

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

In the Matter of the Third Amended
Accusation and Petition to Revoke
Probation Against:

Fares Jeries Rabadi, M.D.

Physician's and Surgeon's
Certificate No. A 66578

Respondent.

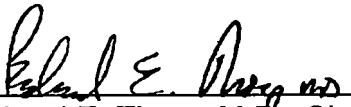
MBC File # 800-2023-101732

**ORDER CORRECTING NUNC PRO TUNC
CLERICAL ERROR IN "ORDER" PORTION OF DECISION**

On its own motion, the Medical Board of California (hereafter "Board") finds that there is a clerical error in the "Order" portion of the Decision in the above-entitled matter and that such clerical error should be corrected so that the license number will conform to the Board's issued license.

IT IS HEREBY ORDERED that the Decision in the above-entitled matter be and is hereby amended and corrected nunc pro tunc as of the date of entry of the Order to reflect that on page 30 the Certificate Number is corrected to read as A 66578.

Date: September 26, 2024


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

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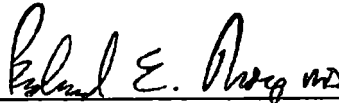
DECISION

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

This Decision shall become effective at 5:00 p.m. on September 20, 2024.

IT IS SO ORDERED: August 23, 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 Third Amended Accusation and Petition
to Revoke Probation Against:**

FARES JERIES RABADI, M.D.

Physician's and Surgeon's Certificate No. A 66578

Respondent.

Agency Case No. 800-2023-101732

OAH No. 2023120548

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 25, May 9, and May 30, 2024, and in person on July 12, 2024.

Wendy Widlus, Deputy Attorney General, appeared on behalf of complainant Reji Varghese, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

Michael J. Kouri, Attorney at Law, appeared on behalf of respondent Fares Jeries Rabadi, M.D.

The Administrative Law Judge received testimony and documentary evidence. The Administrative Law Judge ordered the record to remain open until July 16, 2024, to allow for the uploading of certain exhibits to Case Center.

The record closed and the matter was submitted on July 16, 2024. During her review of the exhibits, the Administrative Law Judge redacted respondent's personal identifying information to protect his privacy.

SUMMARY

Complainant requests the Board discipline respondent's medical license due to his federal felony criminal convictions in 2023 of four counts of filing false tax returns and for dishonest acts related to those criminal convictions. Complainant also seeks to revoke respondent's current license probation because of the criminal convictions and his alleged misrepresentations in three quarterly declarations respondent submitted to the Board. Complainant proved by clear and convincing evidence respondent's criminal convictions were for crimes substantially related to the qualifications, duties, and functions of a physician and surgeon and the crimes involved dishonest acts. Complainant also proved by a preponderance of the evidence respondent failed to comply with one condition of his license probation.

The evidence presented warrants disciplinary action but not outright revocation of licensure. Respondent's crimes occurred nearly five years ago, pre-dated his license probation, and did not involve the practice of medicine. Considering these facts, along with respondent's reputation in the medical community and his overall compliance

with the terms and conditions of his license probation, placing respondent's license on probation for an additional six years is sufficient to protect the public.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 25, 1998, the Board issued Physician's and Surgeon's Certificate Number A 66578 (license) to respondent. The license was scheduled to expire on May 31, 2024.

2. On September 28, 2023, complainant, in his official capacity, signed the Accusation and Petition to Revoke Probation. Thereafter, complainant filed the First Amended Accusation and Petition to Revoke Probation on April 29, 2024, the Second Amended Accusation and Petition to Revoke Probation on May 8, 2024, and the Third Amended Accusation and Petition to Revoke Probation on June 6, 2024. (Exhibits 16, 21, 22.) The Third Amended Accusation and Petition to Revoke Probation is the operative pleading in this matter.

3. The Third Amended Accusation seeks to discipline respondent's license under Business and Professions Code (Code) sections 2236, 2234, subdivision (e), and 2234 based on respondent's convictions of substantially related crimes and his alleged engagement in dishonest and corrupt acts and unprofessional conduct. The Petition to Revoke Probation seeks to revoke respondent's license probation on grounds respondent failed to obey the law, misrepresented his license activities and criminal status in his quarterly declarations to the Board, and failed to comply with the Board's probation program. (Exhibit 22.)

4. On October 5, 2023, respondent filed a Notice of Defense to the Accusation and Petition to Revoke Probation requesting a hearing.

5. All jurisdictional requirements are satisfied.

Prior Discipline

6. On September 29, 2020, the Board filed an Accusation in case number 800-2017-037241 (2020 Accusation), against respondent. The parties consented to a Stipulated Settlement and Disciplinary Order to settle the causes for discipline alleged in the 2020 Accusation. As part of the Stipulated Settlement and Disciplinary Order, respondent agreed the charges and allegations in the 2020 Accusation, if proven at a hearing, constitute cause for imposing discipline on his license. (Exhibit 1, p. A15.) Pursuant to a Decision and Order adopting the Stipulated Settlement and Disciplinary Order, the Board revoked respondent's license, stayed the revocation, and placed respondent's license on probation for two years, effective September 30, 2021 (2021 Board Decision).

7. The 2020 Accusation alleged respondent engaged in gross negligence and repeated acts of negligence in the care and treatment of two patients in violation of Code section 2234, subdivisions (b) and (c). The 2020 Accusation also alleged respondent failed to maintain adequate records for the two patients in violation of Code section 2266. Specifically, the 2020 Accusation alleged respondent committed extreme departures from the standard of care when he: (1) continued to prescribe controlled substances to Patient 1, whom respondent diagnosed with opioid dependency, without a plan to taper Patient 1 off controlled substances, without monitoring Patient 1's compliance with any tapering plan, and without referring Patient 1 to a pain management physician; (2) continued to prescribe both narcotics

and benzodiazepines to Patient 1 over a long period; and (3) failed to document elements of his treatment of Patient 1 and Patient 2.

8. As part of the Stipulated Settlement and Disciplinary Order, respondent agreed to follow specific terms and conditions during his two-year probationary term. These terms included completing a prescribing practices course and a medical record keeping course; informing the hospitals where respondent had privileges and respondent's malpractice insurer of his license probation; prohibiting respondent from supervising physician assistants and advanced practice nurses; obeying all laws; timely submitting quarterly declarations; complying with general probation requirements; attending interviews with the Board; complying with practice requirements; satisfying financial obligations; and paying probation monitoring costs.

9. The 2021 Board Decision provided respondent's license probation would end on September 30, 2023. However, the filing of the Accusation in this matter on September 28, 2023, extended respondent's license probation until the Board's decision in this matter becomes final.

Criminal Conviction

10. On November 2, 2022, a federal grand jury indicted respondent in the matter of the *United States of America v. Feres Jeries Rabadi*, case no. 2:22-cr-00507-FWS, in the United States District Court, Central District of California (federal criminal action). The indictment charged respondent with four felony counts of violating section 7206, subdivision (1), of the Internal Revenue Code (26 U.S.C. § 7206(1)), subscribing to a false tax return. Specifically, the indictment alleged respondent signed and authorized the filing of false United States individual income tax returns (Form

1040s) for the 2015 through 2018 calendar years, with the last filing on October 29, 2019. (Exhibit 5, pp. A103–A108.)

11. According to a Memorandum in Aid of Defendant Fares Jeris Rabadi's Change of Plea Hearing, dated August 17, 2023, and filed in the federal criminal action, the parties jointly proposed the following factual basis of respondent's crimes: Respondent willfully signed and filed tax returns for the 2015 through 2018 calendar years, and he knew those tax returns contained false information. Respondent failed to report \$131,842 in additional income for the 2015 calendar year, \$132,501 in additional income for the 2016 calendar year, \$128,208 in additional income for the 2017 calendar year, and \$102,692 in additional income for the 2018 calendar year on his federal tax returns for those years. Respondent's willful omissions were material and influenced the calculations by the Internal Revenue Service regarding taxes owed by respondent. For calendar years 2015 through 2017, respondent signed the tax returns in a written declaration under penalty of perjury and caused them to be filed through his accountant; for calendar year 2018, respondent authorized his accountant to electronically file the return with respondent's name subscribed. (Exhibit 5, pp. A152–A153.)

12. On August 24, 2023, respondent pleaded guilty to all four counts of the indictment. The court found a factual basis for the plea and that respondent knowledgeably and voluntarily made the plea.

13. On January 4, 2024, the court convicted respondent based on his guilty plea and placed respondent on probation for three years pursuant to the standard conditions of federal probation. Additionally, the court ordered respondent to pay immediately a special assessment of \$400, a fine of \$30,000, and restitution in the amount of \$167,903.90 to the Internal Revenue Service. The court also ordered

respondent for the first year of probation to be placed on a home detention program subject to electronic monitoring and that respondent pay for the monitoring costs. (Exhibit 5, pp. A181–A182.) The court further prohibited respondent from being self-employed or working in a position that did not provide regular pay stubs with appropriate tax deductions unless respondent’s probation officer approved the position. (*Id.*, p. A182.)

14. Complainant presented no evidence respondent’s crimes affected patient care, influenced respondent’s medical decision-making, or involved healthcare fraud.

Alleged Probation Violations

15. On September 27, 2021, before the Board’s 2021 decision took effect, respondent met with Board Inspector Marie N. Altamirano to discuss the terms and conditions of his probation. On that same day, respondent signed the Acknowledgement of Decision, stating he received a copy of the 2021 Board Decision, Inspector Altamirano explained the terms and conditions of his probation and addressed respondent’s questions, and respondent understood what the Board required from him while on probation. (Exhibit 3, p. A62.)

PROBATION CONDITION 5

16. Complainant alleges respondent’s license probation is subject to revocation because he failed to comply with Probation Condition 5 based on his 2022 criminal indictment and arrest. Probation Condition 5 states:

OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine

in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

17. Based on the federal indictment and respondent's guilty plea, respondent's last criminal act took place on October 29, 2019, when he filed his 2018 federal tax return. Respondent did not violate Probation Condition 5 as his criminal acts occurred before the Board's probation took effect (September 30, 2021). There is no evidence respondent failed to obey any federal, state, or local laws, or the rules governing the practice of medicine in California after September 30, 2021. There is also no evidence respondent has been non-compliant with the terms and conditions of his federal criminal probation. Respondent's conduct before September 30, 2021, did not evidence a failure to comply with Probation Condition 5, and therefore cannot form the basis for revocation of his license probation.

PROBATION CONDITION 6

18. Complainant alleges respondent's probation is subject to revocation because he failed to comply with Probation Condition 6 by submitting false answers in three quarterly declarations. Probation Condition 6 states:

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

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

Fourth Quarter 2021 Quarterly Declaration

19. On January 2, 2022, respondent signed his fourth quarter 2021 Quarterly Declaration, which covered respondent's activities in October, November, and December 2021. In response to Question No. 8 of the Declaration, "Are you in the process of applying for any other business or professional license or certificate?" Respondent checked the "No" box. (Exhibit 17, p. A382.)

20. Complainant contends respondent's answer was false because certified records from the State of Indiana show that on October 5, 2021, respondent submitted to the Medical Licensing Board of Indiana (Indiana Medical Board) an online application to renew his Indiana physician's license. (Exhibit 18.)

21. Respondent testified that he answered "No" to Question No. 8 because he understood the question to pertain to applying for a new license or certificate, not to renewing an already existing license. Respondent further testified he has held an Indiana medical license for 26 years. Respondent averred he regularly renews the license, even though he does not intend to live or reside in Indiana, because the license fee is only \$100. Respondent also testified the Board was aware of his Indiana licensure, although he offered no evidence other than his testimony to support that assertion.

22. Respondent did not violate Probation Condition 6 by answering no to Question No. 8. The applicability of Question No. 8 to renewal applications is unclear from the language of the question. It was reasonable for respondent to understand the question to pertain only to new license applications.

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Fourth Quarter 2022 Quarterly Declaration

23. On January 1, 2023, respondent signed the fourth quarter 2022 Quarterly Declaration, which covered respondent's activities in October, November, and December 2022. In response to Question Number 1, "Have you violated any county or city ordinances, been arrested, charged, convicted of, pled nolo contendere in any state or federal court or foreign country to any misdemeanor, felony, or other offense? (If yes, specify which one in your explanation. Exclude parking tickets.)," respondent checked the "No" box. (Exhibit 17, p. A390.) Respondent's answer was false because respondent had been indicted on November 2, 2022, and arrested on November 14, 2022, for filing false tax returns.

24. On November 30, 2022, the Board received a "Criminal Action Reporting Form" from respondent informing the Board of his arrest on November 14, 2022, and his indictment for violations of 26 United States Code section 7206, subdivision (1), subscribing to a false tax return. Respondent also attached a copy of the indictment to the form. (Exhibit 3, p. A64.) On December 14, 2022, Board Inspector Altamirano learned of respondent's Criminal Action Reporting Form regarding his indictment and arrest from the Board's Complaint Unit.

25. On May 19, 2023, the Board issued Citation Order 800-2023-097663 (Citation) against respondent for violating Condition 6 because he failed to disclose the November 14, 2022 indictment and arrest on the fourth quarter 2022 Quarterly Declaration. (Exhibit 3, p. A77.) The Citation included an order of abatement requiring respondent to maintain compliance with all terms and conditions of the decision placing him on probation and an order directing respondent to pay a fine of \$350.

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26. At a July 6, 2023 informal conference with a Board Enforcement Manager about the Citation, respondent told the Board representative he understood Question No. 2 to apply to certain kinds of arrests, such as drunk driving, speeding, or fighting. Respondent described his failure to answer "yes" as an "honest mistake." (Exhibit 3, p. A92.) Respondent also believed his November 30, 2022 notification to the Board about his arrest and indictment was sufficient to alert the Board of his legal status. (*Ibid.*) After the Board affirmed the Citation, respondent filed an appeal of the Citation on July 28, 2023. (*Id.*, p. A97.) However, on September 11, 2023, respondent paid the Citation fine in full. (Exhibit 23, p. A475.) At hearing, although respondent again asserted his belief that Question No. 1 was unrelated to his situation, respondent withdrew his appeal.

27. Respondent violated Probation Condition 6 by not disclosing his arrest and indictment on his fourth quarter 2022 Quarterly Declaration. His explanation of his failure to make the required disclosures on the Quarterly Declaration was not convincing. Although respondent timely alerted the Board to his criminal indictment and arrest in compliance with Code section 802.1, filing the Criminal Action Reporting Form did not excuse respondent from correctly answering Question No. 2 of the fourth quarter 2022 Quarterly Declaration.

Fourth Quarter 2023 Quarterly Declaration

28. On January 1, 2024, respondent signed his fourth quarter 2023 Quarterly Declaration, which covered respondent's activities in October, November, and December 2023. In response to Question 8, "Are you in the process of applying for any other business or professional license or certificate?" respondent checked the "No" box. (Exhibit 17, p. A399.)

29. Complainant contends respondent's answer was false because Indiana certified records show that on October 21, 2023, respondent filed an online application to renew his Indiana physician's license. (Exhibit 19.) Respondent's explanation of his answer to Question No. 8 on the fourth quarter 2023 Quarterly Declaration was the same as his explanation of his answer to Question No. 8 on his fourth quarter 2021 Quarterly Declaration, i.e., he understood Question No. 8 to apply to new applications, not to renewal applications. As noted with respondent's fourth quarter 2021 Quarterly Declaration, respondent's understanding of the parameters of Question No. 8 was reasonable, and therefore respondent did not fail to comply with Condition 6 by answering no to Question No. 8.

30. Complainant alleges respondent also violated Probation Condition 6 by falsely answering Question No. 3 on respondent's 2023 Indiana physician's license renewal. That question asks, "Since you last renewed, and except for minor violations of traffic laws resulting in fines and arrests or convictions that have been expunged by a court, have you been arrested, entered into a diversion agreement, been convicted of, pled guilty to, or pled nolo contendere to an offense, misdemeanor, or felony in any state or U.S. territory?" Respondent checked the "No" box in response to Question No. 3. (Exhibit 19, p. A403.) Respondent's answer was false because he had been arrested and had pleaded guilty to subscribing to false tax returns after he filed his 2021 renewal application.

31. Respondent asserted at hearing that he made a mistake when he responded no to Question 3 of the Indiana renewal application. However, there was insufficient evidence to assess whether respondent's misrepresentation to the Indiana Medical Board was inadvertent or intentional. According to respondent, he had informed the Indiana Medical Board of his criminal convictions. However, respondent

only submitted evidence he had alerted the Indiana Medical Board of the 2021 Board decision placing his California medical license on probation; he offered no evidence showing the Indiana Medical Board was also aware of his criminal convictions. (Exhibit AA.) While respondent's misrepresentation in response to Question No. 3 of the Indiana renewal application raises questions about his honesty, it did not constitute a failure to comply with Probation Condition 6 or any other term of respondent's license probation.

PROBATION CONDITION 11

32. Complainant alleges respondent's probation is subject to revocation because he failed to comply with Probation Condition 11. Probation Condition 11 states as follows:

VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

33. Respondent violated Probation Condition 11 based on his failure to comply with Probation Condition 6 as far as he misrepresented his 2022 arrest and

indictment in responding to a question in his fourth quarter 2022 Quarterly Declaration.

Respondent's Evidence

34. Respondent is 62 years old. He was born in Jordan, and English is not his first language. Respondent has been married for 37 years and has three grown children. He has practiced medicine in the United States for more than 22 years without issue. Other than the two-year license probation imposed in the 2021 Board Decision, respondent has no disciplinary history. The 2023 criminal convictions are his first criminal convictions.

35. Respondent earned his medical degree in Russia in 1986. He completed his internship in Jordan and then practiced general medicine in Jordan from 1987 to 1990. In 1990, respondent emigrated to the United States, and in 1995, respondent became a United States citizen. In 1998, respondent completed his residency in internal medicine at the State University of New York in Buffalo, New York. From 1999 to 2023, respondent maintained a private medical practice in Northridge, California. During at least some of that time, respondent had unrestricted privileges at Dignity Health, Northridge Hospital Medical Center.

36. In 2004, respondent received his board certification in Internal Medicine. In the summer of 2020, respondent passed his Summer 2020 Internal Medicine Maintenance of Certification Knowledge Check-In. (Exhibit B.) Respondent has been unable to update his board certification because of his license probation status.

37. Except for the probation violation discussed in Factual Findings 23 through 27, respondent complied with all terms and conditions of his license probation. Respondent timely submitted his quarterly declarations, took the required

courses, and kept current with his probation monitoring costs. Learning from his past mistake, respondent timely disclosed to the Board and in his 3rd quarter 2023 Quarterly Declaration the date of his guilty plea and his sentencing date. (Exhibit 17, pp. A396, A398.) While on probation, respondent practiced medicine without issue until his criminal conviction in January 2024. Board Inspector Altamirano testified she found respondent to be pleasant and cooperative. According to Board Inspector Altamirano, respondent never canceled any appointments and was always on time.

38. Respondent has complied with the terms of his criminal probation. He paid his restitution obligations and all the fines and fees imposed by the court. He speaks regularly with his probation officer.

39. Respondent acknowledged underreporting his income taxes was wrong. Although respondent repeatedly pointed to his guilty plea as evidence of him taking responsibility for his crimes, respondent's testimony about his criminal involvement was at times inconsistent. When asked to explain the crimes, respondent first testified he turned over all his financial information to his accountant, who never told him anything was amiss. Respondent then testified he was unaware of his obligation to report bonuses as income because he was focused on patient care, not on his finances. However, ultimately, respondent conceded he made a mistake, and "was now paying for it."

40. Because of his criminal convictions, respondent lost his medical practice, and by the terms of his criminal probation, respondent is effectively barred from resuming his own private medical practice until January 2027. Respondent also has been unable to find work because of his felony convictions. Respondent testified he has changed his ways since his criminal convictions. Respondent asserted he now makes sure to report all his income and checks his tax returns thoroughly to make sure

there are no mistakes. Respondent would like to continue practicing medicine so he can use his medical knowledge and expertise to help his patients.

Character References

41. The three character witnesses who testified on respondent's behalf were all aware of respondent's criminal convictions. Father Moheen Hanna, a Greek Orthodox priest who presided over respondent's church for many years, has known respondent for 10 years and speaks with respondent weekly. Father Moheen Hanna testified respondent was an active volunteer in the church and always helpful and kind to people in the church community. Father Moheen Hanna stated respondent had a reputation for honesty. Father Moheen Hanna asserted he had not changed his mind about respondent after respondent's criminal conviction. He believed respondent made a mistake, but the mistake did not and should not define respondent. Father Moheen Hanna's testimony mirrored the letters he wrote on respondent's behalf. (Exhibits 6, p. A204, W.)

42. Father Giris Hanna, also a Greek Orthodox priest and Father Moheen Hanna's brother, testified he has contact with respondent every two weeks. He described respondent as nice, polite, respectful, and "one of the best people [he] ever met." Father Giris Hanna testified respondent was active in the management and planning of the church. Father Giris Hanna believes respondent is an honest person and a good doctor who made a mistake. Father Giris Hanna's testimony mirrored the letters he wrote on respondent's behalf. (Exhibits 6, p. A204, W.)

43. John Fairlie has known respondent for 14 years. Mr. Fairlie first met respondent when Mr. Fairlie was a pharmaceutical representative. Mr. Fairlie then became respondent's patient and his friend. At hearing, Mr. Fairlee testified

respondent was “next to his father, the smartest man [he] ever met.” In his letters to the Board and the federal judge presiding over respondent’s criminal case, Mr. Fairlee described respondent as a wonderful doctor, who always put safety and his patients’ best interests first, and who was also dedicated to his family. (Exhibits I, J, V.) Mr. Fairlee acknowledged respondent’s tax crimes but asserted the crimes had no bearing on his opinion of respondent as a physician.

44. Respondent also submitted several letters of support from professional colleagues and patients. (Exhibits D–H, K–U, X–Z.) Each of the letters extolled respondent’s clinical competence, professionalism, and dedication to his patients. Many of the letters pre-dated respondent’s indictment, and it was unclear whether all the letter writers who submitted letters after the indictment were aware of the nature respondent’s criminal convictions. The three letter writers whom complainant called as witnesses, i.e., Sheldon Davidson, M.D., Gustavo Machiado, M.D., and Michael Soltero, M.D., denied knowing about respondent’s criminal convictions. However, although Dr. Davidson now questioned respondent’s integrity and professionalism, neither Dr. Davidson nor the other physicians took issue with respondent’s patient care or had known respondent to engage in dishonesty when dealing with patients.

Costs

45. The Board seeks reimbursement of \$33,356.45 in enforcement costs for work performed as of April 30, 2024, i.e., for work leading up to the filing of the First Amended Accusation and Petition to Revoke Probation. (Exhibit 15.) Of these costs, 111.25 hours totaling \$24,475 were incurred by attorneys, 40.25 hours totaling \$8251.25 were incurred by paralegals, and 1.25 hours totaling \$243.75 were incurred by an analyst working on the matter. Additionally, costs totaling \$386.25 were incurred for an attorney service. (Exhibit 15.)

46. Respondent offered no evidence regarding his financial ability to pay the requested costs.

LEGAL CONCLUSIONS

Accusation

1. In an Accusation seeking to revoke, suspend, or otherwise discipline respondent's professional license, the Board has the burden of proof to establish the allegations in the Accusation by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855–856.) The clear and convincing evidence standard requires a finding of high probability, or evidence "so clear as to leave no substantial doubt" and "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. "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 . . . and who is found guilty, . . . may, in accordance with the provisions of this chapter: [1] (1) Have his or her license revoked..... [1] (2) Have his or her right to practice suspended for a period not to exceed one year..... [1] (3) Be placed on probation and be required to pay the costs of probation monitoring..... [1] (4) Be publicly reprimanded..... [1] (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." (Code, § 2227, subd. (a).)

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CAUSES FOR DISCIPLINE

First Cause for Discipline – Criminal Conviction

3. In the first cause for discipline, complainant alleges respondent is subject to disciplinary action because he was convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon. (Code, § 2236, subd. (a).)

4. The Board is authorized to take disciplinary action against a licensee charged with unprofessional conduct. Unprofessional conduct includes the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon. (Code, § 2236, subd. (a).) A plea of guilty is deemed to be a criminal conviction within the meaning of Code section 2236. (Code, § 2236, subd. (d); see also Code, § 490.)

5. A crime is considered "substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare." (Cal. Code Regs., tit. 16 (CCR), § 1360, subd. (a).) To determine whether a crime is substantially related to the qualifications, functions, or duties of a medical licensee, the Board considers the following criteria: the nature and gravity of the crime, the number of years elapsed since the date of the crime, and the nature and duties of the profession. (CCR, § 1360, subd. (b).)

6. Complainant proved by clear and convincing evidence respondent's tax crimes are substantially related to the qualifications, functions, or duties of a physician and surgeon. Respondent knowingly submitted tax returns for four different years that

misrepresented his income. (Factual Finding 11.) As a result, respondent underpaid more than \$167,000 in taxes to the federal government. (Factual Finding 13.) Respondent's crimes were felonies resulting in three years of supervised probation, including one year of home detention. (*Ibid.*) Although nearly five years have elapsed since respondent's most recent false tax filing, respondent was not convicted of his crimes until January 2024, and complainant could not proceed with the disciplinary charges based on the criminal convictions until they became final. (Code, §§ 490, subd. (c); 2236.1, subd. (d).)

7. Respondent's crimes are also pertinent to the nature and duties of the medical profession. As noted in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772), "[T]here is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice." [Citation.] "Patients rely on a doctor's integrity and honesty. Additionally, a physician's dealings with the government are based on honesty and trust. Thus, even though no patient is involved, filing false tax returns evidences a lack of moral character inconsistent with and contrary to the qualifications, functions, or duties of a physician and surgeon and demonstrates an unfitness to practice. (*Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 448 (*Pirouzian*); *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470 (*Windham*)). Cause therefore exists to discipline respondent's license for conviction of substantially related crimes under Code section 2236 based on his felony convictions for subscribing to false tax returns.

Second Cause for Discipline – Dishonest and Corrupt Acts

8. In the second cause for discipline, complainant charges respondent with committing acts involving dishonesty and corruption that are substantially related to the qualifications, functions, or duties of a physician and surgeon. Unprofessional

conduct includes “the commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.” (Code § 2234, subd. (e).)

9. Complainant proved by clear and convincing evidence respondent’s subscribing to four false tax returns was dishonest and corrupt. (Factual Findings 10–11.) Cause therefore exists to discipline respondent’s license for unprofessional conduct under Code section 2234, subdivision (e).

Third Cause for Discipline – Unprofessional Conduct

10. In the third cause for discipline, complainant charges respondent with general unprofessional conduct based on the same allegations as in the first and second causes for discipline. (Code, § 2234, subd. (a).)

11. Unprofessional conduct includes conduct unbecoming to 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; *Windham, supra*, 104 Cal.App.3d at p. 469.) Complainant proved by clear and convincing evidence respondent engaged in conduct unbecoming a physician and surgeon when he subscribed to four false tax returns. (Factual Findings 10–13.) Cause therefore exists to discipline respondent’s license for unprofessional conduct under Code section 2234, subdivision (a).

Petition to Revoke Probation

12. In a petition to revoke probation, complainant must show by a preponderance of the evidence that respondent’s license should be revoked. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434.) This evidentiary standard

requires complainant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, complainant must prove it is more likely than not that respondent violated the conditions of his probation. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

13. Complainant did not prove by a preponderance of the evidence that respondent violated Probation Condition 5 (Factual Findings 16–17) or Probation Condition 6 regarding his responses in the fourth quarter 2021 Quarterly Declaration or the fourth quarter 2023 Quarterly Declaration (Factual Findings 18–22, 28–29). However, complainant proved by a preponderance of the evidence respondent violated Probation Condition 6 when he failed to correctly answer the Board’s inquiry regarding his arrests and indictments. Thus, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent’s license for respondent’s false statement. However, revocation or further penalty is unwarranted for this violation considering respondent’s prior notification to the Board of his indictment and arrest and his payment of the fine imposed because of his false response. (Factual Findings 23–27.)

Disposition

14. With causes for disciplinary action established, the Board has the discretion to determine the suitable discipline, “subject to the Legislative mandate that the Board’s highest priority be protection of the public; and, secondarily, discipline should ‘aid in the rehabilitation of the licensee.’ (Code, § 2229, subds. (a), (b).)” (*Pirouzian, supra*, 1 Cal.App.5th at p. 448.) In exercising its discretion, the Board considers the Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition 2016) (Guidelines) that it has adopted. (CCR, § 1361, subd. (a).) “Deviation from

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

15. For felony convictions involving dishonesty that do not arise from patient care, treatment, management, or billing, as is the case here, the Guidelines recommend a minimum disciplinary action of stayed revocation and at least seven years' probation. (Exhibit 7, p. A237.) For dishonest acts not arising from or occurring during patient care, treatment, management, or billing or for general unprofessional misconduct, the Guidelines recommend a minimum disciplinary action of stayed revocation and five years' probation. (*Id.*, p. A238.) The maximum disciplinary action for these forms of unprofessional conduct is license revocation. (*Id.*, at pp. A237, A238.)

16. Regulations section 1360.1, subdivision (b), sets forth rehabilitation criteria to consider when a physician has been convicted of a crime but has not completed the criminal sentence at issue. The evidence relating to the applicable criteria is described below.

17. Nature and gravity of the acts, professional misconduct, or crimes. Respondent's crimes consisted of four felonies for filing false tax returns, which deprived the government of more than \$165,000 in taxes. The crimes did not involve respondent's patients or any government health program. (Factual Findings 10–14.)

18. Total criminal record, or record of professional misconduct. Respondent has no criminal record other than his 2023 criminal conviction. (Factual Finding 33.)

Regarding professional misconduct, in 2021 the Board placed respondent's license on probation for two years relating to his care and treatment of two patients. This was the first time respondent's license incurred discipline. Although respondent's license probation was to end in September 2023, the Board extended the probation because of this proceeding. The causes for discipline underlying the 2021 Board Decision are not related to respondent's crimes and do not allege dishonesty. (Factual Findings 6–9.)

19. The time elapsed since the commission of the act(s), professional misconduct, or crime(s). Nearly five years have elapsed since respondent's most recent filing of a false tax return. (Factual Finding 10.)

20. Compliance with terms of parole, probation, restitution, or any other sanctions lawfully imposed. Respondent is currently on formal probation for his crimes and remains in the federal home detention program until January 4, 2025. Complainant did not allege respondent has violated any probation terms. Respondent has paid his restitution, fines, and penalties in full. (Factual Finding 37.)

21. Evidence, if any, of rehabilitation submitted by the licensee. Respondent has practiced medicine without incident for more than 22 years. He took responsibility for his crimes by pleading guilty to all four counts of the indictment filed against him. (Factual Finding 38.) Respondent complied with the terms of the probation ordered by the Board in 2021, except for making one misrepresentation on a Quarterly Declaration. (Factual Findings 23–27, 36.) The Board Inspector monitoring respondent's probation monitor described respondent as pleasant, cooperative, and punctual. Respondent practiced medicine during the Board's probation without issue until he was unable to continue his practice in January 2024 because of his criminal conviction. (Factual Finding 36.)

22. Respondent's letters of support collectively describe respondent as a compassionate and professional physician. (Factual Findings 40–43.) Although many of the letter writers were unaware of respondent's criminal convictions, those who testified stated respondent's criminal convictions did not change their opinion of respondent's competency or dedication to his patients. Additionally, none of the witnesses were aware of any dishonest conduct in respondent's medical practice or his relationships with his patients.

23. The full extent of respondent's rehabilitation from his crimes is difficult to determine based on the evidence presented. Respondent has been subject to Board monitoring since September 2021, was arrested and indicted in November 2022, pleaded guilty to his crimes in August 2023, and was placed on formal probation in January 2024. During this period, because of his license probation and the pending criminal action, respondent was required to behave in an "exemplary fashion." His good conduct during this period therefore is accorded less weight. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

24. However, the primary purpose of an administrative proceeding is not to punish but to protect the public. (*Pirouzian, supra*, 1 Cal.App.5th at p. 448.) Respondent has already paid substantial penalties and fines as a result of his crimes and is currently on home detention. He had to give up his medical practice, and he can no longer work as a solo practitioner. (Factual Finding 39.) Respondent faces difficulties finding work because of his status as a felon. Thus, nothing in the record suggests respondent would repeat his crimes.

25. Without diminishing the seriousness of respondent's conduct, a review of the entire record and considering the applicable criteria and legislative priorities compels the conclusion that outright revocation of respondent's license is unnecessary

to protect the public and contrary to the goal of making him a better physician. (*Windham, supra*, 104 Cal.App.3d at p. 473; *Pirouzian, supra*, 1 Cal.App.5th at p. 449.) Although felonies, respondent's crimes did not involve healthcare fraud. Nor did the crimes impact his medical decision-making regarding any patient or affect his client billing. There is no evidence he has been dishonest with patients, insurance carriers, or government medical programs. (Compare *Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293 [upholding revocation of the medical license of a physician convicted of 39 counts of Medicare fraud arising from physician's fraudulent statements concerning services to 13 convalescent hospital patients].) Respondent also has vowed to do things correctly in the future to ensure his tax returns are compliant with the law. Respondent continues to have a reputation in the medical community as a committed and competent physician and would like to continue to serve his patients. (Factual Findings 40–43.)

26. Under the foregoing circumstances, placing respondent's license on probation for six years with standard and optional terms and conditions is sufficient to protect the public. (See *Windham, supra*, 104 Cal.App.3d at p. 474 [upholding a three-year Board probation for partially rehabilitated physician convicted of two counts of federal income tax evasion with a total tax deficiency of \$65,000].) The recommended seven-year probation term for a felony offense is reduced by one year to credit the one-year extension of respondent's two-year license probation scheduled to end in September 2023. Per the Guidelines' recommendation and to further ensure public safety, in addition to the standard terms, respondent shall also comply with the following terms: respondent's license shall be suspended for 30 days, respondent shall provide free community service for the first two years of probation, respondent shall be required to enroll in a professionalism program within 60 calendar days of the

effective date of this Decision, and respondent shall be prohibited from engaging in solo practice.

Costs

27. Under Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. The Board seeks reimbursement of \$33,356.45 for enforcement costs. (Factual Finding 44.)

28. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions like Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

29. Based on a review of the Certification of Costs and considering the *Zuckerman* factors, the costs sought by the Board are unreasonable. Respondent had a subjective good faith belief in the merits of his position and raised a colorable challenge to the proposed discipline. Additionally, the Certification of Costs did not separate costs incurred pursuing the Accusation from those involving the Petition to Revoke Probation. Costs incurred proving respondent's alleged probation violations are not recoverable under Code section 125.3 because the section requires a finding that respondent "committed a violation or violations of the licensing act." Costs therefore shall be imposed in the reduced amount of \$20,000.

ORDER

1. Physician's and Surgeon's Certificate No. A 110878 issued to respondent Fares J. Rabadi, M.D., is revoked. However, the revocation is stayed and respondent is placed on probation for six years upon the following terms and conditions:

1. Actual Suspension/Condition Precedent

As part of probation, respondent is suspended from the practice of medicine for 30 days beginning the sixteenth (16th) day after the effective date of this decision.

2. Community Service-Free Services

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval a community service plan in which respondent shall within the first two years of probation, provide community service hours as determined by the Board, of free services (e.g., medical or nonmedical) to a community or non-profit organization. If the term of probation is designated for two years or less, the community service hours must be completed not later than six months prior to the completion of probation:

Prior to engaging in any community service respondent shall provide a true copy of the Decision to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where respondent provides community service and shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also apply to any change(s) in community service.

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Community service performed prior to the effective date of the Decision shall not be accepted in fulfillment of this condition.

3. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but not later than one year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

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4. Solo Practice Prohibition

Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: (1) respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or (2) respondent is the sole physician practitioner at that location.

If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, respondent's practice setting changes and respondent is no longer practicing in a setting in compliance with this Decision, respondent shall notify the Board or its designee within five calendar days of the practice setting change. If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

5. Notification

Within seven (7) days of the effective date of this Decision, respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief

Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

6. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.

7. Obey All Laws

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

8. Quarterly Declarations

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

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

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9. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

10. Interview with the Board or its Designee

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

11. Non-practice While on Probation

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

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

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

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

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

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

12. Completion of Probation

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

13. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke

Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

14. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee not later than January 31 of each calendar year.

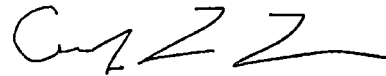
16. Enforcement Costs

Respondent shall pay the costs associated with the enforcement of this matter in the reduced amount of \$20,000. Respondent may negotiate a payment plan with the Board and the costs may be adjusted. Such costs shall be payable to the Medical

Board of California and delivered to the Board or its designee not later than January 31 of each calendar year.

2. The Petition to Revoke Probation against respondent Fares J. Rabadi, M.D. is denied.

DATE: 08/13/2024



CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings