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

In the Matter of the Accusation and First Amended Petition to Revoke Probation Against: Frances Dee Filgas, M.D. Physician's & Surgeon's Certificate No G 42185 Petitioner.	Case No.: 800-2022-094243

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by Adam Brown, attorney for Frances Dee Filgas, for the reconsideration of the decision in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on September 30, 2024.

IT IS SO ORDERED: October 1, 2024

Michelle A. Bholat, MD

Michelle A. Bholat, M.D., Interim Chair
Panel A

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

In the Matter of the Accusation and First Amended Petition to Revoke Probation Against:	**Case No. 800-2022-094243**
Frances Dee Filgas, M.D.	**ORDER GRANTING STAY**
Physician's & Surgeon's Certificate No. G 42185	**(Government Code Section 11521)**
Respondent.	

Adam Brown, Esq. on behalf of Respondent, Frances Dee Filgas, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of September 19, 2024, at 5:00 p.m.

Execution is stayed until September 30, 2024, at 5:00 p.m.

This Stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: September 19, 2024

Jenna Jones for

Reji Varghese
Executive Director
Medical Board of California

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

In the Matter of the Accusation and First Amended Petition to Revoke Probation Against: Frances Dee Filgas, M.D. Physician's and Surgeon's Certificate No. G 42185 Respondent.	Case No. 800-2022-094243

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 SEP 19 2024.

IT IS SO ORDERED AUG 20 2024.

MEDICAL BOARD OF CALIFORNIA

Michelle A. Bholat, M.D., Interim Chair
Panel A

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

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

FRANCES DEE FILGAS, M.D.,

Physician's and Surgeon's Certificate No. G 42185

Respondent.

Agency Case No. 800-2022-094243

OAH No. 2023120710

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on June 10 through 12, 2024, by videoconference.

Deputy Attorney General D. Mark Jackson represented complainant Reji Verghese, Executive Director of the Medical Board of California.

Attorney Adam Brown represented respondent Frances Dee Filgas, M.D., who was present.

The record closed and the matter was submitted for decision on June 12, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 1, 1980, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 42185 to respondent Frances Dee Filgas, M.D. The certificate was in effect at all times relevant to the charges in this matter. As of the filing of the accusation and first amended petition to revoke probation, the certificate was scheduled to expire on January 31, 2024, unless renewed.

2. Respondent's certificate has been on probation since December 16, 2021, pursuant to the Board's decision and order adopting a stipulated settlement in Board Case Number 800-2018-040641. Respondent's certificate was placed on probation for five years for unprofessional conduct, gross negligence, repeated negligent acts, lack of knowledge, excessive prescribing, and failure to maintain adequate medical records. This discipline arose from respondent's treatment of four patients, which included prescribing of high doses of opioids for long-term therapy.

3. Condition 5 of respondent's probation requires that she successfully complete a clinical competence assessment program. The terms of respondent's probation also include completing prescribing practices, medical record keeping, professionalism (ethics), and education courses. Condition 15 of respondent's probation provides that any failure to comply with a term of probation is a violation of probation. Respondent failed to successfully complete the clinical competence assessment program, and since December 29, 2022, has been prohibited from practicing medicine due to a cease practice order issued by the Board.

4. On March 2, 2023, complainant Reji Varghese issued a petition to revoke probation solely in his official capacity as the Board's Executive Director. On September 21, 2023, complainant issued the accusation and first amended petition to revoke probation, solely in his official capacity. Respondent filed a timely notice of defense.

5. Complainant seeks to discipline respondent's certificate based on allegations of gross negligence, repeated negligent acts, and lack of knowledge relating to her treatment of a single patient between September 2019 and April 2021, which included three ketamine infusions. Complainant seeks to revoke probation based on respondent's failure to successfully complete the clinical competence assessment program. Complainant also seeks to recover costs.

Respondent's Background

6. Respondent graduated from medical school in 1979. She completed an internship in internal medicine with a critical care emphasis, followed by a residency in occupational medicine. Respondent worked as an emergency medicine physician for approximately 20 years in small hospitals throughout California. She was board certified in emergency medicine, but that certification has lapsed and at present she holds no board certifications. For 15 years she held a certification from the American Academy of Pain Management, an entity which no longer exists.

7. Respondent has been in private practice for many years, focusing on pain management, hormone replacement therapy, and cosmetic procedures such as Botox and fillers. During the period prior to the issuance of the cease practice order, respondent was practicing in Sonoma County. She worked three days per week, seeing about 10 patients each day. Some of the treatments she provided, including ketamine

infusion treatments and cosmetic procedures, are not covered by health insurance and were paid for directly by her patients.

Petition to Revoke Probation: Failure to Pass PACE Program

8. As required by her probation, respondent enrolled in the Physician Assessment and Clinical Education (PACE) program at the University of California, San Diego School of Medicine. The program consisted of a physical and mental health screening; a mock patient encounter; and four separate oral clinical examinations in different practice areas, conducted by four different physicians. Respondent attended the program on five separate days in October and early November 2022. The PACE team prepared a report with its findings dated December 20, 2022. Lynette Cederquist, M.D., the current medical director of PACE, conducted one of the oral clinical examinations of respondent. She reviewed respondent's file and testified at the hearing about respondent's performance and the PACE team's conclusions.

9. The four oral clinical examinations were conducted over videoconference on four different days. These examinations last about one hour. The examiner goes over case vignettes with the physician being examined and scores the performance on each vignette on a scale of 1 through 9, with scores of 1-3 signifying unsatisfactory responses; 4-6 signifying satisfactory responses; and 7-9 signifying superior performance. PACE evaluators receive training in performing these assessments with the goal of consistency. Dr. Cederquist acknowledged that there is some subjectivity in the scoring, but asserted that she did not believe different evaluators' scores would vary significantly.

10. Respondent's four oral clinical examinations were selected to match respondent's practice areas.

a. Dr. Cederquist administered the oral clinical examination in the domain of primary care pain management. Respondent achieved scores ranging from 2 to 6 on eight patient vignettes, for an average score of 3.37. Respondent scored in the unsatisfactory range on five of the eight vignettes. Dr. Cederquist summarized respondent's overall performance as unsatisfactory, noting that respondent failed to correctly diagnose three of the patients; her knowledge of common pain conditions was lacking; she failed to follow uniform precautions in prescribing opioids, such as checking CURES,[1] performing urine screens, performing risk assessments, and using opioid agreements; and she had limited non-opioid or non-medication treatments to propose.

Dr. Cederquist had concerns about respondent's ability to practice independently in a safe manner, and recommended that respondent complete training in pain management and work under supervision.

b. Melanie Fiorella, M.D., administered the oral clinical examination in the domain of hormone management/anti-aging. Dr. Fiorella went over seven vignettes with respondent. Respondent received an overall score of 4. She received unsatisfactory scores on two of the seven vignettes. Dr. Fiorella commented on respondent's lack of knowledge and recommended that respondent take a course on hormone replacement therapy.

c. Vishakla Gigler, M.D., administered the oral clinical examination in the domain of cosmetic procedures (Botox and fillers). Dr. Gigler reviewed 10 case

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[1] CURES refers to the Controlled Substance Utilization Review and Evaluation System, a database of prescriptions for Schedule II, III, IV, and V controlled substances.

vignettes with respondent. Respondent scored between 1 and 6 on the vignettes; her overall average score was 3.2, with five scores below 3. Dr. Gigler noted that respondent had slow overall responses to questions and often did not respond to the question being asked. Dr. Gigler wrote that respondent had a basic understanding of Botox treatment, but is not able to fully evaluate a patient or present reasonable options, and that respondent was unable to identify the most serious complications associated with cosmetic filler treatments. She recommended that respondent take a basic filler safety course.

d. Albert Leung, M.D., administered the oral clinical examination in the domain of pain medicine. Dr. Leung wrote that due to respondent's slow responses, he was able to review only two case vignettes with her, an unusually low number. He found that she performed marginally satisfactorily on one vignette and moderately satisfactorily on the other. He did not assign numerical scores. Dr. Leung wrote that respondent's basic knowledge in formulating pain differential diagnoses to be "somewhat adequate," her evaluation of clinical presentation to be "a bit random," and her basic examination skills to meet minimal requirements in most areas. He concluded that her opioid management approach requires improvement, "especially in the overall outcome and risk assessments" and that she needed to adopt non-opioid and non-pharmaceutical options in her practice.

Dr. Leung also performed a chart review exercise with respondent, using patient charts from respondent's practice. Dr. Leung identified deficiencies in respondent's clinical practice and documentation.

11. Sarah Merrill, M.D., performed an in-person physical and mental health screening of respondent. Dr. Merrill expressed concern regarding respondent's prescription use, which included high doses of Ambien, trazadone, lorazepam, and

Provigil. She recommended that respondent have her medications reviewed to optimize her treatment and work towards decreasing her use of sedating medications.

Respondent was administered cognitive assessments. As a result of her performance on these assessments, a recommendation for a neuropsychological fitness for duty evaluation was made, in order to determine whether respondent is able to function safely and effectively as a physician.

12. The mock patient history and physical was conducted in person in San Diego. The PACE evaluator observed that respondent was notably nervous and told the mock patient that she was "anxious and overwhelmed." The evaluator noted that respondent obtained an incomplete history and did not perform basic parts of the physical examination. Respondent appeared flustered and unable to gather her thoughts. Her write-up of the encounter was unsatisfactory. Her performance on this portion of the PACE assessment was unsatisfactory.

13. The PACE assessment team concluded that respondent's performance across all areas was poor and inconsistent with safe practice. She was awarded the lowest possible overall score, indicating that she failed the assessment. The team was concerned that respondent was impaired and/or overmedicating with sedating prescription drugs.

The team recommended that respondent first address psychiatric concerns by: 1) undergoing a psychiatric evaluation to assess and appropriately treat depression, anxiety, and insomnia, including optimizing her medication dosage and routine monitoring; followed by 2) undergoing a neuropsychological fitness for duty evaluation. If respondent addressed her health concerns and was found fit for duty, the team recommended a period of significant effort to remediate her deficits, ideally

residency training, proctorship, or other training with direct observation. If such training is unattainable, the PACE team recommended 6 to 12 months of intensive independent self-study in addition to continuing medical education courses. The team noted that respondent should not practice until she has demonstrated fitness to practice and the ability to provide safe patient care through a clinical competency reevaluation.

14. Dr. Cederquist did not observe respondent to be anxious or experiencing a panic attack during her oral clinical examination. Dr. Cederquist acknowledged that many physicians are nervous and anxious during the PACE assessment. None of the PACE evaluators reported that respondent told them or appeared to them to be experiencing a panic attack. Respondent did not report experiencing anxiety on an anxiety screening administered to her during PACE. Respondent did not ask to suspend or reschedule any of the assessments. Respondent has never contacted PACE to arrange to be reevaluated.

15. Respondent is in compliance with the other terms of her Board probation. She has completed the ethics, medical record keeping, prescribing practices, and other education courses as directed by the probation department. Her probation monitor described respondent as cooperative and very pleasant to work with.

Accusation: Patient 1

16. Patient 1 sought treatment from respondent in September 2019 for chronic pain and insomnia. She reported having previously received ketamine infusion treatments in Milwaukee, Wisconsin. Respondent treated Patient 1 for 19 months. Respondent's treatment of Patient 1 included prescribing numerous medications,

including opioids, topical creams, and ketamine troches (tablets placed under the tongue). Respondent also administered three hour-long intravenous ketamine infusions, on January 8, 2020, January 15, 2020, and December 7, 2020. Patient 1's medical records from the first infusion reflect that the treatment was provided for "chronic pain and depression."

17. Due to difficulties in the physician-patient relationship, respondent terminated Patient 1 at an appointment on April 19, 2021. Respondent sent Patient 1 a letter the following day confirming that she would no longer treat her and providing contact information for three other physicians in the area. Respondent wrote that she was terminating Patient 1 because Patient 1 never provided requested medical records from other providers; created strife in respondent's practice by missing appointments, coming late, and cancelling appointments at the last minute; and displayed demanding behavior by wanting to pick up her prescription and immediately leave without seeing and being examined by respondent.

18. Within hours after respondent terminated Patient 1, Patient 1 filed an online complaint against respondent. The complaint contained numerous allegations of unethical, unprofessional, and dangerous behavior. As a result of Patient 1's complaint, the Division of Investigation conducted an investigation. The Board's disciplinary order placing respondent on probation went into effect during the investigation into Patient 1's allegations.

19. As part of the investigation, respondent was interviewed and her medical records for Patient 1 were obtained. The interview transcript, patient records, and other documents were provided to an expert, Samuel S. Wong, M.D., in February 2023. The accusation was issued based on Dr. Wong's opinions regarding respondent's

treatment of Patient 1. Most of the allegations raised by Patient 1 in her online complaint were not substantiated and are not included in the accusation.

20. Dr. Wong wrote an expert report with his conclusions and testified at the hearing. Dr. Wong has been a licensed physician since 1988 and is board certified in internal medicine. Dr. Wong currently operates a small concierge medical practice. He spent most of his career at the Veterans Affairs (VA) Medical Center in Loma Linda, providing both inpatient and outpatient care. He was also an assistant professor of medicine at Loma Linda University School of Medicine. Pain management was a large component of Dr. Wong's practice at the VA, where he served as a liaison between primary care practitioners and pain management specialists. Dr. Wong has never used ketamine in his practice or recommended its use to his patients with chronic pain, but is familiar with its use.

21. Dr. Wong concluded that respondent committed several extreme departures from the standard of care in her treatment of Patient 1, as follows:

a. **Respondent missed multiple opportunities to reconsider treating with ketamine**. Dr. Wong explained that ketamine infusion therapy is not a "first line" therapy for chronic pain, and is not commonly used in an outpatient primary care setting. Ketamine is an anesthetic medication that is also sometimes used to treat drug-resistant depression. At the Loma Linda VA, ketamine infusions are only given under the guidance of anesthesiologists. A journal article Dr. Wong included in his report notes that there is weak to moderate evidence supporting its use for treating certain pain conditions.

Respondent's records for Patient 1 include only minimal documentation of depression, and no information regarding what, if any medications she had taken and

whether she had ever been treated by a psychologist or psychiatrist. Dr. Wong concluded that the records were insufficient to establish cause to treat Patient 1 with ketamine on the basis of drug-resistant depression, if depression was the basis for the decision to treat with ketamine.

b. **Respondent missed multiple opportunities to re-introduce alternative pain medications**. Dr. Wong noted that Patient 1's records contained no information establishing whether her pain could be controlled with optimal doses of medications other than ketamine (such as gabapentin, duloxetine, pregabalin, and celecoxib), and no evidence that any such medications had been attempted during respondent's care of Patient 1.

c. **Respondent failed to monitor Patient 1's oxygen saturation during the ketamine treatments**. Oxygen saturation was measured prior to treatment, but there is no documentation of oxygen saturation levels during or after treatment.

d. **Respondent failed to monitor Patient 1's vital signs during the recovery period after the ketamine treatments**. Blood pressure and pulse rate were monitored prior to and during treatment, but were not documented during the recovery period.

e. **Respondent administered ketamine at an infusion rate that exceeded published recommendations**. Dr. Wong claims that the ketamine dose used was appropriate, but that the infusion rate was too fast. Dr. Wong explained that physicians at the VA use a much slower infusion rate, especially at initial treatments.

The journal article cited by Dr. Wong supports the dose that respondent administered, and provides a range of infusion rates, from .05 to 2 mg per kilogram of

body weight per hour. The infusion rate used was .7 mg per kilogram of body weight, within this range. On this point, Dr. Wong was not persuasive.

f. **Respondent lacked knowledge in known drug-drug interactions.** Dr. Wong based this conclusion on respondent's investigation interview, in which she stated that it was her understanding that there are no drug-drug interactions with ketamine. Dr. Wong explained that there are many known potential drug-drug interactions of concern involving ketamine, including with hydrocodone, which Patient 1 had taken prior to two of the infusions.

g. **Respondent failed to assess whether Patient 1 was pregnant prior to one of the ketamine treatments.** During the second treatment, respondent's documentation does not reflect that Patient 1's pregnancy status was assessed. Patient 1 was approximately 30 years old at the time of treatment. It is important to assess for pregnancy because use of ketamine during pregnancy is not recommended.

22. In addition, Dr. Wong found a simple departure from the standard of care in respondent's failure to check CURES during her first five months of prescribing opioids to Patient 1.

23. Dr. Wong did not find that respondent's conduct rose to the level of predictable public harm.

Respondent's Evidence

RESPONDENT'S TESTIMONY

24. Regarding Patient 1's ketamine treatments, respondent stated that she was in the room for the entire duration of the ketamine treatments. Respondent is a former emergency medicine physician, and her treatment room was equipped with a

"crash cart" in case of any adverse reactions during treatment requiring resuscitation. Respondent stated that she monitored Patient 1's oxygen levels and vital signs throughout and after treatment, but acknowledged that she did not document doing so. Respondent stated that in the future, she would make sure to adequately document oxygen saturation and vital signs. Respondent stated that she asked Patient 1 verbally if she was pregnant each time. Respondent knows that ketamine should not be administered to pregnant patients. This testimony was credible.

25. Respondent reported that Patient 1 "cried tears of joy" after the first infusion and reported no longer feeling any pain. Patient 1 did not have the third ketamine infusion for many months because she did not have the money to pay for the treatment. Respondent believes that Patient 1 benefited from and experienced no harm from the treatments.

26. Respondent noted that Patient 1 filed the online complaint with the Board within hours of respondent terminating her. She believes that Patient 1 had bad motives and made up many false allegations against her in retaliation.

27. Respondent does not recall participating in PACE for five days, stating that she only remembered attending the one day in San Diego. She does not recall any sessions over videoconference. Respondent believes she suffered from a panic attack and/or anxiety during the assessments which has affected her recollection. She remembers very little of the day in San Diego, calling it "a blur." She remembers shaking, sweating, and feeling overwhelmed and unable to focus.

Respondent denied ever having had a similar type of panic attack. She described a brief "low grade" panic attack during divorce proceedings years ago, when she asked her attorney to allow her to wait until the following day before signing any

documents. Respondent denied having poor recollection about any other events and stated that she otherwise has a "great memory."

28. Respondent continues to be prescribed Ambien and trazodone, which she takes nightly for insomnia. She recently stopped taking lorazepam. Respondent reported that her primary care physician diagnosed her with anxiety disorder in 2022, but told her earlier this year that respondent no longer has this condition.

29. Respondent has not engaged in a formal retraining program or a rigorous program of self-study. Respondent stated that she never saw the PACE report until the week before the hearing, and was unaware of the recommendations in it.

30. Respondent requests that she be permitted to retake the PACE program and remain on Board probation. She shared that she previously attended and passed PACE more than 20 years ago, after being ordered to do so by the Board in connection with a disciplinary reprimand order. Respondent believes that she will be able to successfully complete PACE now that her anxiety is under control. Respondent stated that she would be willing to comply with "reasonable" terms of probation, including continuing in psychotherapy.

31. Respondent loves the practice of medicine and called it her "whole life." She is constantly reading about and thinking about medicine. She wants to practice medicine until she is no longer able to do so.

32. Respondent reported that she is extremely poor. She borrowed $100,000 from her son's retirement account and has spent it all. Her friends help her by buying her food and gas and giving her money. Respondent has no income other than Social Security benefits, and no savings.

RESPONDENT'S PSYCHIATRIST, DR. EUGENE SCHOENFELD

33. Psychiatrist Eugene Schoenfeld, M.D., has been treating respondent monthly over videoconference since July 2023, when he was approved by respondent's probation monitor to serve as respondent's psychiatrist. Dr. Schoenfeld submits quarterly reports to respondent's probation monitor. Respondent has never missed a session and has been participating fully. Dr. Schoenfeld reported that respondent has made progress in therapy and is more calm and less anxious.

34. At respondent's request, Dr. Schoenfeld wrote a report and testified at the hearing. Dr. Schoenfeld wrote that respondent had neuropsychological testing after she took the PACE program, and that the doctor who performed the evaluation did not find serious deficits, but recommended that respondent see a sleep specialist. This neuropsychological evaluation was not offered into evidence.

35. Dr. Schoenfeld stated that respondent currently has no mental health diagnosis other than chronic insomnia. He does not believe she has ever been diagnosed with anxiety disorder. He is not prescribing any medications to her because he believes the medications that are prescribed by her other physicians are appropriate.

36. Dr. Schoenfeld believes that respondent suffers from situational anxiety relating to the status of her medical license. Based on respondent's report, and statements in the PACE report, Dr. Schoenfeld believes that she suffered situational anxiety when taking the PACE assessment and that this explains her performance. Situational anxiety can cause racing thoughts and can interfere with the ability to focus on tasks. Dr. Schoenfeld does not believe respondent experienced a panic attack.

37. As her treating psychiatrist, Dr. Schoenfeld believes that respondent is fit to practice medicine. He confirmed that she is suffering financially and would like to resume earning a living.

CHARACTER EVIDENCE

38. Two physicians testified at the hearing on behalf of respondent; both also wrote letters of support.

a. Anesthesiologist Richard Derby, M.D., has known respondent for 30 years. Before he retired in 2020, his practice focused on interventional pain medicine. He taught respondent injection techniques for use with her chronic pain patients. Dr. Derby shared more than 100 patients with respondent, mainly difficult patients with chronic spine pain. He found that respondent tried to control pain symptoms without narcotics, was motivated to comply with the law, and really cared about her patients. Dr. Derby has never had any cause to question her ethics or treatment choices.

b. Gary Barth, M.D., is an eye surgeon who has known respondent for more than five years. He has had patients in common with respondent, and he has also treated respondent. Dr. Barth described respondent as honest and committed to the well-being of her patients, many of whom have difficult chronic conditions. He admires her rich educational background. Dr. Barth is aware of the cease practice order and of the allegations in this proceeding, but continues to support respondent.

39. Two other physicians wrote letters of support.

a. Cheri Quincy, D.O., is a physician in Santa Rosa who has known respondent for 20 years and has had many mutual patients with her. Dr. Quincy

described respondent as brilliant, creative, and caring, and praised respondent's innovative approach to treating pain.

b. Cardiologist Joel S. Erickson, M.D., has known respondent for 15 years. He reached out to her after many of his patients raved about her. Dr. Erickson referred many patients to respondent for primary care. He wrote that these patients appreciated her compassion, patience, and availability. Dr. Erickson valued her "unparallelled knowledge" and willingness to take on difficult cases.

40. Attorney Charles Davis has known respondent for at least 15 years. He wrote a letter on her behalf and testified at the hearing. Davis represents clients in personal injury and medical malpractice litigation. Davis has referred clients to respondent and has never heard anything negative about her treatment. Davis has found respondent to be an honest and caring physician who takes the time to listen to her patients. He believes she is an excellent diagnostician, noting that on more than one occasion, respondent offered a tentative diagnosis for a patient with unusual symptoms that was later confirmed by a specialist. Davis is aware of the cease practice order and has read the accusation and petition.

41. Three former patients testified on behalf of respondent; all three also wrote letters.

a. Todd Petersen was respondent's patient for more than seven years. She treated him for two painful, disabling spine conditions. He testified that respondent made a big difference in his quality of life, enabling him to return to work and play with his children. He described respondent as engaged, empathetic, and attentive to detail. Petersen is aware of the cease practice order and the allegations in the accusation. He would not hesitate to return to respondent's care.

b. Kacie Young was respondent's patient for 10 years and developed a friendship with her. Young suffers chronic pain from having been run over by a car. She testified that respondent is professional, sought all options to minimize pain, is knowledgeable, and is a great advocate for her patients. Young described respondent as a great listener who truly cares about her patients. Respondent reduced Young's pain medications three times. Young believes respondent is one of the best doctors in the world. Respondent has helped Young in her quest to find the best path forward to live a successful, healthy, and functional life. Young is aware of the cease practice order and of the allegations in the accusation.

c. Gary Bazzani was respondent's patient for about 20 years. Bazzani has several medical conditions and respondent referred him to various specialists and made sure he followed up. Respondent once drove two hours to see Bazzani in the hospital after he had surgery. Bazzani believes that he might not be alive if not for respondent's care. He is eager to return to her care.

42. Numerous other patients wrote letters of support. These patients described respondent as compassionate, professional, nurturing, and dedicated. She was praised for being a good listener and problem-solver. Her patients are grateful to her for improving their quality of life.

Costs

43. Complainant seeks to recover investigation, expert witness, and prosecution costs in this matter. Complainant seeks to recover $36,477.50 for legal services provided by the Department of Justice from January 2023 through May 17, 2024. These costs are supported by a declaration in compliance with the requirements of California Code of Regulations, title 1, section 1042. This matter was reassigned to a

different deputy attorney general in February 2024, resulting in duplicative costs billed to complainant for legal services. Accordingly, a 20 percent reduction in prosecution costs, to $29,182, is appropriate.

Complainant seeks to recover expert witness costs in the amount of $3,700 and investigation costs in the amount of $8,955. These costs are also supported by declarations in compliance with the requirements of California Code of Regulations, title 1, section 1042, and are reasonable.

The reasonable costs in this matter total $41,837.

Ultimate Findings

44. Clear and convincing evidence established that respondent committed extreme departures from the standard of care in her treatment of Patient 1, by treating Patient 1 with ketamine infusions without adequately exploring alternative treatments for her depression and/or chronic pain and for failing to be aware of potential drug-drug interactions. This failure to be aware of drug-drug interactions also constituted a lack of knowledge. In light of respondent's credible testimony, it was not established that respondent failed to monitor Patient 1's oxygen saturation and vital signs during and after the treatments or failed to assess her pregnancy status. Nor was it established that respondent administered the ketamine infusions at an inappropriate infusion rate.

45. Clear and convincing evidence established that respondent committed a simple departure from the standard of care by failing to check CURES during the first five months that she prescribed opioids to Patient 1.

46. It is undisputed that respondent did not pass the PACE clinical competence assessment program, as required by her probation conditions.

LEGAL CONCLUSIONS

Accusation

1. It is complainant's burden to demonstrate the truth of the allegations in the accusation by "clear and convincing evidence to a reasonable certainty," and that the allegations constitute cause for discipline of respondent's certificate. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. Business and Professions Code section 2227 authorizes the Board to take disciplinary action against licensees who have been found to have committed violations of the Medical Practice Act. Business and Professions Code section 2234, included in the Medical Practice Act, provides that a licensee may be subject to discipline for committing gross negligence (Bus. & Prof. Code, § 2234, subd. (b)), for repeated negligent acts (Bus. & Prof. Code, § 2234, subd. (c)), or for incompetence (Bus. & Prof. Code, § 2234, subd. (d)). Gross negligence is defined as "the want of even scant care or an extreme departure from the ordinary standard of conduct." (*Cooper v. Board of Medical Examiners* (1975) 49 Cal. App. 3d 931, 941. Per the Board's Expert Reviewer Guidelines, incompetence is synonymous with lack of knowledge.

3. Cause for discipline based on gross negligence was established in light of the matters set forth in Findings 21(a), 21(b), 21(f) and 44, for failure to adequately explore alternative treatments for Patient 1's depression and/or chronic pain and for failure to be aware of potential drug-drug interactions.

4. Cause for discipline based on incompetence was established in light of the matters set forth in Findings 21(f) and 44, for failure to be aware of potential drug-drug interactions when administering ketamine infusions.

5. Cause for discipline based on repeated negligent acts was established in light of the matters set forth in Findings 21(a), 21(b), 21(f), 22, 44, and 45.

Petition to Revoke Probation

6. Complainant has the burden of proving each of the grounds for revoking probation alleged in a petition to revoke probation, and must do so by a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441.)

7. Condition 5 of respondent's probation requires respondent to successfully complete a clinical competence assessment program. Respondent attended the PACE program in 2022 but did not pass. Cause to revoke probation was established in light of the matters set forth in Findings 13 and 46.

Disciplinary Determination

8. Cause for discipline and revocation of probation having been established, the appropriate level of discipline must be determined. In exercising its disciplinary functions, protection of the public is the Board's paramount concern. (Bus. & Prof. Code, § 2229, subd. (a).) At the same time, the Board is directed to take disciplinary action that is calculated to aid the rehabilitation of the licensee whenever possible, as long as the Board's action is not inconsistent with public safety. (Bus. & Prof. Code, § 2229, subds. (b), (c).)

9. Respondent was placed on probation as the result of serious violations, including gross negligence and lack of knowledge stemming from her treatment of four patients with high doses of opioids. The additional violations involving Patient 1 confirm the Board's concerns about respondent's clinical judgment that resulted in the initial imposition of probation. Respondent was assessed at the PACE program and deemed unsafe to practice. The PACE team was concerned both with possible impairment and respondent's lack of demonstrated clinical competence.

Respondent has taken some measures to address the concerns about her health by undergoing a neuropsychological evaluation, attending psychotherapy, and reducing her medication use. Respondent has not taken any measures to address the noted deficits in her clinical knowledge. Respondent has not engaged in any significant remedial education since failing PACE in December 2022, and has not contacted PACE to arrange a reevaluation. Respondent practiced medicine with compassion for many years and was beloved by many patients. Nonetheless, she has not demonstrated that she currently possesses the clinical competence to practice safely, even with Board monitoring. Therefore, it would be against the public interest to permit respondent to retain her physician's and surgeon's certificate. Revocation of respondent's certificate is the appropriate discipline in this matter.

Costs

10. Business and Professions Code section 125.3 authorizes the Board to recover its reasonable costs of investigation and enforcement if the licensee is found to have committed a violation of the licensing act. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are

not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's 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 to the alleged misconduct.

These factors support a reduction of costs in this matter. The allegations involving Patient 1 were known to complainant prior to the stipulated settlement in 2021. The prior disciplinary action that resulted in respondent's probation involved similar misconduct, and the disciplinary order already in place adequately addressed the violations involving Patient 1. Complainant chose to incur additional costs after a cease practice order was in effect and the initial petition to revoke probation had been filed. Not all of Patient 1's allegations were substantiated, and not all of the allegations in the accusation were established by clear and convincing evidence. Additionally, respondent credibly established that she has limited financial ability to pay costs. A significant reduction of costs, to $5,000, is warranted.

ORDER

1. The probation granted to respondent Frances Dee Filgas, M.D., Physician's and Surgeon's Certificate Number G 42185, in Case Number 800-2018-040641, is revoked and the disciplinary order that was stayed (revocation) is imposed.

2. Physician's and Surgeon's Certificate Number G 42185, issued to respondent Frances Dee Filgas, M.D., is revoked.

3. Respondent shall reimburse the Board $5,000 for enforcement and prosecution costs. The Board may permit respondent to pay these costs pursuant to a payment plan.

DATE: 07/11/2024

Karen Reichmann

KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings