

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

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

**Lokesh Shantanu Tantuwaya, M.D.**

**Physician's & Surgeon's  
Certificate No. G 79268**

**Respondent.**

**Case No. 800-2018-044637**

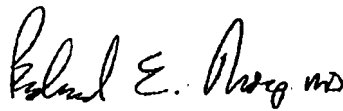
**DECISION**

**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 December 13, 2024.**

**IT IS SO ORDERED: November 15, 2024.**

**MEDICAL BOARD OF CALIFORNIA**



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

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

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

**LOKESH SHANTANU TANTUWAYA, M.D., Respondent**

**Agency Case No. 800-2018-044637**

**OAH No. 2023040015**

**PROPOSED DECISION**

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on September 24, 2024.

Keith C. Shaw, Deputy Attorney General, represented complainant, Reji Varghese, Executive Director of the Medical Board of California (board), Department of Consumer Affairs, State of California.

Lokesh Shantanu Tantuwaya, M.D., respondent, represented himself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on September 24, 2024.

## RESPONDENT'S MOTION TO CONTINUE

At the beginning of the hearing, respondent requested reconsideration of his previous motion to continue this hearing filed one day prior to the start of the hearing on September 23, 2024, which was denied on September 23, 2024. Respondent alleged the basis for the motion to continue was the September 23, 2024, withdrawal of his counsel. He argued that he needed time to obtain another counsel or to obtain the documents and information from his previous counsel regarding this matter for his defense. Respondent's renewed motion was denied at hearing on the basis that he failed to show good cause for the continuance. There is no right to counsel in administrative proceedings. (*Savoy Club v. Bd. of Supervisors* (1970) 12 Cal.App.3d 1034, 1038; *Borror v. Department of Investigations* (1971) 15 Cal.App.3d 531, and *Walker v. State Bar* (1989) 49 Cal.3d 1107.) It is also not a denial of due process to deny a continuance where a party delays his or her retention of counsel or retains counsel that is unavailable or not able to be prepared on the hearing date. (*Givens v. Dept. of Alcoholic Beverage Control* (1959) 176 Cal.App.2d 529, 532.) This matter has been pending since April 3, 2023, and has been previously continued three times at respondent's request. Respondent failed to show good cause for a further continuance.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On June 22, 1994, the board issued Physician's and Surgeon's Certificate Number G 79268 to respondent. Said certificate<sup>1</sup> expired on August 31, 2021, and is in delinquent status. Respondent's certificate has a long history of discipline, which is set forth below.

2. On January 31, 2023, the board issued a Notice of Automatic Suspension of License to respondent automatically suspending his certificate by operation of law based upon his September 1, 2022, felony conviction and subsequent incarceration as set forth below.

3. On November 28, 2023, complainant filed the First Amended Accusation and Petition to Revoke Probation in this matter alleging two causes to discipline respondent's certificate and three causes to revoke his probation. The two causes to discipline respondent's certificate alleged are: (1) respondent's September 1, 2022, conviction in the United States District Court for the Central District of California, in Case No. SA CR 1840-JLS, pursuant to his plea of guilty of violation of 18 U.S.C. section 371, conspiracy to commit honest services fraud and to receive illegal payments for

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<sup>1</sup> The terms "certificate" and "license" are used interchangeably in this Proposed Decision to refer to respondent's Physician's and Surgeon's Certificate Number G 79268.

health care kickbacks, a felony; and (2) unprofessional conduct based upon respondent's actions underlying his 2022 conviction.

The five causes to revoke respondent's probation alleged are: (1) respondent's failure to abide by condition number 7 in Case Nos. 800-2014-007852 and 800-2016-021906, and condition number 5 of Case No. 800-2017-033112, which requires respondent to maintain a current and renewed California physician's and surgeon's license, because respondent's certificate expired on August 31, 2021, and has not been renewed; (2) respondent's failure to abide by condition number 9 in Case Nos. 800-2014-007852 and 800-2016-021906, and condition number 7 of Case No. 800-2017-033112, which requires that respondent not have a period of non-practice while on probation to exceed two years, because respondent last practiced as a physician on May 3, 2021, and as of May 3, 2023, his period of non-practice exceeded two years; and (3) respondent's failure to abide by condition number 11 in Case Nos. 800-2014-007852 and 800-2016-021906, and condition number 9 of Case No. 800-2017-033112, which requires that respondent fully comply with the terms of his probation, because respondent violated multiple conditions of his probation as alleged in the First Amended Accusation.

4. Respondent timely filed a notice of defense, and this hearing followed.

### **Prior Convictions and Prior History of Discipline of Respondent's Certificate**

5. The First Amended Accusation and Petition to Revoke Probation at issue in this matter alleges as disciplinary considerations, respondent's prior conviction and his prior history of license discipline discussed below.

6. On December 1, 2015, respondent was convicted on his plea of guilty in the Superior Court of California, County of San Diego, in Case No. SCN 335891 of violation of Penal Code section 136.1, subdivision (b)(1), attempting to dissuade a witness from reporting a crime; and of violation of Penal Code section 273a, subdivision (b), child endangerment, both misdemeanors.

7. On July 30, 2018, in a Decision and Order, effective August 31, 2018, the board placed respondent's certificate on probation for a period of three years in Case No. 800-2014-007852, based upon his December 1, 2015, conviction of one count of misdemeanor witness intimidation and one count of misdemeanor child endangerment, as well as his failure to comply with a board Order of Examination pursuant to Business and Professions Code section 820.

8. On November 16, 2018, the board issued to respondent a Public Letter of Reprimand in Case No. 800-2018-045236, based upon an order issued by the Arizona Medical Board, whereby respondent was reprimanded for failing to respond to an investigation, and failing to disclose three malpractice settlements paid on behalf of respondent in 2013.

9. On April 11, 2019, in a Decision and Order, effective May 10, 2019, in Case No. 800-2016-021906, the board placed respondent's certificate on probation for two years, to run consecutively with the three years of probation ordered in Case No. 800-2014-007852, based upon respondent's gross negligence, repeated negligent acts, dishonesty, failure to maintain adequate or accurate records, failure to report a conviction to the board within 30 days, and general unprofessional conduct.

10. On November 12, 2019, in a Decision and Order, effective December 12, 2019, in Case No. 800-2017-033112 the board placed respondent's certificate on

probation for four years, to run concurrent with his existing probation ordered in Case No. 800-2014-007852, based upon respondent's substantially related conviction of one misdemeanor count of violating a protective order.<sup>2</sup>

### **Respondent's 2022 Conviction**

11. On September 1, 2022, in the United States District Court for the Central District of California, in Case No. SA CR 1840-JLS, respondent was convicted on his plea of guilty of violation of 18 U.S.C. section 371, conspiracy to commit honest services fraud and to receive illegal payments for health care kickbacks, a felony. As a result of this conviction, respondent was sentenced to five years in federal prison and ordered by the court as part of his sentence pursuant to a Money Judgement of Forfeiture dated December 9, 2022, to forfeit his illegal gains of \$3.3 million. Respondent's conviction was affirmed on appeal by the United States Court of Appeals for the Ninth Circuit in Case No. 8:18-CR-00040-JLS-1 on February 21, 2024.

12. The circumstances underlying respondent's 2022 conviction were obtained from respondent's plea agreement signed by respondent on September 1, 2022, which is part of the court records received in evidence. Pursuant to that document, respondent agreed to not contest these facts:

[B]eginning no later than in or about 2010 and continuing through in or about 2013, there was an agreement between two or more persons to commit honest services mail fraud or wire fraud, . . . or to solicit or receive illegal remuneration

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<sup>2</sup> This conviction was not alleged as an independent basis for disciplinary consideration.

for health care referrals, . . . the defendant [respondent] became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it, and . . . one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy.

[¶] . . . [¶]

[T]he defendant [respondent] devised or knowingly participated in a scheme or plan to deprive patients of their right to defendant's honest services . . . the scheme or plan consists of a bribe or kickback in exchange for performing surgeries at Pacific Hospital..... the defendant [respondent] owed a fiduciary duty to his patients..... the defendant [respondent] acted with the intent to defraud by depriving his patients of their right to the defendant's honest services . . . the defendant's [respondent's] act was material; that is, it had a natural tendency to influence, or was capable of influencing a patient's acts.....the defendant [respondent] used, or caused someone to use, the mails to carry out or attempt to carry out the scheme or plan.

[¶] ..... [¶]

[T]he defendant [respondent] knowingly and willfully paid or received remuneration, directly or indirectly, in cash or in kind, to or from another person.....the remuneration was



given to induce that person to refer an individual for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal [sic] health care program . . . and defendant [respondent] knew that such payment of remuneration was illegal.

### **Respondent's Testimony**

13. Respondent is 57 years old and currently incarcerated as a result of his 2022 conviction. He has been incarcerated since 2021. Respondent testified that he is currently housed in a home setting and has access to email, but he is not free to leave the facility. Respondent stated that he has practiced as a physician since 1999 in San Diego and various hospitals in Riverside and Imperial counties. Respondent stated that his patients came from all over California and frequently traveled great distances to have their surgery performed by him. In 2009 respondent was approached by a representative of various hospitals, who was responsible for recruiting physicians, to recruit respondent to be a neurosurgeon at two different hospitals. Thereafter, in January 2010, respondent was offered the position of Director of Neurosurgery at Pacific Hospital, which he accepted. He began performing neurosurgery at Pacific Hospital in January 2010. Respondent testified that he performed less than 50 percent of his surgeries at Pacific Hospital and the rest of his surgeries at other hospitals. Respondent remained the Director of Neurosurgery until 2013.

14. Respondent testified that his patients who received spinal surgery at Pacific Hospital were given the option to go to other hospitals for the surgery, but they selected Pacific Hospital, and their insurance carrier authorized it. Respondent stated that each of his patients were informed of respondent's role as the Director of

Neurosurgery. Respondent denied ever deceiving his patients or depriving them of his services as a physician. Respondent stated, "the notion that these patients traveled a longer distance for their surgery is irrelevant because they knew they would be traveling." Respondent stated that his conviction is based on the assertion that he was paid a specific amount of money (kickbacks) from the owner of Pacific Hospital to perform specific surgeries at Pacific Hospital, but he denied that was true. He stated that the allegations underlying his conviction that he was paid bribes from between \$7,500 to \$15,000 per surgery with a higher amount paid if he used specific surgical hardware from the owner of Pacific Hospital was also false. Respondent testified the spinal implants he used were not from Pacific Hospital, but were from publicly traded companies. He asserted that the \$3.3 million he was ordered to pay in the Money Judgment of Forfeiture was based upon the contracts he signed with Pacific Hospital and not from kickback payments from surgeries he performed. Respondent denied that he ever performed any unnecessary surgery. He stated that he was paid through those contracts for his administrative services as the Director of Neurosurgery and not for surgeries performed. Respondent first became aware that the Federal Bureau of Investigations (FBI) was investigating Pacific Hospital in April 2013 when the FBI raided the hospital.

15. Respondent testified that with regard to his guilty plea underlying his conviction, he asserted that his plea was not voluntary, and he signed the plea under duress. Respondent claims that he was incarcerated at the time he entered the plea of guilty, and that while he was in jail, a threat was made on his life leading him to believe that if he stayed in that jail he would be killed. As a result, he stated he signed the guilty plea because he was told that if he did so he would be moved to a different jail. Notably, respondent's argument that his guilty plea was involuntary was

considered and rejected on his appeal by the United States Court of Appeals for the Ninth Circuit in its February 21, 2024, Memorandum affirming respondent's conviction.

16. With regard to his previous criminal conviction and disciplinary orders by the board, respondent stated that he successfully served his criminal sentence related to that conviction and he was always cooperative with the board regarding any license discipline. Respondent testified that he is aware that his certificate has expired and has not been renewed, but he stated that he was unable to renew the certificate because he has been incarcerated.

17. Respondent testified that he wants to retain his California medical certificate because he would like to perform work for the organization named "Doctors Without Borders," but in order to do so he must have a medical license from somewhere in the world. He stated that the federal government has barred him from practicing medicine for any federally funded healthcare facility for a period of 12 years. As a result, he is not able to practice medicine in California for any patient where care is funded by the federal government or private insurance company that requires a Medicare accreditation to practice medicine.

### **Costs of Enforcement and Investigation**

18. Complainant seeks recovery of enforcement costs of \$28,904.50 and investigative costs in the amount of \$1,363.50, pursuant to Business and Professions Code section 125.3.

19. In support of the request for recovery of enforcement costs, the Deputy Attorney General who prosecuted the case signed a declaration on September 17, 2024, requesting total enforcement costs of \$27,606.25. Attached to the declaration is a document entitled "Master Time Activity by Professional Type." This document

identifies the tasks performed, the dates legal services were provided, who provided the services, the time spent on each task, and the hourly rate of a Supervising Deputy Attorney General, three Deputies Attorney General, and four paralegals from December 7, 2022, through September 13, 2024, for a total of \$28,904.50 in prosecution costs for a total of 132.50 hours of work.

20. In support of the request for recovery of investigation costs, a declaration of Investigative Activity signed by Eric Ryan, Supervising Investigator, Department of Consumer Affairs, Division of Investigation, Health Quality Investigation Unit, was received in evidence. The declaration listed the investigator assigned to this matter and provided that the investigator spent 3.25 hours at a billing rate of \$158 per hour, and thereafter with an updated billing rate of \$170 per hour spent an additional 5 hours on this matter for a total of \$1,363.50 spent on investigation of this matter. The declaration included an "Investigator Log" providing the dates, number of hours, and tasks performed with a task description, for the work the investigator performed on this matter.

21. California Code of Regulations, title 1, section 1042, subdivision (b), requires that this declaration must include "specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs."

22. Both declarations submitted in this matter for enforcement and investigation costs comply with the requirements specificity of section 1042, subdivision (b), and the total costs of investigation and enforcement of this matter of \$30,268 are found to be reasonable.

23. Accordingly, the total reasonable costs of enforcement and investigation of this matter are \$30,268. This total is analyzed further below with respect to whether

complainant established the causes for discipline as alleged in the first amended accusation. Respondent did not present any evidence regarding his ability to pay costs or otherwise.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. Complainant bears the burden of proof of establishing that the charges in the accusation and petition to revoke probation are true. (Evid. Code, § 115; 500.)

2. With respect to the accusation portion of the pleadings, the standard of proof required is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The obligation to establish charges by clear and convincing evidence is a heavy burden. It requires a finding of high probability; it is evidence so clear as to leave no substantial doubt, or sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.) With regard to the petition to revoke probation portion of the pleadings, the standard of proof is a preponderance of the evidence. (*Sandarg v. Dental Board of California* (2010) 184 Cal.App.4th 1434, 1441-1442.)

### **Applicable Statutes, Regulations, and Authority**

3. Business and Professions Code section 2227 provides that a licensee who has violated the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or subject to other discipline the board deems proper.

4. The board's Decision and Order, effective December 12, 2019, contained the following provision in condition number 5 (in Case No. 800-2017-033112), as well as in the board's Decision and Order in Case Nos. 800-2014-007852, and 800-2016-021906, at condition number 7:

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

5. The board's Decision and Order, effective December 12, 2019, contained the following provision in condition number 7 (in Case No. 800-2017-033112), as well as in the board's Decision and Order in Case Nos. 800-2014-007852, and 800-2016-021906, at condition number 9:

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..... 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 (2) years. . . .

6. The board's Decision and Order, effective December 12, 2019, contained the following provision in condition number 9 (in Case No. 800-2017-033112), as well as in the board's Decision and Order in Case Nos. 800 2014-007852, and 800-2016-021906, at condition number 11:

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 a 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.

7. Business and Professions Code section 118 provides:

(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."

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



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

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

[¶] . . . [¶]

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

9. Business and Professions Code section 2236 provides in part:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

[¶] . . . [¶]

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The

division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

10. California Code of Regulations, title 16, section 1360, provides:

(a) For the purposes of denial, suspension or revocation of a license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Such crimes, professional misconduct, or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or

conspiring to violate any provision of state or federal law governing the applicant's or licensee's professional practice.

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

(1) The nature and gravity of the crime;

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

(3) The nature and duties of the profession.

11. The primary purpose of disciplinary action is to protect the public. (Bus. & Prof. Code, § 2229, subd. (a).) The Medical Practice Act emphasizes that the board should "seek out those licensees who have demonstrated deficiencies in competency and then take those actions as are indicated, with priority given to those measures, including further education, restrictions from practice, or other means, that will remove those deficiencies." (Bus. & Prof. Code, § 2229, subd. (c).) However, "[w]here rehabilitation and protection are inconsistent, protection shall be paramount." (Bus. & Prof. Code, § 2229, subd. (c).)

## **Disciplinary Guidelines**

12. California Code of Regulations, title 16, section 1361, provides that when reaching a decision on a disciplinary action, the board must consider and apply the "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (12th Edition/2016) (Disciplinary Guidelines). Under the Disciplinary Guidelines, the board expects that, absent mitigating or other appropriate circumstances such as early acceptance of

responsibility, demonstrated willingness to undertake board-ordered rehabilitation, the age of the case, and evidentiary problems, Administrative Law Judges hearing cases on behalf of the board and proposed settlements submitted to the board will follow the Disciplinary Guidelines, including those imposing suspensions. Any proposed decision or settlement that departs from the Disciplinary Guidelines shall identify the departures and the facts supporting the departure.

13. Under the Disciplinary Guidelines, the minimum discipline for conviction of a crime substantially related to the qualifications, functions or duties of a physician and surgeon and arising from or occurring during patient care, treatment, management or billing under Business and Professions Code section 2236, is one year suspension and seven years of probation. The maximum discipline is revocation.

14. Under the Disciplinary Guidelines, the minimum discipline for unprofessional conduct as a result of violation of probation is 30 days of suspension. The maximum discipline is revocation. The Disciplinary Guidelines provide that the maximum penalty should be given for repeated similar offenses or for probation violations revealing a cavalier or recalcitrant attitude.

## **Evaluation**

15. At the hearing, respondent argued that his criminal conviction is not valid because his plea of guilty was involuntary and made under duress. However, respondent's argument in this respect lacked credibility and has already been specifically rejected by the United States Court of Appeals for the Ninth Circuit in its February 21, 2024, decision. Respondent repeatedly denied any culpability for his crime, and he attempted to relitigate it in this hearing. Regardless of the motive for respondent's plea of guilty, "the conviction which was based thereon stands as

conclusive evidence of [respondent's] guilt of the offense charged." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) As *Arneson* explains, "[t]he licensee, of course, should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." (*Arneson, supra*, at p. 449.) But, an inquiry into the circumstances surrounding the offense "should not form the basis of impeaching a prior conviction." (*Arneson v. Fox* (1989) 28 Cal.3d 440, 448-449.) Complainant established by clear and convincing evidence that respondent was convicted of a substantially related crime on September 1, 2022.

16. Respondent failed to present any evidence of rehabilitation of his crime at hearing. His crime was very serious in nature, and he has a long history of disciplinary actions against his certificate by the board. Respondent explained that he was unable to renew his certificate while in prison. However, respondent has been represented by counsel for many years and provided no explanation why his counsel could not effectuate a renewal of his certificate during the time he has been incarcerated. Furthermore, respondent has been incarcerated since 2021 and as a result has been unable to practice medicine, which is itself a violation of the terms of his probation.

### **Cause for Discipline**

17. Cause exists under Business and Professions Code section 2227, and 2234, as defined by California Code of Regulations, title 16, section 1360, to impose discipline. Complainant established by clear and convincing evidence that respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon, specifically his September 1, 2022, conviction in the United States District Court for the Central District of California, in Case No. SA CR 1840-JLS, pursuant to his plea of guilty of violation of 18 U.S.C. section 371, conspiracy to

commit honest services fraud and to receive illegal payments for health care kickbacks, a felony.

18. Cause exists under Business and Professions Code section 2234, subdivision (e), to impose discipline. Complainant established by clear and convincing evidence that respondent engaged in unprofessional conduct by his conduct underlying his September 1, 2022, conviction.

### **Cause to Revoke Probation**

19. Cause exists to revoke respondent's probation for violating probation condition 5 (in Case No. 800-2017-033112), as well as condition number 7 (in Case Nos. 800-2014-007852, and 800-2016-021906) (General Probation Requirements) because respondent failed to maintain a current and renewed California physician's and surgeon's license as his certificate expired on August 31, 2021, and has not been renewed.

20. Cause exists to revoke respondent's probation for violating probation condition 7 (in Case No. 800-2017-033112), as well as condition number 9 (in Case Nos. 800-2014-007852, and 800-2016-021906) (Non-Practice While on Probation) because a preponderance of the evidence established that respondent has a period of non-practice exceeding two years as he last practiced medicine in 2021, and has been incarcerated since 2021.

21. Cause exists to revoke respondent's probation for violating probation condition 9 (in Case No. 800-2017-033112), as well as condition number 11 (in Case Nos. 800-2014-007852, and 800-2016-021906) (Violation of Probation) because a preponderance of the evidence established that respondent failed to fully comply with all terms and conditions of probation as set forth herein.

## **Appropriate Discipline**

22. Respondent's actions underlying his September 1, 2022, substantially related conviction are very serious in nature. There is no other profession in which one passes so completely within the power and control of another as does the practice of medicine. The physician-patient relationship is built on trust and honesty. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 578-579.) Respondent's actions, as well as his extensive disciplinary history with the board, call into question his ability to abide by the law and his probation terms generally.

23. After consideration of all evidence provided, the only appropriate discipline that will ensure public protection is revocation.

## **Costs of Enforcement and Investigation**

24. Business and Professions Code section 125.3, subdivision (a), authorizes an administrative law judge to direct a licensee who has violated the applicable licensing act to pay a sum not to exceed the reasonable costs of investigation and prosecution. The reasonable costs in this matter are \$30,268.

25. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth five factors to be considered in determining whether a particular licensee should be ordered to pay the reasonable costs of investigation and prosecution under statutes like Business and professions Code section 125.3. Those factors are: 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. (*Ibid.*)

26. Applying the *Zuckerman* factors to this case leads to the following conclusions: respondent was not successful in getting the charges dismissed or reduced, respondent demonstrated a subjective good faith belief in the merits of his position, respondent failed to raise a colorable challenge to the proposed discipline, and respondent provided no evidence or argument to establish that he does not have the financial ability to pay costs; and the scope of the investigation was appropriate in light of the alleged misconduct.

27. After consideration of the *Zuckerman* factors in this case, a reduction of the costs of enforcement is not appropriate. Accordingly, an appropriate cost amount of \$30,268 is deemed reasonable and respondent shall pay that amount to the board prior to any reinstatement of his license.

## **ORDER**

Respondent Lokesh Shantanu Tantuwaya, M.D.'s Physician and Surgeon's Certificate No. G79268 is revoked. Respondent shall pay to the board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$30,268, as a condition precedent to having his certificate reinstated, if and when he chooses to do so. Nothing prohibits the board from reducing or modifying the costs should respondent seek reinstatement.

DATE: October 22, 2024

*Debra D. Nye-Perkins*

DEBRA D. NYE-PERKINS

Administrative Law Judge

Office of Administrative Hearings