oversees all clinical competency screenings of residents in the program and has access to every comment that comes into the program related to residents. Dr. Han summarizes all this information for each resident in the program in a report that is provided to the accrediting organization for the program. Dr. Han is very familiar with respondent because he was respondent's program director for respondent's internal medicine residency for the past three years.

37. Dr. Han worked side-by-side with respondent during his residency, treated patients with respondent, and taught him clinical skills at the bedside for patient care. Dr. Han has seen the "whole picture" of respondent's clinical skills, medical knowledge, and interaction with staff and patients, during the three years he supervised him. Dr. Han stated that the internal medicine residency program at Scripps is fairly small with only 14 residents. As a result, he has the luxury of knowing each resident very well, both personally and professionally. With regard to his medical skills, Dr. Han rates respondent as one of the most outstanding residents in his class, and for the residents graduating from the program in the past four or five years, Dr. Han would rank respondent in the top 10 to 15 percent of all those residents. With regard to respondent's character, Dr. Han stated that respondent is honest, straightforward, polite, respectful, and never has a sense of entitlement, which unfortunately is sometimes a quality he sees in residents. Respondent is very hard-working, caring, bright, and easy to work with. Dr. Han stated that he wishes more of his residents were like respondent.

38. Dr. Han testified that he has never had a concern about respondent having a substance or alcohol use issue. With regard to his DUI, respondent informed Dr. Han about his DUI arrest shortly after it happened. Dr. Han remembers that day well because respondent is normally "a well-put together healthy man" and on that

day respondent was crying in Dr. Han's office, which is something Dr. Han has never seen him do. Respondent repeatedly told Dr. Han that he was remorseful, embarrassed, and "had messed up significantly." Respondent was very forthright and honest about what had happened and was remorseful and "eager to make things right."

39. Dr. Han feels that respondent does not have an alcohol use problem and that respondent is safe to practice medicine without any restrictions. Dr. Han testified that he has previously dealt with other residents who had a drug or alcohol issue and usually he can tell there is a problem based on their performance. He has seen no such issues with respondent.

40. Dr. Han wrote a letter attesting to respondent's character and performance as a resident, which mirrored his testimony and was received in evidence.

TESTIMONY OF JOHN MICHAEL DODGE, M.D.

41. Dr. Dodge is currently the Medical Director of the Scripps Resident Outpatient Clinic and an Associate Director of the Scripps Internal Medicine Residency program, both positions he took on October 11, 2021. Prior to that Dr. Dodge was teaching internal medicine residents from Scripps at his internal medicine private practice at the Scripps outpatient clinic, which he did from January 2019 to October 2021. From July 1992 to October 2021 Dr. Dodge worked as a physician specializing in internal medicine at the Scripps Coastal Medical Center. From September 2019 to June 2022, Dr. Dodge worked as a Voluntary Associate Clinical Professor at UCSD Department of Medicine. From 2001 to 2016, he worked as a non-salaried Assistant Clinical Professor at the UCSD Department of Medicine. From 1991 to 2001, he worked as a Clinical Instructor at the UCSD Department of Medicine. Dr. Dodge received his

Doctor of Medicine degree in 1988 from the Jefferson Medical College in Philadelphia, Pennsylvania. Dr. Dodge first met respondent in June 2020 when respondent was beginning his internship year in internal medicine because respondent worked in Dr. Dodge's office for an entire week, which was respondent's first week of internship. During respondent's residency, Dr. Dodge oversaw respondent's work in the outpatient clinic for approximately 20 percent of respondent's time spent in that outpatient clinic. Dr. Dodge has interacted with respondent extensively in a clinical setting, and has also presented to respondent during the "noon conference presentations."

42. Dr. Dodge testified, and he wrote a letter which was received in evidence that mirrored his testimony, that respondent's performance as a resident was spectacular and he put his patients' needs first. Dr. Dodge stated that respondent's performance as a resident was in the top two of the 14 residents in the program that year from "a holistic standpoint," which Dr. Dodge considered to be for medical knowledge, skill, humanism, work ethic, altruism, accountability, and maturity. Dr. Dodge stated that respondent's accountability is fantastic. Respondent would put his patients' concerns ahead of his own and would sacrifice his own time for the sake of patients. Dr. Dodge stated that internal medicine physicians have a very difficult job, but that respondent has a calling for it.

43. Dr. Dodge stated that respondent told him about the DUI arrest and conviction and expressed profound remorse for his actions, even crying about it. Dr. Dodge stated that respondent "expressed a full set of emotions" regarding his actions, and told Dr. Dodge specifically the steps he is taking to better himself and to prove he is serious about never letting something like that happen again. Dr. Dodge noted that respondent told him that he has "spent tons of money" dealing with the ramifications

of the DUI arrest and conviction, and respondent does not come from a wealthy family. Respondent has borrowed money from his parents to address these issues, and that fact troubles respondent deeply. Dr. Dodge stated that he would be shocked if respondent ever repeated the behavior that led to his DUI conviction. Dr. Dodge has never observed any behavior from respondent to indicate a problem with alcohol.

44. Dr. Dodge testified that he believes "to the depth of my soul" that if respondent does not practice as a physician, the public will be harmed because respondent provides terrific care to patients and that care will be denied if he does not practice medicine. Dr. Dodge does not believe that respondent requires any restrictions to his ability to practice safely.

Testimony of Respondent's Girlfriend

45. Mariana Lizarzaburu is respondent's girlfriend and has been for the past two-and-a-half years. Ms. Lizarzaburu met respondent on a dating website, and she was living in Los Angeles when they met, but respondent was living in Missouri and was not yet in his internal medicine residency program. Ms. Lizarzaburu first met respondent in person in August 2019 in Santa Monica, California. They met on dates for about five to seven times before respondent moved to San Diego. During those dates, respondent only drank alcohol when they met in Santa Monica in August 2019 and that "was not a lot." During their dates and prior to respondent moving to San Diego, the number of times respondent drank alcohol with her was "virtually none," and unless there was a restaurant involved, then no alcohol was involved in the date. She stated that most of their activities together did not involve drinking alcohol, and she does not recall any incident where respondent drank alcohol to the point of being drunk. After respondent moved to San Diego, he drove up to see Ms. Lizarzaburu in

Los Angeles every weekend. She saw him about seven or eight weekends prior to his DUI arrest.

46. Ms. Lizarzaburu testified that respondent is the kindest man she has ever met, and is respectful, patient, and caring. She learned of his DUI arrest the day after it happened when he called her to apologize for not responding to her earlier texts because he was in jail. Ms. Lizarzaburu stated that his DUI arrest did not deter her from wanting to have a relationship with respondent because she knew him to be a substantive person and someone she wanted as a partner. After the DUI arrest, Ms. Lizarzaburu continued to see respondent every weekend depending on respondent's availability. She stated that on their dates, they go to the beach, hike, ride bikes, play tennis, see movies, and go on picnics. She stated respondent likes to surf and she likes to ride bicycles.

Ms. Lizarzaburu stated that after the DUI she did not see respondent drink alcohol, other than the one instance when they went to Mexico on vacation in July 2021 to meet Ms. Lizarzaburu's parents. On that occasion, she and respondent discussed whether to tell her parents about his DUI. Ms. Lizarzaburu and respondent agreed that they would not disclose the DUI during that vacation because that was the first time he was meeting her parents, and "it would not be the best look" to disclose the DUI to his future in-laws on that occasion. They decided that they would tell her parents, but not right away. Ms. Lizarzaburu stated that her mother brought food from Peru, including a Peruvian beer, to that vacation, which triggered respondent to ask his criminal lawyer whether it was alright to consume the beer. Respondent concluded that it was fine to consume the beer on that vacation, which he did.

47. Ms. Lizarzaburu testified that respondent has taken his DUI arrest and conviction very seriously. Since his arrest he has engaged in self-reflection and

introspection and has become even more perceptive than before the DUI arrest. She believes respondent is being sincere when he says he is remorseful. She has engaged in many conversations with respondent about the incident and his bad decisions that day. Respondent is adamant about never letting that happen again. Ms. Lizarzaburu knows that the incident scared respondent. He has described to her that he has searched through the bible looking for verses of forgiveness. She and respondent are both very religious, share religious beliefs, and pray together.

48. With regard to respondent not drinking alcohol, she does not believe this will have an impact on him or on her. She stated that she barely consumes alcohol anyway. Ms. Lizarzaburu wrote a letter of support for respondent, which mirrors her testimony and was received in evidence.

Respondent's Documentary Evidence

49. Respondent provided numerous documents received into evidence in this matter. In addition to the reports from Dr. MacDonald and from CPR discussed above, the support letters and Uber receipt described above, as well as the hair specimen test results and the Soberlink results discussed above, respondent provided a letter from Ann Glassmoyer, M.A., a clinical psychologist in the UCSD Health Professional Program verifying his testing with the UCSD Health Professional Program from October 22, 2021, through February 14, 2022, with Soberlink. He also provided a certificate of completion from UCI School of Medicine Continuing Medical Education showing that he completed an internet live course titled, "Western Institute of Legal Medicine Physician Assessment & Clinical Quality Improvement Program Practical Medical Ethics and Professionalism; and Medical-Legal Implications of Ethics for Practicing Physicians" on April 15 and 16, 2023.

50. Respondent also provided a letter dated April 3, 2023, from Gavin Jackson, M.D., Associate Program Director, Internal Medicine Residency at Scripps. In the letter Dr. Jackson praised respondent's clinical abilities, patient care, communication skills, work ethic, attitude, and maturity. Dr. Jackson wrote that respondent discussed his DUI conviction with him, and Dr. Jackson believes the incident to be an isolated incident inconsistent with respondent's usual good judgement. Dr. Jackson also wrote that he has never seen respondent demonstrate any behavior indicative of an alcohol or drug problem. Dr. Jackson fully supports respondent's unrestricted practice of medicine.

51. Respondent also provided a letter dated June 7, 2023, and signed by both of his parents, Julia Hoostal and K.P. Hoostal on June 17, 2023. In the letter his parents wrote that respondent has always been kind, helpful, responsible, intelligent, a hard worker, and personable. They described respondent's hard work to complete medical school, his volunteer work, and dedication to his studies. Mr. and Mrs. Hoostal wrote that respondent never had any issues with alcohol and has always made responsible choices regarding alcohol. They were devastated by the news of respondent's DUI, and so was respondent. They understand that respondent made a huge mistake resulting in his DUI conviction, and he has taken every possible step to make up for that mistake. They further wrote that placing any restrictions on respondent's medical license would be "unwarranted punishment."

52. Respondent also provided a copy of the Order from the court granting his petition for dismissal pursuant to Penal Code section 1203.4 expunging his conviction.

Cost of Investigation and Enforcement

53. Complainant seeks recovery of enforcement costs of \$31,213.75 pursuant to Business and Professions Code section 125.3. In support of the request, the Deputy Attorney General who prosecuted the case signed a declaration requesting costs for legal work billed through July 7, 2023, totaling \$25,993.75. Additionally, the declaration included a good faith estimate of costs for legal work billed after July 7, 2023, and through the hearing, totaling \$5,220. Attached to the declaration was a document entitled "Costs of Suit Summary." The document identified the tasks performed, the dates legal services were provided, who provided the services, the time spent on each task, and the hourly rate of the individuals who performed the work. No certification of investigation costs was provided.

54. California Code of Regulations, title 1, section 1042, subdivision (b), requires that any declaration seeking costs include "specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs." The certification of enforcement costs up to July 7, 2023, of \$25,993.75 satisfied the requirements of California Code of Regulations, title 1, section 1042, subdivision (b), and the certification regarding enforcement costs supports a finding that costs in the amount of \$25,993.75 are reasonable in both the nature and extent of the work performed. However, the certification regarding the good faith estimate of costs to be incurred after July 7, 2023, are speculative and lack the required specificity needed to satisfy California Code of Regulations, title 1, section 1042, subdivision (b). Accordingly, the additional \$5,220 costs are not allowed, and the reasonable cost of enforcement and investigation of this matter is \$25,993.75.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (Evid. Code, § 115; 500.) The standard of proof required is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The obligation to establish charges by clear and convincing evidence is a heavy burden. It requires a finding of high probability; it is evidence so clear as to leave no substantial doubt, or sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

2. In a proceeding involving the issuance of a license, such as a Physician's and Surgeon's Certificate, the burden of proof is on the applicant to show that he or she is qualified to hold the license. In order to prevail, respondent must demonstrate by a preponderance of the evidence that he or she is entitled to a Physician's and Surgeon's Certificate. (Evid. Code, §§ 115, 500.)

Applicable Statutes and Regulations

3. The primary purpose of disciplinary action is to protect the public. (Bus. & Prof. Code, § 2229, subd. (a).) The Medical Practice Act emphasizes that the board should "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).) However, "[w]here

rehabilitation and protection are inconsistent, protection shall be paramount.” (Bus. & Prof. Code, § 2229, subd. (c).)

4. Business and Professions Code section 2064.5 states, in part, as follows:

(a) Within 180 days after beginning a board-approved postgraduate training program pursuant to Section 2065, medical school graduates shall obtain a physician’s and surgeon’s postgraduate training license. To be considered for a postgraduate training license, the applicant shall submit the application forms and primary source documents required by the board, shall successfully pass all required licensing examinations, shall pay a nonrefundable application and processing fee, and shall not have committed any act that would be grounds for denial.

[11] . . . [11]

(d) The postgraduate training licensee may be disciplined by the board at any time for any of the grounds that would subject the holder of a physician’s and surgeon’s certificate to discipline.

(e) If the medical school graduate fails to obtain a postgraduate training license within 180 days after enrollment in a board-approved postgraduate training program or if the board denies his or her application for a postgraduate training license, all privileges and exemptions under this section shall automatically cease.

(f) Each medical school graduate enrolled in a board-approved postgraduate training program on January 1, 2020, shall apply for and obtain a postgraduate training license by June 30, 2020, in order to continue in postgraduate training pursuant to Section 2065.

(g) Each medical school graduate who was issued a postgraduate training authorization letter by the board prior to January 1, 2020, and is enrolled in a board-approved postgraduate training program by April 30, 2025, will be issued a postgraduate training license automatically by June 30, 2020, or by June 30 of the year following initial enrollment into a board-approved postgraduate training program, whichever is earlier, upon proof of enrollment in the postgraduate training program.

(h) The board shall confidentially destroy the file of each medical school graduate who was issued a postgraduate training authorization letter by the board prior to January 1, 2020, who did not enroll in a postgraduate training program by April 30, 2025.

(i) This section shall become operative on January 1, 2020.

5. Business and Professions Code section 2064.7 states:

(a) The board may deny a postgraduate training license to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or

suspension of his or her license. The board, in its sole discretion, may issue a probationary postgraduate training license to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

- (1) Limitations on practice.
 - (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) Abstention from the use of alcohol or drugs.
 - (6) Restrictions against engaging in certain types of medical practice.
 - (7) Compliance with all provisions of this chapter.
 - (8) Payment of the cost of probation monitoring.
- (b) The decision placing the applicant on probation shall be disclosed to an inquiring member of the public indefinitely and shall be posted on the board's Internet Web site for the period of probation.

(c) The board may modify or terminate the terms and conditions imposed on the probationary postgraduate training license after one year upon receipt of a petition from the postgraduate training licensee. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board.

(d) The board shall deny a postgraduate training license to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

(e) An applicant shall not be eligible to reapply for a postgraduate training license for a minimum of three years from the effective date of the denial of his or her application, except that the board may, in its discretion and for good cause demonstrated, permit reapplication after not less than one year has elapsed from the effective date of the denial.

(f) This section shall become operative on January 1, 2020.

6. Business and Professions Code section 2227 states:

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

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

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

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

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

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

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated

therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

7. Business and Professions Code section 475 states, in part, as follows:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

[1] . . . [1]

(2) Conviction of a crime.

[1] . . . [1]

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. . . .

8. Business and Professions Code section 480 states, in part, as follows:

(a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. . . .

9. Business and Professions Code section 490 states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or

duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

10. Business and Professions Code section 2221 provides:

(a) 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. 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 this chapter.

(9) Payment of the cost of probation monitoring.

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

(c) The board shall deny a physician's and surgeon's certificate to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

(d) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate for a minimum of three years from the effective date of the denial of their application, except that the board, in its discretion and for good cause demonstrated, may permit reapplication after not less than one year has elapsed from the effective date of the denial.

(e) The board shall disclose a probationary physician's and surgeon's certificate issued pursuant to this section and the

operative statement of issues to an inquiring member of the public and shall post the certificate and statement on the board's internet website for 10 years from issuance.

11. Business and Professions Code section 2234 states, in part, as follows:

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

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

[¶] . . . [¶]

(f) Any action or conduct that would have warranted the denial of a certificate. . . .

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

13. Business and Professions Code section 2236 states, in part, as follows:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and

surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

[¶] . . . [¶]

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

14. Business and Professions Code section 2239 provides:

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

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

15. California Code of Regulations, title 16, section 1360 states:

(a) For the purposes of denial, suspension or revocation of a license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Such crimes, professional

misconduct, or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of state or federal law governing the applicant's or licensee's professional practice.

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the board shall consider the following criteria:

(1) The nature and gravity of the crime;

(2) The number of years elapsed since the date of the crime;
and

(3) The nature and duties of the profession.

16. California Code of Regulations, title 16, section 1360.1 provides:

(a) When considering the suspension or revocation of a license under Section 490 of the code on the ground that a person holding a license has been convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

(1) The nature and gravity of the crime(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for the modification.

(b) If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), or the suspension or revocation is based on disciplinary action as described in Section 141 of the Code, the board shall apply the following criteria in evaluating the licensee's rehabilitation:

(1) The nature and gravity of the act(s), professional misconduct, or crime(s).

(2) The total criminal record, or record of professional misconduct.

(3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(5) The criteria in subdivisions (a)(1)-(5), as applicable.

(6) If applicable, evidence of dismissal proceedings pursuant to Section 1203.4 of the Penal Code.

(7) Evidence, if any, of rehabilitation submitted by the licensee.

Disciplinary Guidelines

17. California Code of Regulations, title 16, section 1361, provides that when reaching a decision on a disciplinary action, the board must consider and apply the "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (12th Edition/2016). Under the Guidelines the board expects that, absent mitigating or other appropriate circumstances such as early acceptance of responsibility, demonstrated willingness to undertake board-ordered rehabilitation, the age of the case, and evidentiary problems, Administrative Law Judges hearing cases on behalf of the board and proposed settlements submitted to the board will follow the guidelines, including those imposing suspensions. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure. California Code of Regulations, title 16, section 1361, further provides that the board shall use the Uniform Standards for Substance-Abusing Licensees as

provided in section 1361.5, without deviation, for each individual determined to be a substance-abusing licensee.

18. California Code of Regulations, title 16, section 1361.5, provides that if the licensee is to be disciplined for unprofessional conduct involving the use of alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Business and Professions Code. In 2015, the board adopted the Uniform Standards for Substance Abusing Licensees under California Code of Regulations, title 16, sections 1361 and 1361.5. California Code of Regulations, title 16, section 1361.5, further provides specific probationary terms and conditions that must be used without deviation in the case of a substance-abusing licensee.

19. Under the Disciplinary Guidelines, the minimum discipline for a misdemeanor conviction substantially related to the functions of a physician and surgeon but not arising from or occurring during patient care, treatment, management or billing is a stayed revocation for five years. The maximum discipline is revocation. Among the conditions of probation, the guidelines recommend community service, professionalism program, psychiatric evaluation, medical evaluation and treatment, and victim restitution.

20. Under the Disciplinary Guidelines, the minimum discipline for the excessive use of alcohol in violation of Business and Professions Code section 2239 is stayed revocation for five years with terms and conditions including: suspension of 60 days or more, abstain from alcohol and controlled substances, biological fluid testing, ethics course, psychiatric evaluation, psychotherapy, medical evaluation and treatment, and a monitor of practice/billing. The maximum discipline is revocation.

Cause for Discipline and Denial

21. Cause exists under Business and Professions Code sections 2064.5, subdivision (b), 2227, 2234, and 2236, to impose discipline on respondent's Postgraduate Training License. Additionally, cause exists under Business and Professions Code sections 475, subdivisions (a)(2) and (a)(4); 480, subdivision (a)(1) and (a)(2); 490, 2221, and 2236 to deny respondent's application for a Physician's and Surgeon's Certificate. Complainant established by clear and convincing evidence that respondent was convicted on January 20, 2022, of violation of Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level of 0.08 percent or more, a misdemeanor. Respondent's conviction is substantially related to the qualifications, functions or duties of a physician and surgeon and Postgraduate Training Licensee.

22. Cause exists under Business and Professions Code sections 2064.5, subdivision (b), 2227, 2234, and 2239 to impose discipline on respondent's Postgraduate Training License. Additionally, cause exists under Business and Professions Code sections 2221 and 2234 to deny respondent's application for a Physician's and Surgeon's Certificate. Complainant established by clear and convincing evidence that respondent used alcohol to the extent or in such a manner as to be dangerous to himself and others on April 16, 2021.

23. Cause exists under Business and Professions Code sections 2064.5, subdivision (b), 2227, and 2234 to impose discipline on respondent's Postgraduate Training License. Additionally, cause exists under Business and Professions Code sections 2221 and 2234 to deny respondent's application for a Physician's and Surgeon's Certificate. Complainant established by clear and convincing evidence that respondent engaged in unprofessional conduct as a result of his use of alcohol on April 16, 2021, resulting in his arrest and conviction.

Evaluation

24. Clear and convincing evidence established that respondent was convicted of a DUI and had a BAC of 0.19 percent after driving his vehicle off an exit ramp on April 16, 2021, which caused extensive damage to his vehicle. Respondent testified credibly that he did not recall any events after drinking with friends at the last bar in Pacific Beach. Respondent's friends put him in an Uber to prevent him from driving home, which is an event respondent does not remember. The receipt from Uber established that the driver simply drove respondent one block, and respondent either exited the vehicle on his own, or the driver made him exit the vehicle. Respondent has no memory of the event or the circumstances of how he exited the Uber vehicle or how he got into his own vehicle and began driving.

25. Substantial evidence was presented to show that the events of April 16, 2021, were an aberration in respondent's life. As established by his own testimony, the testimony of his girlfriend, coworkers, and supervisors, respondent did not regularly consume alcohol. Respondent's testimony at the hearing was heartfelt and credible. He took responsibility for his actions that day and expressed a genuine remorse for his behavior. After his DUI arrest, respondent has taken every step possible to rehabilitate himself, engage in self-reflection and introspection, engage in therapy, and take any step he can to demonstrate that he will never engage in the same behavior again.

Respondent testified that he contacted the board to ask if there were any steps the board requested that he take so that he can demonstrate that he is safe to practice medicine with no restrictions. The board requested that respondent undergo a CDE from CPR to show that he does not have a substance use disorder or alcohol use disorder. Respondent immediately complied with that request and underwent and extensive evaluation from CPR, which resulted in a unanimous conclusion by the CPR

team that respondent does not suffer from any substance use disorder or alcohol use disorder. Even after obtaining that information, the board proceeded with filing an accusation and statement of issues in this case. Beyond the CPR evaluation, respondent also obtained an independent evaluation from Dr. MacDonald for a determination of whether respondent suffers from an alcohol use disorder. Dr. MacDonald also concluded that respondent does not suffer from an alcohol use disorder. Respondent has presented clear and convincing evidence that he does not suffer from an alcohol use disorder, or any substance use disorder.

Respondent also provided evidence that after his arrest and conviction, he took steps beyond that required by the court to address any issues about his behavior on April 16, 2021, and to show he does not have an alcohol use disorder and is safe to practice without restrictions. He complied with his criminal probation and completed all requirements early and obtained an expungement of that conviction on July 21, 2023. He has voluntarily and at his own expense provided breathalyzer test results and hair test results demonstrating his sobriety. He credibly testified that he has only consumed alcohol on two occasions since his DUI arrest and provided the unusual circumstances behind those events. He is remorseful and has been deeply impacted by his poor decision to drive a vehicle under the influence of alcohol that day. He has taken full responsibility for his actions in that regard. He knows that he could have harmed or killed himself or others, and he knows the harm he has caused his family, girlfriend, friends, and coworkers by his poor judgment. Respondent has demonstrated that the self-reflection he has undergone as a result of that poor decision makes it highly unlikely he will ever repeat his poor decisions of that day. All evidence supports that the events of April 16, 2021, were an isolated incident of poor judgment and will not be repeated.

Appropriate Action

26. As cause for discipline of respondent's Postgraduate Training Certificate, and cause for denial of his Physician's and Surgeon's Certificate has been established, determination of the appropriate action to impose on respondent's Postgraduate Training Certificate and application for his Physician's and Surgeon's Certificate in order to protect the public is necessary. Based on the totality of the evidence, it is determined that requiring respondent to be placed on a period of probation would serve no public purpose and would amount to impermissible punishment. (*Fahmy v. Medical Board*, 38 Cal.App.4th at p. 817.) Publicly reprimanding respondent will ensure sufficient public protection.

This determination represents a departure from the board's recommended guidelines of five years' probation with terms and conditions, this departure is made for the following reasons: Respondent established by expert testimony and testimony from the board's own hand-selected experts, namely CPR, that respondent does not suffer from an alcohol use disorder or any substance use disorder and requires no restrictions on his license to practice medicine to protect the public. The board advised respondent to undergo this evaluation by CPR, he did so at their advice. There was no evidence provided by the board or by any expert to contradict those conclusions. Respondent has taken full responsibility for his actions, taken appropriate and significant steps to address any issues related to his actions on April 16, 2021, and has gone above and beyond what the courts and the board has required and requested of him. He has expunged his conviction, engaged in voluntary community service, and undergone voluntary breath and hair testing to show his sobriety. On this record, a public reprimand is the most appropriate action to take.

A public reprimand is not a “free pass.” It constitutes the board’s formal criticism and censure of respondent, who engaged in the conduct outlined above. It warns him that engaging in the same or similar conduct in the future will likely result in more serious consequences.

The Costs of Enforcement

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

Considering the *Zuckerman* factors, costs are reduced by half for these reasons: Respondent presented a colorable defense to the charges against him and successfully obtained a disposition less than a period of probation complainant sought.

Accordingly, the reasonable costs of investigation and prosecution of this matter in the amount of \$25,993.75 are reduced by half to \$12,996.88.

ORDER

Spencer Thomas Hoostal, M.D., is hereby publicly reprimanded for his substantially related conviction for violating Vehicle Code section 23152, subdivision (b). This Decision shall serve as Dr. Hoostal's Public Reprimand in this matter, and it is conditioned upon Dr. Hoostal paying the costs associated with the prosecution of this matter in the amount of \$12,996.88 within 90 days or as arranged with the board.

DATE: December 13, 2023

Debra D. Nye-Perkins

DEBRA D. NYE-PERKINS

Administrative Law Judge

Office of Administrative Hearings