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

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| In the Matter of the First Amended Accusation Against:<br><br>Phong Hung Tran M.D.<br><br>Physician's & Surgeon's Certificate No. G 74233<br><br>Respondent. | Case No. 800-2016-019951 |

## DECISION

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

This Decision shall become effective at 5:00 p.m. on August 2, 2024.

IT IS SO ORDERED: July 2, 2024.

MEDICAL BOARD OF CALIFORNIA

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

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

## In the Matter of the First Amended Accusation Against:

## PHONG HUNG TRAN, M.D., Respondent

## Physician's and Surgeon's Certificate No. G 74233

## Case No. 800-2016-019951

## OAH No. 2019040901.2

## PROPOSED DECISION AFTER REMAND

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 22, 2020, and May 20, 2024, by videoconference.

Jason J. Ahn, Deputy Attorney General, Department of Justice, Office of the Attorney General, State of California, represented complainant, Reji Varghese, Executive Director of the Medical Board of California (Board).

Albert Garcia, Attorney at Law, represented respondent, Phuong Hung Tran, M.D., who was present.

Evidence was received, the record closed, and the matter submitted for decision on May 20, 2024.

## FACTUAL FINDINGS

### Jurisdictional Matters and Procedural History

1. On June 2, 1992, the board issued Physician's and Surgeon's Certificate No. G 74233 to respondent. Per the Board's website, his license will expire on January 31, 2026, unless renewed.

2. On October 21, 2020, complainant signed the first amended accusation in Case No. 800-2016-01995, alleging four causes for discipline of respondent's license: (1) conviction of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon, (2) dishonest or corrupt acts, (3) revocation or suspension of license due to Insurance Fraud and Workers' Compensation Fraud pursuant to Business and Professions Code section 810; and (4) general unprofessional conduct. Respondent had timely filed a notice of defense and requested a hearing.

3. Following an administrative hearing on October 22, 2020, a Proposed Decision was transmitted to the board, finding cause existed to discipline respondent's license for all four causes for discipline, and revoking respondent's license. On December 31, 2020, the board's Panel B adopted the Proposed Decision, effective January 29, 2021.

4. Respondent filed a petition for writ of administrative mandate challenging the Board's decision. On May 20, 2022, the Superior Court heard the petition and issued a Judgment and Writ of Mandate on June 13, 2022, vacating the board's decision. The court held the board erroneously concluded respondent had been "convicted" of a felony because it relied on an earlier version of Business and Professions Code, section 7.5. The court held that under the amended version of

Business and Professions Code section 7.5, operative July 1, 2020, for purposes of license discipline, a "conviction" means a judgment following a guilty/nolo contendere plea or finding of guilt. In this case, since no criminal judgment had occurred at the time of the administrative hearing, the court ruled that the board's decision must be set aside on the issue of criminal conviction and remanded the matter to the board. The court specifically declined to address the other issues raised in the writ proceedings and expressly stated the board's discretion to decide this matter was not in any way limited or controlled by the court's order. The court acknowledged in its decision that the federal court had entered a judgment of conviction during the period while the writ proceeding was pending but indicated it was unaware of the status of the state conviction.

5. Following written and oral argument from the parties after remand, Panel B issued a Decision after Superior Court Remand on March 16, 2023, effective April 17, 2023, revoking respondent's license. Despite the court's ruling that the causes for discipline based on a criminal conviction could not be established because a judgment of conviction had not been entered, the board held that clear and convincing evidence established respondent pled guilty to these crimes and cause for discipline was established under Business and Professions Code sections 2227 and 2234, subdivisions (a) [violation of the Medical Practice Act] and (c) [repeated negligence], causes for discipline that were not alleged in the first amended accusation.

6. On May 8, 2023, respondent sought ex parte relief in Superior Court challenging the Board's decision. At a hearing on May 8, 2023, at which counsel for complainant was present, the court set aside the Board's decision. The court held the board improperly precluded respondent from offering new evidence relating to mitigation/rehabilitation if its decision relied in part on respondent's convictions.

Moreover, the court stated the board's decision was unclear as to whether the board considered the first and third causes for discipline, relating to the criminal convictions.

7. In setting aside the board's decision, the court commented, "If the Board elects on the second remand not to take into consideration the convictions in its determination to any of the four alleged causes of discipline or its penalty, that reasoning needs to be expressly explained in its ruling." The court added, "If on the other hand, the Board elects to consider the convictions on remand, petitioner must be allowed to introduce evidence of, among other things, his rehabilitation and performance on probation."

8. Prior to the board taking any action on the Superior Court's order, on September 6, 2023, complainant signed an accusation in a different case filed against respondent, Case No. 800-2022-089226. This new case alleges the exact same facts as contained in the First Amended Accusation in Case No. 800-2016-019951, with additional allegations that judgments of conviction were entered in federal court on September 13, 2021, and in state court on September 27, 2021. The new accusation omits the cause for discipline based on dishonesty/corruption under Section 2234, subdivision (e), that had been previously sustained by the Board and was not disturbed by the court. On September 28, 2023, complainant submitted a Request to Set with OAH to schedule an administrative hearing on the new accusation.

9. On October 12, 2023, the Board issued an Order of Remand to OAH "for taking additional evidence regarding Respondent's mitigation/rehabilitation." The Order states, "Panel B is not considering the criminal convictions, but rather only the underlying conduct giving rise to the criminal convictions. As such, the additional evidence to be taken is to be limited to Respondent's mitigation/rehabilitation efforts concerning the conduct to the remaining causes for discipline, i.e., dishonest and

corrupt acts and unprofessional conduct under Business & Professions Code, section 2234."

10. On February 2, 2024, complainant submitted a Request to Set in Case No. 800-2022-089226 to schedule a hearing on the Board's remand order, even though the remand order was in Case No. 800-2016-019951. No explanation for this was offered.

11. OAH set both matters for hearing on May 20, 2024, per a notice of assigned hearing dates. Following a status conference with the parties on May 7, 2024, OAH issued an order consolidating the matters for hearing pursuant to Government Code section 11507.3 and ordered complainant to file with OAH the Board's Decision After Superior Court Remand.

12. Complainant, in a letter dated May 9, 2024, requested separate hearings on both matters, arguing the convictions are now "ripe" and must be considered separately from the remanded matter. Respondent opposed this request, noting that the convictions occurred in 2021, over two years before the board issued its remand order to OAH.

13. In an order dated May 14, 2024, OAH stayed Case No. 800-2022-089226/OAH No. 2023090856 until the board issues its decision in this present matter, which was ordered to proceed as scheduled.

14. In the ruling on complainant's request, OAH cited the board's remand order which expressly stated that Panel B was not considering the criminal convictions – only the underlying conduct giving rise to the criminal convictions – and the additional evidence to be taken was limited to respondent's mitigation/rehabilitation efforts concerning the conduct to the remaining causes for discipline, i.e., dishonest

and corrupt acts and unprofessional conduct under Business & Professions Code, section 2234. As such, the board's remand order is jurisdictional and limits the scope of the evidence to be considered on remand. Thus, the hearing on May 20, 2024, was held for the limited purpose of taking additional evidence regarding respondent's mitigation/rehabilitation as it relates to the remaining causes of discipline, dishonest/corrupt acts and unprofessional conduct.

## Respondent's Guilty Pleas and the Factual Bases for These Pleas

15. On August 29, 2018, respondent pled guilty to a one count-superseding indictment to Conspiracy to Commit Honest Services Mail Fraud and Health Care Fraud, a violation of 18 U.S.C. §§1341, 1346 and 1349, in United States District Court for the Southern District of California, Case No. 16CR1409-H.

As alleged in Count 1 of this indictment, respondent conspired with others in violation of 18 U.S.C. §§ 1341 and 1346, "Honest Services Mail Fraud," and 18 U.S.C. 1347, "Health Care Fraud." As detailed in this indictment, respondent, with others, knowingly and with the intent to defraud, devised and participated in a material scheme to defraud and to deprive patients of the intangible right to their doctors' honest services, and caused mailings in furtherance of the scheme, in violation of 18, U.S.C. § 1341, and committed Health Care Fraud by knowingly and with the intent to defraud, devised and participated in a material scheme to defraud a health care benefit program, or to obtain money or property owned by, or under the custody or control of, a health-care benefit program by means of false or fraudulent pretenses, representations, or promise in violation of 18 U.S. C. § 1347, which were all in violation of 18, U.S.C. § 1349.

Under the terms of the plea agreement, respondent signed on August 29, 2018, the applicable penalties for this crime include a maximum prison term of 20 years and a fine of $250,000.

16. Also on August 29, 2018, respondent pled guilty in Superior Court of California, County of San Diego, Case No. SCD255524, to violating Labor Code section 3215 and Penal Code section 550, subdivision (b)(3), both felonies. Respondent acknowledged in his plea agreement that he may be subject to a maximum jail sentence of five years and eight months, a maximum $60,000 fine, and three years parole or supervised release. The factual bases of respondent's plea are incorporated in the federal plea agreement respondent signed.

17. In the federal plea agreement, respondent admitted under oath to the factual bases to both the federal and state charges and detailed the extent and nature of the criminal conspiracy he committed.

18. Specifically, in the agreement respondent admitted he engaged in the following criminal conduct:

> 1. Defendant PHONG HUNG TRAN was the owner of Coastline Medical Clinic in Southern California. From 1992 to June 2016, Dr. Tran was licensed as a physician and surgeon in the State of California. Defendant operated a medical clinic in Westminster, also treated patients at clinics owned by others, including clinics in San Diego, Escondido, and Calexico, California.
>
> 2. From at least April 2013 through June 2016, within the Southern District of California and elsewhere, defendant

PHONG HUNG TRAN knowingly and intentionally conspired with JOHN PANGELINAN, JONATHAN PENA and others to commit the offenses of Honest Services Mail Fraud, in violation of 18 U.S.C. §§ 1341 and 1346, and Health Care Fraud, in violation of 18 U.S.C. § 1347.

3. It was the goal of the conspiracy to fraudulently obtain money from health care benefit programs by submitting claims for prescription pharmaceuticals, Durable Medical Equipment, Autonomic Nervous System testing, sleep studies, toxicology testing, and other medical goods and services that were generated through a secret pattern of bribes to and from TRAN and other doctors (and those acting with them and on their behalf), to induce doctors to refer patients for those services, and to refer to particular providers, in violation of the doctors' fiduciary duty to their patients.

4. It was a further part of the conspiracy that defendant TRAN, knowing that receiving a per-patient referral fee was unlawful, agreed to accept per-patient bribes from the co-conspirators to refer patients to companies owned by his co-conspirators or in which they had an interest. It was a further part of the conspiracy that defendant TRAN, knowing that paying a per-patient referral fee was unlawful, agreed to pay per-patient bribes to co-conspirators to obtain access to patients for which TRAN could thereafter

bill insurance companies for a variety of expensive and unnecessary goods and services.

5. It was a further part of the conspiracy that the co-conspirators negotiated specific bribe and kickback amounts for specific kinds of prescriptions, conspiracy that the co-and kickback amounts for including: between $200-250 Interferential Unit (used for pain relief) ("IF Unit") $50-100 for each compound cream prescription.

6. It was a further part of the conspiracy that the co-conspirators bribed and solicited marketers and doctors to prescribe per referral and the conspiracy that the co-compound creams and patches over other types of medications, because these custom pharmaceuticals can be billed at high rates to insurance companies.

7. It was a further part of the conspiracy that the co-conspirators crafted compound creams and other pharmaceuticals to contain the most expensive components, in order to bill at high rates to insurance companies, instead of customizing the medications to the needs of particular patients.

8. It was a further part of the conspiracy that the co-conspirators concealed from patients, and intended to cause the doctors to conceal from patients, the kickback and bribe payments made to doctors for referring patients

to companies owned by the co-conspirators or in which they had an interest, in violation of the doctors' fiduciary duty to their patients.

9. It was a further part of the conspiracy that the co-conspirators obscured the true nature of their financial relationships in order to conceal their corrupt payments for patient referrals, including by: (1) entering sham agreements to purportedly lease office space, provide marketing services, or provide management services; (2) creating separate companies in the names of nominees and straw owners, to make and receive payments; and (3) disguising payments as salaries for employees when in reality the corrupt payments were made in exchange for, or to induce, the referral of patients.

10. It was a further part of the conspiracy that the co-conspirators utilized the mails as an essential part of their fraudulent scheme, including by mailing bills to insurance carriers, and mailing prescription pharmaceuticals and DME to patients.

11. It was a further part of the conspiracy that co-conspirators billed, and caused insurers to bill, for services' provided to patients that the co-conspirators had procured by paying bribes and kickbacks.

12. It was a further part of the conspiracy that the co-conspirators concealed from insurers and patients the material fact of the kickback arrangements, which were in violation of California state law, that led to the referrals.

13. As a part of the scheme, on or about September 19, 2014, in a meeting attended by David Nguyen (charged elsewhere) and Alex Martinez (charged elsewhere), TRAN offered that he was willing to pay a greater bribe to chiropractor Dr. Steven Rigler (charged elsewhere) for access to his San Diego and Escondido patients, if Dr. Rigler would let TRAN prescribe expensive compound creams for them, explaining, "If you want something, more contribution from me, then these, these compound [creams, I need to] control these."

14. In the same meeting, TRAN explained that he saw 70, 80, or 90 patients each time he visited Dr. Rigler's clinic in Calexico, and for that his "contribution" to Dr. Rigler was between $4,000 and $5,000, depending on the number of patients, but it was more worthwhile because TRAN had "control of the compounds."

15. TRAN explained that the unlawful referral payments would be disguised as rent up to a certain amount, and then salary, offering, "If we work together and [you] say, hey okay, well you know, we [will] hand you this office and these are the numbers of patients we're gonna get to you on a

monthly basis, for Escondido, for San Diego, then what I wanna pay you basic rent, [then] salary as to the difference, it's gonna be paid by a management company. . . that's the only way to protect us. I can do, even on the rent payment, because it doesn't make sense, you know, if I go over there and I pay you four, five thousand dollar each office [for rent] and do, once a month . . . you know . . . doesn't make sense."

16. Using the combination of basic rent and salaries, TRAN specified the total that he would offer for the number of patients: "[for] 80, about $4,000; 100 [patients] is about $5,000."

17. As a part of the scheme, in November 2015, TRAN and PANGELINAN discussed a bribe payment of over $100 per cream TRAN would prescribe.

18. On or about November 4, 2015, TRAN asked PENA to send kickback money to a separate marketing company, because TRAN did not want the money going directly to him. TRAN asked PENA to send him a text message that used the code "Let's meet at one [o'clock]" if PENA would pay $100 per compound cream prescription, or "two [o'clock]" if PENA would pay $200.

19. On or about November 16, 2015, PANGELINAN delivered to TRAN or TRAN's representative a check for

$10,000 made out to "Team Enterprise," in payment for 50 IF Units referred by TRAN to Post Surgical Rehab ("Post-Surgical").

20. On or about November 24, 2015, PANGELINAN suggested a new kickback deal with TRAN, to pay TRAN over $100 for each compound cream prescription that TRAN prescribed.

21. Sometime before December 2015, TRAN and PANGELINAN agreed that TRAN would receive $10,000 per month (disguised as payment for "marketing" services) in exchange for referring 50 IF Units per month to Post-Surgical.

22. On or about December 8, 2015, TRAN said that he would be sending many more DME referrals to Post-Surgical, and in order for Post-Surgical to "catch up" on payments due him, TRAN suggested that he only have [*sic*] to refer 40 IF Units per month in exchange for the $10,000 monthly payment. On or about December 8, 2015, TRAN and PANGELINAN agreed that TRAN would be paid $125 per compound cream that he prescribed.

23. On or about December 8, 2015, TRAN and PANGELINAN agreed that TRAN would be paid $125 per compound cream that he prescribed.

24. On or about December 15, 2015, PANGELINAN delivered to TRAN a check for $10,000 made out to "Team Enterprise," in payment for 50 IF Units referred by TRAN to Post-Surgical.

25. On or about December 8, 2015, TRAN told PANGELINAN that he was opening a new marketing company though which he would be paid for the compound cream kickbacks, although it would be run by "none of my family members" because "you gotta be smart."

26. TRAN also explained that he needed to have a justification ready that the compound creams were medically necessary, noting, "I always think, what if people ask me, you know, a medical necessity. . . you know the more I'm able to justify what I do the better for me. Because I'm gonna have to assume that it will come down to that point."

27. On or about January 14, 2016, PANGELINAN delivered to TRAN a check for $10,000 made out to "Team Enterprise," in payment for 40 or 50 IF Units referred by TRAN to Post-Surgical.

28. TRAN agrees that he intentionally engaged in or caused conduct constituting sophisticated means, including by setting up and utilizing various shell companies,

falsifying payment records to reflect payments as being for "rent" or "salary," maintaining no checking accounts, and otherwise concealing his receipt of the benefits of this kickback and cross-referral scheme. TRAN agrees that his offense involved abuse of his position of trust with respect to his patients.

29. TRAN agrees that his offense involved abuse of his position of trust with respect to his patients.

30. TRAN further agrees that the California Workers' Compensation system is a "government health care program" within the meaning of Sentencing Guidelines Section 2B1.1(b)(7), and that his crime caused loss greater than $1 million to a government health care program.

31. TRAN agrees that he had an aggravated role in the offense, in that he managed and supervised office staff and medical professionals at his clinic to act in ways to further his kickback scheme, including by directing office managers to pay cappers for patient referrals, and directing his physician's assistants to prescribe the medical ancillary products and services for which Tran was to receive a kickback payment.

32. Using the manners and means described above, defendant and his co-conspirators submitted and caused to be submitted claims between $3.5 million and $9.5 million

for goods and services procured through the payment of bribes and kickbacks.

(Exhibit 4, pp. AGO-009 to 014, §§ 1 to 32.)

19. With respect to the state charges, respondent admitted, again under oath, that he engaged in the following criminal conduct in violation of Labor Code section 3215 and Penal Code section 550, subdivision (b)(3):

> 1. As to Count 21: On or about April 28, 2015, Defendant Phong Hung Tran gave to another person a check (#1381) in the amount of $8,000 payable to Crosby Square Chiropractic and drawn on the checking account of MD Pharma, Inc. MD Pharma, Inc. was a management company with which Defendant was affiliated. MD Pharma, Inc.'s main purpose for existence was to help Defendant conceal illegal kickback payments. This $8,000 check was disguised as "rent" in an effort to conceal the fact that it was really an illegal kickback payment intended as compensation to another for the referral of patients in the California Workers [Compensation] System. The illegal compensation for the referral of patients included payment by Defendant to another based on the number of prescriptions for compounded pharmaceutical creams Defendant and his agents were able to write for the referred patients ($50 per patient). Defendant paid the illegal $8,000 kickback to another because defendant himself had arranged to receive illegal kickbacks from persons

associated with the pharmaceutical companies who would fill the expensive prescriptions for the compounded creams.

2. As to Count 44: As more fully set forth above. Defendant paid illegal kickbacks to another for access to these patients, including a payment of $50 for each compounded pharmaceutical cream Defendant or his agents would write. Defendant had an arrangement with persons associated with the pharmaceutical companies who would fill the compounded cream prescriptions whereby Defendant would receive illegal kickbacks for writing the prescriptions, Defendant knew that these pharmaceutical companies would and did submit bills to insurance companies in the California Workers Compensation system for these compounded pharmaceutical creams.

Defendant did aid and abet and conspire with others to conceal from the insurance companies the existence of illegal kickbacks tied to the patients for whom bills were sent to insurance companies, including State Compensation Insurance Fund. Defendant knew that the no insurance company in the California Workers' Compensation System would or could pay any bill for services or products for any patient when the services or products (including prescription medications) were tied to an illegal kickback. A bill was sent on or about November 4, 2014, to State Compensation Insurance Fund for compounded

> pharmaceutical cream for patient Richard D. This bill was sent by a pharmaceutical company seeking payment in the amount of $2,475.73 for the compounded cream provided to a patient in the California Workers' Compensation System. Defendant was the prescriber of the compounded cream and was listed as the prescriber on the bill submitted. Defendant paid an illegal kickback to another for access to unwitting patient Richard D. Defendant paid an illegal kickback to another for access to unwitting patient Richard D. Defendant expected to receive an illegal kickback from persons associated with the pharmacy filling the prescription for Richard D. Defendant knew the pharmacy would send the aforementioned bill to the insurer. Defendant did assist and conspire with others to conceal and fail to disclose to State Compensation Insurance Fund any illegal kickbacks associated with compounded pharmaceutical creams for patient Richard D.

(Exhibit 4, pp. AGO-015 to 017.)

20. In exchange for his pleas of guilty in state and federal courts, both courts delayed sentencing respondent to allow respondent to cooperate in the prosecution of other individuals involved in the criminal conspiracy.

21. Respondent was sentenced for both crimes in September 2021. Respondent was sentenced first in federal court on September 13, 2021. The federal court sentenced him to time served with two years of supervised release. Per a letter respondent submitted into the record in this present matter, respondent's federal

probation was terminated early on January 13, 2023, for substantial compliance while on probation.

22. Respondent was sentenced in state court on September 27, 2021. The state court sentenced him to two years of probation with a jail sentence of 365 days, which the court stayed pending successful completion of probation, 80 hours of volunteer work, and fines and fees of $50,820 and $50,000.

## Respondent's Testimony and Evidence from Initial Hearing

### RESPONDENT'S TESTIMONY

23. Respondent's testimony at his initial hearing is summarized as follows:

Respondent came to the United States as a refugee after the Vietnam War. He was educated at the University of Memphis where he obtained his medical degree in 1990 and was trained in anesthesia, pain management and completed fellowships in obstetrics and pain management. He obtained a master's degree in business administration at the University of California at Irvine in 2004. He obtained a law degree in 2021 at Pacific Coast University.

Until 2016, when he was barred from practicing medicine as a condition of his bail in the criminal matters, he maintained a medical practice, primarily, in Westminster, California.

24. Respondent described the nature of the conduct he engaged in as a "kick-back scheme for products and services in exchange for referrals." He denied that he was the principal organizer of this criminal scheme and stated his involvement began at the initiation of an individual who contacted him with an offer, he now

recognizes, that was too good to be true. He quickly added he made the wrong decision to involve himself in this scheme.

25. Respondent attributed his conduct to his gambling addiction. His addiction to gambling was extensive. He noted he had gambling losses, at times, of about $50,000 a day, and he had to borrow between $100,000 to $1 million dollars to maintain his addiction. He said he "got into a situation where he accumulated a large amount of debt," and needed to fund his addiction through the criminal conduct. Despite his addiction to gambling, respondent has not been in treatment to address the condition. Respondent also said alcohol contributed to his conduct, but he only went to Alcoholics Anonymous (AA) twice because this program was not for him.

26. Respondent, it seems, in addition to his problems with gambling and alcohol, attributed his conduct to Post Traumatic Stress Disorder (PTSD). He stated he has PTSD due to the traumatic events he suffered as a refugee fleeing Vietnam and his experience on a boat at sea for 30 days. Respondent has also not been in treatment for this condition. It is not clear from the record how his PTSD contributed to his criminal behavior.

27. Respondent emphasized that he has cooperated with federal and state prosecutors in the prosecution of other individuals in the criminal scheme and he continues to render assistance.

28. Respondent said he is very remorseful and ashamed about his conduct, he is embarrassed and humiliated, feels that he is living in a prison every day, and accepts responsibility for his conduct. He said he failed his community and family. He stated he always led a "focused life" and for a "small period of time [he] lost track." He said he will do amends although he said there was "no victim." Later in his testimony

he sought to correct this statement and acknowledged there were victims of his behavior. He said he has learned to understand his actions, learned ethics and boundaries, taken and completed an ethics course at the University of California, Irvine, and he is now a different person.

29. As an accurate summary of sentiments about his behavior and his acceptance of responsibility, respondent referenced a letter he wrote to the sentencing judge in the federal criminal case. (Exhibit C.) In this letter he acknowledged that his conduct defrauded the California healthcare system of millions of dollars, hurt his patients, the community, and his family.

30. Respondent believes he has transformed himself and is rehabilitated. He said he needed to "come back to the person he was to help people" and as an indication of his desire to do this, he connected with a few clinics in his community that gave out masks. He also said he had an opportunity to go to the border and "treat" COVID patients as a volunteer doctor and he sought to have the board lift the Superior Court Penal Code section 23 order barring him from the practice of medicine so he could do this. However, the Deputy Attorney General (DAG) who is prosecuting this matter "turned down" his request. He said his request is still "pending" because he wants to use his training to help people during the pandemic. Respondent appealed the Section 23 restriction on his license and, on June 27, 2016, the Court of Appeal denied his petition.

31. As evidence of his rehabilitation, respondent cited his renewed religious faith and work at a Buddhist temple as evidence of his personal transformation.

32. Respondent's testimony that he accepts full responsibility for his criminal conduct and is rehabilitated was found not credible at the initial hearing for several

reasons. First, respondent acknowledged that his gambling addiction and debts from gambling contributed to his need to participate in the criminal scheme to fund his addiction. Despite this, he had not participated in therapy or groups for persons with gambling addiction. Considering the severity of his gambling addiction, his failure to engage in any therapy is notable. His use of alcohol also appears to have contributed to his criminal behavior and, aside from two occasions, he did not participate in AA and has not obtained therapy. Similarly, respondent did not seek or obtain therapy for the PTSD condition he said he has which may have contributed to his problem behaviors. Further, while admitting he defrauded the California healthcare system of millions of dollars over an extended time frame, respondent minimized his role as a participant, despite the clear evidence, including text messages, to the contrary. In his testimony, he suggested he went along with an offer to participate in the scheme and he incorrectly testified that his conduct occurred over a "small" amount of time. As detailed in his allocution he made under oath, respondent seems to have been the key person of the criminal conspiracy, if not principal of the illegal scheme, and the illegal conduct occurred over a three-year period and involved numerous individuals, numerous offices around Southern California, numerous patients, and a substantial sum of money.

**RESPONDENT'S WITNESSES**

33. Reverend Aparekkee Punyasiri testified as a character witness for respondent. He is the Abbot and CEO of Maithree Vihara Buddhist and Meditation Center. Reverend Punyasiri is aware of the charges against respondent and read the accusation. He said respondent has been honest with him about his criminal conduct and acknowledged his mistake and has sought to correct himself.

Reverend Punyasiri stated respondent has been an active member of the temple community and he has materially contributed to the maintenance and development of the temple. In addition to his testimony Reverand Punyasiri wrote a letter on respondent's behalf which is consistent with his testimony.

34. Respondent also called Habib Akl as a character witness. Mr. Akl is a fellow law student of respondent and works as a paralegal. He has known respondent for the last three years. He is familiar with the charges against respondent.

Mr. Akl, based on conversations he has had with respondent, believes respondent committed a "dishonest act" and is now completely rehabilitated related to his gambling addiction specifically and in general. He has further formed the opinion that respondent is a person of honesty and integrity, and this opinion is not altered by the criminal case against him. Mr. Akl submitted a letter on respondent's behalf which is consistent with his testimony.

**RESPONDENT'S CHARACTER REFERENCE LETTERS**

35. In addition to the testimony of these two persons, respondent submitted letters of support from the following persons:

Andrew Blount, who is a former Mayor of Laguna Hills and a former patient of respondent, in a letter dated October 5, 2020, stated he is grateful for the treatment respondent provided him and believes notwithstanding the charges against him, he is trustworthy and competent.

Allison Mong Lan Dao is respondent's former employee and friend. In a letter dated October 14, 2020, she stated that respondent helped educate people in the community regarding COVID-19 and how to protect themselves. Respondent also

helped arrange for masks for the most vulnerable members of the community. She described him as a highly respected and skilled doctor and a vital member of the community. She did not state she was aware of the specific charges against respondent.

Sam Kortab knows respondent through law school and in a letter dated October 14, 2020, described him as kind, compassionate, understanding, and caring. He believes respondent to be an honest and competent person. Mr. Kortab is aware of the charges against respondent.

Chandao Nina Nantha is an attorney. In a letter dated October 5, 2020, she wrote she has known respondent since 1996. She also stated she read the charges against him and believes that the "allegations are skewed, not accurate, misleading and taken out of context from the overall facts." Ms. Nantha said respondent is a vital member of the community, a skilled doctor, and he has "never exhibited any character of dishonesty."

Tuan Nguyen, D.O., has known respondent for more than 20 years. In a letter dated October 11, 2020, Dr. Nguyen described respondent's conduct as out of character and respondent is a committed, skilled, empathetic, and brilliant doctor. His understanding of the charges came from respondent. He said respondent explained the charges against him in detail and said he accepts responsibility. Dr. Nguyen asks that respondent be allowed to continue to practice medicine.

Michael Vo is Mayor Pro Tem of Fountain Valley. In a letter dated October 14, 2020, Mr. Vo stated he is familiar with the charges against respondent. He said respondent took care of his parents and he developed a close friendship with him. Mr. Vo described respondent as a compassionate, trustworthy person of outstanding

character and integrity and his conduct does not reveal his true character. Mr. Vo added that respondent accepted responsibility for his conduct. He did not state if he was aware of the specific criminal charges against respondent.

## Evidence Produced at the Hearing on Remand

### RESPONDENT'S TESTIMONY

36. Respondent testified at the remanded hearing. The following is a summary of his testimony:

37. Respondent's license was reinstated in 2022, after the court granted his petition for a writ of mandate. Since that time, he has been practicing as a physician doing pain management and cosmetic medicine. He has practiced medicine without any issues or complaints.

38. Respondent admits he engaged in the conduct he pled guilty to in state and federal courts, and that conduct constituted dishonesty and unprofessional conduct.

39. In terms of his efforts to rehabilitate himself, since the first hearing in October 2020, respondent has continued to try to better himself by taking online courses and serving the homeless and elderly. He completed his law degree at Pacific Coast University in 2021. As he expressed it, he wants to give rather than to take, and he now feels a purpose and connection to others.

40. Respondent has worked with Golden Hearts Foundation, a nonprofit organization with the mission to help those in need, promote education and healthcare. Respondent has volunteered at Gold Hearts from 2020 to the present.

Respondent also has volunteered since 2022 at the Asian-American Senior Citizens Association, a nonprofit organization, where he has provided medical services since his reinstatement in 2022. Respondent received a Certificate of Recognition from the California State Senate for his volunteer work with this organization on April 10, 2022.

In addition, respondent received a Certificate of Recognition for his community volunteerism efforts to make the King Hung Vuong Festival, a holiday in the Vietnamese tradition, successful on April 21, 2024.

41. Respondent understands a power is above him. He attends a Buddhist Temple and meditation center one to three times a month. He gets together with leaders of the temple, learns how to meditate, and how to keep in control of his self. Meditation helps him to stay focused.

42. Respondent said he had an issue with gambling, but his gambling problem is "long gone." At the same time, he stressed he wants to transform and learn what is "the root" of his problem.

43. Respondent understands he had serious gambling and alcohol abuse problems. He has not been in treatment for these conditions. His attorney referred him for an evaluation with Michael McGee, M.D., a psychiatrist certified in addiction medicine, to identify stressors and to make sure he is "clean." Dr. McGee met respondent on April 28, 2024, May 4, 2024, and May 11, 2024, and prepared a report for respondent's attorney on May 17, 2024, the Friday before the hearing in this matter. Dr. McGee's report is discussed later in this decision.

44. Respondent said he wanted this "professional assessment" from Dr. McGee and saw him three times for Dr. McGee to evaluate him. He discussed with Dr.

McGee his gambling and alcohol use history, and the trauma he experienced when he fled Vietnam by boat after the Communist takeover of South Vietnam. Dr. McGee recommended he undergo therapy to ensure that he does not relapse. He is willing to take Dr. McGee's recommendation to continue with psychotherapy. He also accepts what he did involved serious problems with gambling and alcohol abuse.

45. Respondent also took courses in prescribing pain medicines and testified he took a professional boundaries and ethics course in September 2019. In addition, respondent completed continuing medical education courses and submitted certificates of completion into the record. Respondent, further, obtained letters of support for this proceeding.

46. Respondent addressed his dishonest, fraudulent, and unprofessional conduct. He said while people approached him "to do these schemes," it was all on him. He accepted what these people offered, and he went in the wrong direction. He stressed he last gambled in 2016. His period of excessive gambling was from 2013 to 2016, the point when he was arrested. He now is not inclined to gamble. As proof of this, he noted he did not gamble when he went to Las Vegas in 2023 with a group of friends.

47. With regard to his use of alcohol, respondent said he used alcohol to deal with the devastation and pain associated with his arrest during the period from 2016 to 2019. He acknowledged he drank heavily.

48. Respondent said he has been to 30 Alcoholics Anonymous (AA) meetings and bought books through AA. He commented that Dr. McGee "confirmed" for him that he does not have an alcohol abuse problem. He said he drank last in March of 2024 but doesn't feel a compulsion to drink alcohol.

49. In summary, respondent said he feels very shameful and humiliated for his conduct. He has learned to accept full responsibility for what he did, and he has rehabilitated and transformed himself. He said he now has a sense of integrity and accountability and wants to give and not take. As he also put it, he wants to be connected and not be in isolation. Reflecting on what happened, he said he is happy he got arrested and his license was suspended. As a result, he woke up. He made the biggest mistake of his life, and hurt patients, his family, and the community. He now is not striving for material wealth but to give and to stay connected. He wants to be accountable and to redeem himself.

50. In response to the question how he can assure the board he won't reoffend, respondent offered this response: He now believes he deserved to be punished. His conduct sent him to the bottom and woke him up. His materialistic life required him to be a "winner;" he now wants to live a humble life and to contribute his talents to help others; and he wants to stay connected, to serve and give. He stressed he knows what he did was wrong and wants to redeem himself.

Respondent further stated he would accept any terms of probation the board may impose, including biological fluid testing, a psychiatric evaluation, and counseling,

51. In response to questions on cross-examination, respondent acknowledged he has not sought medical treatment for gambling, alcohol abuse, or Post Traumatic Stress Disorder (PTSD), before he met Dr. McGee in late April 2024.

**TESTIMONY OF WITNESSES**

52. Habib S. Akl, who testified at the previous hearing, and Robert Edward Willyard, both testified on respondent's behalf.

53. Mr. Akl has known respondent since 2018, when they were in law school. He worked with respondent as a paralegal at the law firm where Mr. Akl works. Mr. Akl supervised him from September 2021 to November 2022. In addition to his testimony, he provided a letter dated April 29, 2024.

Mr. Akl became close to respondent during the second year, and they regularly talk to each other. He is aware that respondent's license was revoked. Respondent told him his story relating to insurance fraud and his rehabilitation after that. In his letter respondent told Mr. Akl alcohol abuse and his gambling problems vices were his "downfall," and he will never commit these mistakes again. Mr. Akl said he was shocked when respondent told him about his alcohol use and gambling problem.

Numerous times, respondent told him he accepted responsibility for his conduct; he was out of line and hurt his family by his conduct. Respondent told Mr. Akl he went through a year of alcohol rehabilitation and other rehabilitation programs when he was first convicted. Of note, no evidence of these programs was introduced.

Mr. Akl has a high opinion of respondent's honesty. At the law office, respondent was straightforward, trustworthy; people said they loved his honesty. At his essence, he considers respondent a very good person. Mr. Akl believes respondent deserves a second chance now that he is rehabilitated.

On cross-examination, Mr. Akl was asked about the alcohol programs respondent told him he attended. Mr. Akl said that respondent told him he went to alcohol programs, but he does not recall those programs specifically. In response to questions about respondent's participation in a program for persons with gambling problems, Mr. Akl didn't answer the question directly. He stated he understands that respondent went to Las Vegas and did not gamble.

54. Mr. Willyard is an attorney and has known respondent for about 14 years in the capacity as his physician, medical consultant, and friend. Mr. Willyard also provided a letter that supplemented his testimony.

Mr. Willyard is aware of respondent's convictions "generally." Respondent told Mr. Willyard he made "several mistakes" and accepted responsibility for his conduct. Mr. Willyard said respondent "apparently" no longer gambles. Respondent told him he wants to improve himself. He understands that respondent has undertaken to rehabilitate himself by his involvement in the Vietnamese community.

Mr. Willyard regards respondent as honest and trustworthy and a very caring and attentive physician.

**LETTERS IN SUPPORT**

55. Respondent submitted letters of support from these persons: Michael Truong, M.D., Rev. Aparekke Punyasiri, and Chandao N. Nantha, Attorney at Law.

56. Dr. Truong, in his letter dated April 23, 2024, states that he has known respondent since 2018, at UMC Medical Clinic, where he is the Medical Director. Respondent has worked at the clinic since 2022 and sees about 20 to 30 patients per month. Based on his direct observations of respondent as a physician at the clinic, respondent has delivered high quality care to patients, particularly patients suffering from chronic pain conditions that, in Dr. Truong's view, have not been adequately managed by their current doctors and specialists. Patients have asked for respondent specifically. Respondent has been attentive to patients and patients feel heard, understood and hopeful of a viable solution to their problems. Dr. Troung regards respondent as an honest, caring, and competent physician. There have been no complaints about respondent's care of patients.

Dr. Truong has reviewed the accusation filed on September 23, 2023, and understands respondent was convicted in state and federal courts. Respondent has told him he accepts responsibility for his conduct, and he has learned from his mistakes. He noted that respondent has completed a professional boundaries and ethics course in 2019 and he completed law school.

57. Ms. Nantha has known respondent and his family for 30 years. She describes him in her letter dated May 6, 2024, as dedicated to his family and a physician who has provided her and her family and his patients with superior healthcare. He has demonstrated a strong sense of honesty, trustworthiness, and high moral standards. He has taken steps to rehabilitate himself, and he is now a better person and physician. She cited the continuing education courses and ethics courses he has taken, as examples of his commitment to improve himself and maintain the highest standards of medical practice. Ms. Nantha added that respondent accepts responsibility for his conduct. She did not discuss her knowledge of respondent's conduct. As stated above, it is noted, Ms. Nantha wrote in her other letter dated October 5, 2020, that she believes that the "allegations are skewed, not accurate, misleading and taken out of context from the overall facts."

58. Reverend Aparekkee Punyasiri is the Abbot and CEO of Maithree Vihara Buddhist and Meditation Center. He testified at the initial hearing in this matter. In his letter dated April 24, 2024, he states he wrote a letter of support for respondent in 2020 and has maintained close contact with respondent since that time. Respondent has been an active member of the temple community and has served the community as a caring, compassionate, and talented physician. Reverend Punyasiri believes respondent has transformed himself and is totally rehabilitated.

## DR. MCGEE'S REPORT

59. Dr. McGee's report, as mentioned above, was sent to complainant on May 17, 2024, the Friday before the hearing. Complainant moved to bar his testimony and opinions regarding respondent pursuant to Business and Professions Code section 2334, subdivision (b), for failing to comply with the time period for the report disclosure deadline.

Complainant's motion was granted. The disclosure deadline under Section 2334 required respondent to provide complainant with information regarding Dr. McGee's opinion with respect to respondent at least 30 days before the hearing. Respondent did not comply with the Section 2334 disclosure deadline. OAH set the May 20-21 hearing dates on February 2, 2024. Respondent provided complainant with Dr. McGee's report on the afternoon of Friday, May 17, 2024.

60. However, to the extent the information contained in Dr. McGee's report qualifies as administrative hearsay under Government Code section 11513, subdivision (d), that information is considered.[1]

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[1] Dr. McGee's opinion regarding respondent would be given little weight, even if it were considered on the merits. His evaluation consisted of recording what respondent told him. He did not review any material documents, including court documents, relating to respondent's conduct, and he did not interview persons who know him. His opinion is, further, undercut by his conclusion that respondent had a "mild" gambling disorder at the same time he recommended he undergo psychotherapy every one to two weeks. A gambling disorder that resulted in over $300,000 in debt, as he told Dr. McGee, or even over $1 million dollars, as he said at

61. To this extent, as a supplement to the evidence of record in this matter, Dr. McGee reports that respondent's attorney referred respondent to him for a comprehensive psychiatric evaluation. Dr. McGee's evaluation consisted entirely of his interview of respondent and a mental status examination he performed. Dr. McGee did not review any documentary evidence, including the pleadings in this matter and court documents. He met respondent on April 28, 2024, May 4, 2024, and May 11, 2024. Respondent told him he has not gambled since 2016; he accrued $300,000 in gambling debt; he does not now abuse alcohol; his arrest and conviction (for crimes Dr. McGee does not identify) left him humiliated; he hit bottom; he realized the mistaken life agenda he was living; he now wants to "serve;" and he has worked as a practicing physician since 2022, when his license was reinstated. Respondent also told Dr. McGee he has been to 30 AA meetings but does not feel he needs AA. In addition, respondent stated he experienced significant trauma when he fled Vietnam as a refugee after the Vietnam War.

62. Based on his interview with respondent, and a mental status examination he conducted, Dr. McGee assessed respondent with a gambling disorder of "mild severity . . . in sustained remission." Dr. McGee does not believe respondent suffers from an alcohol abuse disorder. Dr. McGee recommends respondent undergo long term maintenance psychotherapy on an indefinite basis every one to two weeks on average.

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his first hearing, that caused him to engage in widespread insurance fraud, cannot be deemed "mild."

## DOCUMENTARY EVIDENCE

63. Respondent submitted the following documents into the record: letters of support from the individuals identified above; a letter dated April 23, 2024, signed by Chao Lam Nguyen, CEO of the Golden Hearts Foundation and a letter dated April 24, 2024, also from Mr. Nguyen as CEO of the Asian-American Senior Citizens Association, and a letter dated April 26, 2024, from Phat Bui, Chairman of Vietnamese American Federation of Southern California; a letter dated January 21, 2023, from United States Probation & Pretrial Services, stating that respondent's probation was terminated early on January 13, 2023, for substantial compliance with the terms of probation; a certificate of completion dated September 6-8, 2019, for a course in professional boundaries and ethics; a Certificate of Recognition dated April 10, 2022, from the California Senate for respondent's volunteer work supporting the Asian-American community, and a Certificate of Recognition dated April 21, 2024, from the California Assembly for his volunteer work for the King Hung Vuong Festival; and CME certificates of completion for a medical ethics course completed on May 10, 2024, a course on COVID on November 5, 2023, developing a safe treatment plan for opioid use to manage chronic pain on November 5, 2023, responsible and effective opioid prescribing on November 5, 2023, opioid safety on November 5, 2023, sleep disorders on November 6, 2023, Men's Health Issues on November 9, 2023, safe use for prescribing opioids on November 9, 2023, and medical ethics for physicians on May 20, 2022. Respondent also submitted into the record a copy of his law degree dated May 21, 2021.

64. With regards to the letters from Mr. Nguyen and Mr. Bui, Mr. Nguyen states in his letter that respondent has been volunteering since 2020 at Golden Hearts Foundation and since 2022 at the Asian-American Senior Citizens Association. He

stated that both nonprofits have benefited from respondent's compassionate and competent medical service. Mr. Nguyen commented that respondent is remorseful for his conduct.

65. Mr. Bui in his letter writes that since the reinstatement of his medical license in July 2022, respondent has provided medical care to Mr. Bui and many others, and he has conducted himself in a professional and caring manner. Mr. Bui also stated that respondent expressed his remorse for his conduct. He further noted respondent's volunteer work in the community and that he had earned a law degree.

## The Parties' Arguments

66. Complainant argued in closing that revocation of respondent's license is the appropriate remedy considering the nature and extent of respondent's conduct and that respondent did not show he is sufficiently rehabilitated. Respondent has not had any treatment for gambling, PTSD, or alcoholism. He saw Dr. McGee only to assess him for future treatment. Despite the trauma he experienced as a refugee fleeing the Communist takeover of Vietnam in 1975, respondent has not undergone any treatment for this condition. He attended only 30 AA meetings and at his initial hearing said he did not find the meetings "useful." Despite the board's concerns as expressed in the initial decision in this matter regarding the absence of treatment, he did not receive treatment. As complainant put it, "words without actions mean nothing."

Concerning the nature of respondent's dishonest conduct, his conduct involved millions of dollars, and an elaborate scheme to hide what he was doing. Respondent was the ringleader of this conduct over a period of years at multiple locations.

67. In addition to his closing arguments, respondent submitted a trial brief which was considered. In his arguments, respondent recognizes his conduct was serious and grave. He argues, however, that revocation of respondent's license is not the appropriate remedy consistent with the goal of public protection. Consistent with the board's disciplinary guidelines and applicable regulation, respondent said he has done a great deal of work to work out his problems and he accepts responsibility for his conduct. He has shown he is rehabilitated.

68. Respondent highlighted this additional evidence of respondent's rehabilitation: respondent has continued to accept full responsibility for his conduct; he sought an evaluation from Dr. McGee; he completed ethics courses in 2019, May 2022, and May 2024, he submitted additional letters of support; he has continued his community service; he was recognized by the California Senate and Assembly due to his contributions to the King Hung Vuong Festival and his community; and he earned a law degree in 2021.

69. Respondent stressed that his conduct occurred eight to eleven years ago, since 2016 his gambling and alcohol abuse are in the past, and he has been practicing since 2022 without supervision and without incident or complaint. In his trial brief, he cited his cooperation with law enforcement relating to his plea agreement. He now has a track record of good, lawful conduct since 2016. Respondent argues that probation with appropriate terms and conditions is the appropriate disposition consistent with the goal of public protection.

## LEGAL CONCLUSIONS

### Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that the charges in the amended accusation are true.

2. The standard of proof required in this matter 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.)

### Applicable Statutes

3. Business and Professions Code section 2227 provides:

> (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.

4. Business and Professions Code section 2234 provides in relevant part:

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.

[¶] . . . [¶]

(e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon. . . .

## Criminal Statutes Referenced in this Decision

5. 18 U.S.C. § 1341 provides as follows:

Whoever, having devised or intending to devise any scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be

deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both.

6. 18 U.S.C. § 1347, "Health Care Fraud", provides as follows:

Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice —

(1) to defraud any health care benefit program; or

(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365 of this title), such person shall be fined under this title or imprisoned not more than 20 years, or both; and if the violation results in death, such person shall be fined under this title, or imprisoned for any term of years or for life, or both.

(b) With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section

7. Labor Code section 3215 provides as follows:

Except as otherwise permitted by law, any person acting individually or through his or her employees or agents, who offers, delivers, receives, or accepts any rebate, refund, commission, preference, patronage, dividend, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring clients or patients to perform or obtain services or benefits pursuant to this division, is guilty of a crime.

8. Penal Code section 550, subdivision (b)(3), provides as follows:

(b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:

(3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.

## Case Law Regarding Unprofessional Conduct

9. In *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575, the appellate court noted that "unprofessional conduct" as that term was used in Business

and Professions Code section 2361 (now section 2234), included certain enumerated conduct. (*Id.* at p. 575.) The court further stated (*Ibid.*):

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

## Cause Exists to Impose Discipline Against Respondent's License For Dishonest and Corrupt Acts and Unprofessional Conduct

10. Cause exists under Business and Professions Code section 2227 and 2234, subdivision (e), to impose discipline against respondent's license. Complainant established by clear and convincing evidence that respondent committed dishonest and corrupt acts based on his detailed admission that he committed Conspiracy to Commit Honest Services Mail Fraud and Health Care Fraud, in violation of 18 U.S.C. §§ 1341, 1346 and 1349, and Insurance Fraud and Workers' Compensation Fraud in violation of Penal Code section 550, subdivision (b)(3), and Labor Code section 3215. Respondent engaged in this conduct during patient care, treatment, management and billing.

11. Cause exists under Business and Professions Code sections 2227 and 2234 to impose discipline against respondent's license. Complainant proved by clear and convincing evidence, based on the above findings of cause for discipline, that respondent engaged in general unprofessional conduct because his conduct was

unbecoming a member in good standing of the medical profession. As noted, respondent's dishonest misconduct occurred during patient care, treatment, management and billing.

## The Board's Disciplinary Guidelines and Evaluation Regarding the Degree of Discipline

12. With causes of discipline having been found regarding respondent's dishonest and unprofessional conduct, the determination now must be made to assess the degree of discipline and the terms and conditions, if any, to impose. In this regard, the Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition, 2016) states:

> 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.

13. For the violations established in this matter, the Board's disciplinary guidelines provide the following recommended terms and conditions for general dishonesty related to the qualifications, functions or duties of a physician arising from

or occurring during patient care, treatment, management or billing: the minimum recommended penalty is seven years' probation, a one-year suspension, and specific terms and conditions; the maximum penalty is revocation.

## Disciplinary Considerations and Disposition Regarding the Degree of Discipline

14. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.) Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

15. The determination whether respondent's license should be revoked or suspended involves evaluating the nature and severity of the conduct and rehabilitation and mitigation factors as set forth under California Code of Regulations, title 16, section 1360.1. This rule provides as follows:

> When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:
>
> (a) The nature and severity of the act(s) or offense(s).

(b) The total criminal record.

(c) The time that has elapsed since commission of the act(s) or offense(s).

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

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

(f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

16. After considering the board's guidelines, and the factors under California Code of Regulations, title 16, section 1360.1, the evidence of rehabilitation and mitigation respondent presented, including evidence relating to mitigation/rehabilitation after the board issued its initial decision in this matter, and the evidence of record as a whole, it is determined that revocation of respondent's license is the only disposition that would ensure public protection.

17. This conclusion is reached for these reasons: Respondent engaged in serious, widespread dishonest and unprofessional conduct over a three-year period. His conduct involved multiple actors, multiple locations throughout Southern California, and efforts to hide his conduct. He based patient care on the monetary reward he and his co-conspirators received. As he admitted in his plea agreement, his conduct caused to be submitted claims between $3.5 million and $9.5 million for

goods and services procured through the payment of bribes and kickbacks. His conduct, while not recent, is not remote in time.

The insurance fraud he committed constituted very serious violations of trust between patients and respondent as the treating physician. No other profession passes so completely within the power and control of another as does the practice of medicine. The physician-patient relationship is built on trust. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 578-579.) By respondent's conduct he violated the trust numerous patients placed in him; he placed his financial interests before their care.

Further, sending patients for unnecessary medical treatment to increase the amount of insurance billings caused harm to patients, insurance companies, and the public.

18. Respondent recognizes his conduct was due to his gambling addiction. His gambling problem was extensive. He noted in his first hearing he had gambling losses, at times, of about $50,000 a day, and he borrowed between $100,000 to $1 million dollars to maintain his addiction. He said he "got into a situation where he accumulated a large amount of debt" and needed to fund his addiction through the criminal conduct.

19. Considering the severity of his dishonest and unprofessional conduct, respondent needed to provide compelling evidence of his rehabilitation to maintain his medical license. Such a conclusion cannot be made based on the evidence of rehabilitation he presented, including the additional evidence submitted at this hearing.

20. Most notably, respondent did not present evidence he has participated in therapy or counseling to address his severe gambling addiction, alcohol abuse, or PTSD. He failed to do this despite recognizing his gambling addiction caused him in desperation to engage in widespread insurance fraud to pay his gambling debts (debts he said at his initial hearing that were over $1 million dollars).

21. Respondent is given no credit for seeing Dr. McGee for a psychiatric evaluation less than a month before the hearing in this matter. To the contrary, his decision to see Dr. McGee shortly before this hearing is a weak attempt to try to show he is committed to addressing the "root" causes of his problems, as he put it, and gain self-insight into them. But respondent did not see Dr. McGee to discover these root causes. He went to Dr. McGee for Dr. McGee to "confirm," as respondent testified, his own understanding that his gambling and alcohol problems are in the past. Dr. McGee simply mimicked what respondent told him. Given the degree of his gambling addiction, this late-in-the game effort means little in the absence of his participation in therapy, to any extent.

22. Moreover, respondent's evaluation with Dr. McGee so many years after his conduct only demonstrates he lacks a desire to gain self-insight of the root causes of the mental health conditions, in contrast to what he said in this hearing. Without meaningful insight into the gambling problem that led to his serious and grave misconduct, little reassurance can be had he would not engage in similar conduct in the future. Respondent's belief that his gambling addiction is a thing of the past, even if echoed by Dr. McGee, is faint assurance.

23. Although respondent expressed a willingness to submit to conditions including that he undergo psychotherapy as a condition of probation, this is not an indication of his rehabilitation. Considering the previous decisions in this matter

emphasized respondent's failure to meaningfully address his gambling addiction, it was incumbent on respondent to address his mental health concerns *prior* to this hearing. His failure to do so strongly undercuts his claim that he is rehabilitated such that the public can be protected by his continued practice of medicine.

24. With regard to additional factors respondent cited as proof of his rehabilitation, they are not found significant: Respondent's participation in AA was limited. He went 30 times over a period of time he did not identify. His testimony that he purchased books from AA means little. Respondent did not express an understanding of what he learned from these books.

25. That respondent was terminated early from federal probation for substantial compliance is also not considered a significant rehabilitation factor. The fact is, he was on probation until January 2023, and during the time he was on probation, respondent was supposed to behave in an "exemplary fashion." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Compliance with the law while one is on court ordered probation "does not necessarily prove anything but good sense." (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473.)

26. Respondent's work at his temple, his religious faith, his volunteer work, and his expressed desire to give and not take as a practicing physician and member of the community, while all commendable, do not lead to a different conclusion other than revocation, considering the nature, extent, and severity of his dishonest and unprofessional conduct. Respondent was expected, through at least 2023 when his federal probation was terminated early, to conduct himself in an exemplary manner. An insufficient amount of time has thus passed to determine whether he has completely transformed himself.

27. For this same reason, the fact that respondent has practiced medicine without complaint or incident since 2022 does not warrant concluding he is sufficiently rehabilitated. Again, respondent has been on probation through at least January 2023 and was expected to conform his behavior or violate the terms of his probation. Since January 2023, insufficient time has passed to assess whether his problem behaviors are truly in the past.

28. The testimony of respondent's two character witnesses, and the written statements provided by other character witnesses, have been considered. Considering the nature and severity of respondent's conduct, the lack of any effort on respondent's part to address his gambling problem, and that respondent has been on criminal probation for much of the time they have known him, the statements of these persons do not lead to the conclusion that revocation is not required to ensure public protection.

29. Respondent's testimony has also been considered. His sentiments about changing his focus in life to serve others seems sincere. But his sentiments standing alone, without some effort to address in a meaningful way his extensive problem gambling, do not offer adequate assurance he would not repeat the same behavior that led him to defraud the healthcare system to the extent he did.

30. Consideration has also been given to respondent's cooperation with prosecutors in the pending criminal matter, as respondent cites it in his trial brief. Respondent cooperated with prosecutors as a matter to avoid a long-term prison sentence and punishment. It is not considered material proof of his rehabilitation.

31. For these reasons, based on the record as a whole, it is concluded that respondent's license must be revoked to ensure protection of the public.

## ORDER

Physician's and Surgeon's Certificate, No. G 74233 issued to respondent Phong Hung Tran, M.D., is revoked.

DATE: June 10 2024

Abraham M. Levy (Jun 10, 2024 13:46 PDT)

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings