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

In the Matter of the Petition to Revoke Probation Against: Boniface Okwudili Onubah, M.D. Physician's & Surgeon's Certificate No. A 52415 Respondent.	Case No.: 800-2022-090498

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the petition for reconsideration, filed by December 31, 2024, and the time for action having expired at 5:00 p.m. on January 13, 2025, the petition is deemed denied by operation of law.

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

In the Matter of the Petition to Revoke Probation Against: **Boniface Okwudili Onubah, M.D.** **Physician's & Surgeon's Certificate No. A 52415** **Respondent.**	**Case No. 800-2022-090498** **ORDER GRANTING STAY** **(Government Code Section 11521)**

Adam B. Brown. Esq. on behalf of Respondent, Boniface Okwudili Onubah M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of December 12, 2024, at 5:00 p.m.

Execution is stayed until January 13, 2025, at 5:00 p.m.

This stay is granted solely for the purpose of allowing the Respondent to file a Petition for Reconsideration.

DATED: December 10, 2024

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 Petition to Revoke Probation Against: Boniface Okwudili Onubah, M.D. Physician's and Surgeon's Certificate No. A 52415 Respondent.	Case No. 800-2022-090498

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 12, 2024.

IT IS SO ORDERED November 12, 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 Petition to Revoke Probation Against:

BONIFACE O. ONUBAH, M.D.,

Physician's and Surgeon's Certificate No. A 52415,

Respondent.

Agency Case No. 800-2022-090498

OAH No. 2023040607

PROPOSED DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 16-18, 2024.

Wendy Widlus, Deputy Attorney General, represented petitioner Reji Varghese, Executive Director, Medical Board of California (Board), Department of Consumer Affairs.

Adam B. Brown, Esq., Brown & Brown, represented respondent Boniface O. Onubah, M.D.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on September 18, 2024.

SUMMARY

Respondent is a neurologist who has been on Board probation since January 2021 when the Board reinstated his previously-revoked physician's and surgeon's certificate. The reinstatement included a probation term requiring respondent to complete a Board-approved clinical competence assessment program before resuming practice, and a stayed revocation of the certificate that the Board could carry out if respondent violated probation. Respondent twice failed the clinical competency assessment program, and petitioner now asks the Board to revoke respondent's probation and carry out the revocation order that was stayed. Respondent contends the program was flawed and unfair, and the Board should overrule or disregard the program's findings that he failed. Respondent asks the Board to continue his probation without requiring any further participation in the program. If the Board will not do that, respondent asks to be allowed to enroll in a different clinical competence assessment program. Respondent does not ask to return to the same program, although he would do so as a last resort if necessary to keep his physician's and surgeon's certificate.

Petitioner's evidence proves the evaluations of respondent in the clinical competence assessment program were regularly conducted and appropriate. Respondent failed the program twice, and his claim the program was flawed and unfair lacks evidentiary support. Under the terms of his probation, respondent had to successfully complete the clinical competence assessment program within six months of his initial enrollment, unless the Board or its designee agreed to an extension. Over

three years have now passed since respondent's initial enrollment, and he has still not completed the program successfully. Furthermore, respondent's requests that the Board continue his probation without the program requirement or allow him to enroll in a different program are not well taken. Therefore, the petition to revoke probation is granted, and respondent's physician's and surgeon's certificate is revoked.

FACTUAL FINDINGS

Background

1. On October 6, 1993, the Board issued Physician's and Surgeon's Certificate Number A 52415 to respondent. Between 1997 and 2014, respondent was a neurologist in private practice.

2. On June 20, 2013, Kimberly Kirchmeyer, then Executive Director of the Board, filed an Accusation against respondent requesting that the Board revoke or suspend his certificate. In September 2014, an administrative law judge at OAH held a hearing on a Second Amended Accusation charging respondent with 11 causes for disciplinary action. The administrative law judge issued a proposed decision sustaining some of the charges and recommending revocation of respondent's certificate. The Board adopted the proposed decision and revoked respondent's certificate effective November 14, 2014. (Decision, Case No. 05-2011-214515, Oct. 17, 2014.) The sustained charges included gross negligence, repeated negligent acts, unprofessional conduct, and violations of federal and state law for leaving pre-signed prescription slips at clinics for later use by others. Respondent petitioned the Superior Court of California to overturn the Board's decision, but the court denied the petition.

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3. In 2019, respondent petitioned the Board to reinstate his certificate. In a decision effective January 15, 2021, the Board reinstated the certificate with a five-year term of probation and a stayed revocation of the certificate that the Board could carry out if respondent violated probation. (Decision After Non-Adoption, Case No. 800-2019-055701, Dec. 17, 2020.) One term of probation required respondent to enroll in a Board-approved clinical competence assessment program within 60 days of the effective date of reinstatement, and to successfully complete the program within six months of initial enrollment unless the Board or its designee agreed to an extension. (Exhibit 1, p. A31.) Respondent was responsible for all program expenses, and he was prohibited from practicing until he successfully completed the program and was so notified by the Board or its designee in writing. The determination as to whether respondent successfully completed the program was "solely within the program's jurisdiction." (*Id.* at p. A32.) If respondent did not complete the program successfully or violated probation in any other respect, "the Board, after giving respondent notice and an opportunity to be heard, could revoke his probation, and carry out the disciplinary order [i.e., revocation] that was stayed." (*Id.* at p. A40.)

4. Inspector Marie Altamirano of the Board's Probation Unit held a probation intake interview with respondent on January 11 and 12, 2021. Altamirano read the Board's decision to respondent verbatim, and she and respondent discussed the clinical competence assessment program requirement. Respondent stated he understood the requirement and did not have any questions. (Exhibit 13, p. A228.)

5. Respondent timely enrolled in the Board-approved clinical competence assessment program offered by the University of California, San Diego (UCSD) Physician Assessment and Clinical Education (PACE). Respondent took part in the PACE program virtually on May 13, 2021, and in person on May 19 and July 29, 2021. On

November 23, 2021, the Board received a letter from PACE's Director (William Norcross, M.D.) and respondent's case manager at PACE (Monique Velde) about the results. The letter stated respondent's final grade was "pending" due to unanswered questions about respondent's health and fitness. (Exhibit 4, p. A165.) PACE faculty and staff recommended additional evaluations of respondent to enable the program to issue a final grade for him. (*Ibid.*) Respondent underwent the additional recommended evaluations.

6. On May 11, 2022, the Board received a letter from Norcross and Velde stating that after considering the additional evaluations and reconsidering respondent's performance in 2021, his overall performance was consistent with a "Fail Category 4." (Exhibit 4, p. A169.) The letter explained that a Fail Category 4 score "signif[ies] poor performance that is not compatible with overall physician competency and safe practice," and "reflects major, significant deficiencies in clinical competence." (*Id.* at p. A170.) "[P]hysicians who receive this outcome, if they are deemed to be candidates for remedial education, should think in terms of engaging in a minimum of one full year of dedicated study and learning activities requiring an average of 30 to 40 hours a week." (*Ibid.*)

7. On the same day, Altamirano sent a letter to respondent informing him of the result and stating, "PACE has concluded that you were not successful in passing the program. Please be advised that failure to successfully complete the clinical competence assessment program is considered a violation of probation." (Exhibit 4, p. A171.) Altamirano also stated the matter would be referred to the Attorney General's Office with a request to take further action against respondent's certificate. In addition, Altamirano stated it was Board policy that PACE and Board staff cannot supply a copy of the PACE final report to participants, although "you will be provided with an

opportunity to obtain this information during the discovery process." (*Ibid.*) However, Altamirano informed respondent of the following recommendations that were included in the letter from Norcross and Velde: "PACE recommended that you engage in a period of psychotherapy to address your personality traits and social stressors. They also recommend you work on improving your medical knowledge. Ideally, you would accomplish this by completing a mini-residency, observer-ship, or preceptorship. Alternatively, you should engage in self-directed study for several hours each week. After a period (6-12 months) of psychological treatment and remediation, it is also recommended that you undergo repeat fitness for duty and clinical competency evaluations to determine if you are capable of returning to practice." (*Ibid.*)

8. On February 17, 2023, petitioner filed the present petition to revoke respondent's probation due to his failure to complete the PACE program successfully. Respondent filed a notice of defense to request a hearing. Later that year, respondent participated in a repeat PACE evaluation on September 11, 2023 (virtual), October 19-20, 2023 (in-person), and November 10, 2023 (virtual). On January 15, 2024, the Board received a letter from Norcross, Velde, and PACE Director Lynette Cederquist, M.D., stating respondent's overall performance on the repeat PACE assessment was again consistent with a "Fail, Category 4." (Exhibit 23, p. A285.)

9. On January 16, 2024, Altamirano wrote to respondent informing him of the result and conveying recommendations stated in the PACE letter that respondent: (1) "establish care with a primary care physician;" (2) "continue to work on his professionalism and communication skills by engaging with a physician mentor and/or coach;" (3) "have ongoing psychotherapy with twice monthly sessions for at least 6 months," after which "treatment frequency could be negotiated to once-monthly for

another 6 months," and (4) "review John M. Oldham's book The New Personality Self Portrait: Why you Think, Work, Love, and Act the Way You Do (Oldham, J. M., & Morris, L. B. (1995)." (Exhibit 24, p. A288.) Altamirano also reiterated the Board's policy that PACE and Board staff cannot provide participants with a copy of the final PACE report.

Hearing

PETITIONER'S CASE

Marie Altamirano

10. Altamirano testified respondent has always complied with his probation requirements to the best of his ability. He has consistently displayed a sincere commitment to compliance and a passion for his career. However, respondent is out of compliance with his probation terms due to his failure to complete the PACE program successfully. Due to financial hardship, respondent also stopped paying the Board's probation monitoring costs after the first year of probation.

Lynette Cederquist, M.D.

11. Cederquist is an internal medicine physician who has been a PACE faculty member for about 20 years. Cederquist attended the PACE case conferences in which PACE faculty determined respondent failed the program on both occasions. Cederquist also personally evaluated respondent's performance of a history and physical examination of a mock patient and of standardized patient evaluations of other mock patients in both 2021 and 2023. Other PACE faculty also evaluated respondent's performance during the standardized patient evaluations. The mock patient exercises are components of PACE's multi-faceted assessment of a physician's clinical competence.

12. In 2021, respondent performed a minimally satisfactory history and physical examination on the mock patient. On the standard patient evaluations of other mock patients, respondent's performance ranged from marginal to satisfactory. However, respondent's behavior during the PACE evaluation was concerning. He was noted to be nervous, overly talkative, tangential, and unprofessional by various PACE staff and faculty. (Exhibit 4, p. A165.) He also failed one case on an oral examination covering neurology, and his score on a multiple-choice neurology clinical examination "placed his performance in the 1st percentile compared with a reference group of more than 6,000 first-time takers from 55+ schools who took the test as their final clerkship examination." (*Ibid.*)

13. In 2023, respondent was asked to perform a focused history and physical examination on a trained actor portraying a 77-year-old patient seeking evaluation for memory loss. Cederquist determined respondent's conduct of the examination was unsatisfactory. Respondent downplayed the results of the cognitive screen of the mock patient, and respondent did not suggest further workup or offer the patient any treatment or follow-up plan. Although respondent's evaluation included a dementia diagnosis, he did not communicate that to the patient, instead telling the patient not to worry about what he could not remember and just be the best person he could. Cederquist also noted respondent spent a significant portion of the encounter talking about himself.

14. Cederquist also evaluated respondent's performance of standardized patient evaluations on two mock patients. Cederquist determined respondent demonstrated poor professional behavior in both cases, as documented in the letter to the Board that she co-authored on January 15, 2024. (Exhibit 23.) Respondent spent much of each encounter oversharing about his own life and opining on a variety of

unrelated topics, including religion, respondent's philosophies of life, his diet, and his life in Nigeria where he grew up. Respondent often cut off the mock patients and started talking about himself. Respondent also neglected to wash his hands; instead, he donned gloves after he was well into the physical exam. At times, he also laughed inappropriately.

15. As stated in the letter to the Board, respondent also displayed poor counseling skills. One of the mock patients made statements suggestive of domestic abuse, but respondent did not ask follow-up questions and started talking about his experiences in Nigeria. Respondent mentioned counseling to the patient at one point, but he then seemed to discourage it, telling the patient she should work things out with her husband. For the other mock patient who requested opioids for pain, respondent did not appropriately address the patient's acetaminophen dosing or find out about the patient's alcohol consumption or marijuana use in order to address combining them with opioids. Respondent also did not provide proper advice about opioid-induced constipation.

16. Respondent demonstrated appropriate knowledge of neurology on a different component of the PACE evaluation involving oral clinical vignettes rather than mock patients. But with the mock patients, Cederquist testified respondent did not demonstrate competence in applying that knowledge to the assessment and treatment of patients. According to Cederquist, respondent spent too much time on extraneous matters and not enough time assessing the patients and coming up with a comprehensive treatment plan. Furthermore, respondent had two years between the PACE evaluations in 2021 and 2023, but he did not improve his performance. Therefore, respondent did not demonstrate he was able to practice safely.

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Sarah Merrill, M.D.

17. Sarah Merrill, M.D., is also a PACE faculty member. She has been a physician for about 11 years. Along with Cederquist, Merrill evaluated respondent's performance during the standardized patient evaluations of mock patients in 2023. Merrill and Cederquist performed and graded their evaluations separately, but Merrill also determined respondent performed unsatisfactorily on the evaluations. The letter to the Board regarding respondent's PACE assessment in 2023 accurately reflects Merrill's evaluation and findings as to the standardized patient evaluations. (Exhibit 23.)

Video Evidence

18. Petitioner's evidence also included video recordings of respondent's mock patient encounters in 2023. The video recordings support Cederquist's and Merrill's findings and testimony. Respondent overshared personal information, talked excessively about himself, and spent considerable time discussing extraneous matters. The video evidence also confirms Cederquist's and Merrill's descriptions of his patient counseling.

RESPONDENT'S CASE

Nathan Lavid, M.D.

19. Nathan E. Lavid, M.D., is a board certified clinical and forensic psychiatrist. He has been in private practice since 2002. Lavid has served as an expert witness for the Board, and he continues to work in that role.

20. Respondent called Lavid to testify as to whether respondent is fit to practice from a mental health perspective. During respondent's PACE evaluation in

2023, Kai MacDonald, M.D., a PACE faculty psychiatrist, diagnosed respondent with Narcissistic Personality Disorder and gave clinical treatment recommendations to address the diagnosis. Despite the diagnosis, MacDonald found respondent to be fit to practice from a psychiatric perspective.

21. In July 2024, Lavid performed a comprehensive neuropsychiatric evaluation of respondent and similarly found respondent to be fit to practice from a psychiatric perspective. But Lavid testified he disagreed with MacDonald that respondent has Narcissistic Personality Disorder. Lavid opined that his testing and mental status examination of respondent indicates he does not meet the criteria for any mental disorder. Lavid found no psychiatric reason why respondent could not return to practice as a neurologist. Lavid's opinions pertain to respondent's psychiatric status; he did not assess respondent's clinical competence.

Boniface O. Onubah, M.D.

22. Respondent contends the PACE program was flawed and unfair, and he should have been found to have passed it. The mock patient encounters were not scored by a neurologist, and respondent believes they should have been. Furthermore, the mock patients were actors, and it is impossible for actors to fake some of the physical symptoms a neurologist assesses. Respondent testified his performance on the mock patient encounters was appropriate for a specialist's examination, and he contends he should have been evaluated as a specialist as opposed to a general practitioner. Furthermore, respondent does not believe using mock patients to evaluate a specialist is appropriate.

23. Respondent testified that before the PACE evaluation in 2021, he consumed too much caffeine because a family circumstance kept him up almost all

night, which affected respondent's performance. For the PACE evaluation in 2023, respondent disagrees that he displayed a lack of professionalism by oversharing information and talking about himself during the mock patient encounters. Respondent testified he shared anecdotes with the patients to put them at ease. Respondent also notes he performed well on the oral clinical examination portion of the PACE evaluation in 2023. The PACE evaluator found respondent clearly demonstrated appropriate levels of neurologic knowledge with respect to that examination. (See Exhibit 23, p. A282.)

24. Respondent also testified he did not receive copies of the final PACE reports of his evaluations. Petitioner's evidence includes letters from PACE to the Board summarizing the results, but not the reports themselves. Moreover, respondent testified he did not see the letters from PACE until just before the hearing. Before that, he had only seen the letters from Altamirano reporting that he failed the program.

Catherine Browers

25. Catherine Browers works for a brain scan equipment company. She has known respondent for about 25 years. When respondent was a practicing neurologist, he worked as a consultant with respect to her company's brain scan equipment. In addition, Browers still consults with respondent with respect to interpreting neurological data. Browers testified respondent is extremely knowledgeable and passionate about neurology. Although Browers has not seen respondent interact with patients for a long time, he was always professional and thorough with patients.

Emmanuel O. Eminike, M.D.

26. Emmanuel O. Eminike, M.D., is the director of a pain management clinic in Southern California. He has known respondent for about 15 years, and respondent

has done consulting work for Eminike's practice. In 2021, respondent requested a preceptorship in Eminike's practice in accordance with PACE's recommendations, and Eminike agreed without reservation. Based on his many interactions with respondent, Eminike testified respondent is a capable and skilled physician. Eminike also authored a letter of reference describing respondent's professional abilities and resilience under difficult personal and professional circumstances.

Other Evidence

27. Respondent presented a report from psychologist Valerie Maxwell, Ph.D., who provided therapy to respondent between July 2022 and January 2023. Maxwell reported respondent is psychologically stable and able to return to work as a physician. Respondent also presented a letter from Sim C. Hoffman, M.D., who has known respondent since 2001. Respondent worked in Hoffman's office between 2001 and 2004 and between 2011 and 2013 interpreting neurologic studies. Hoffman's letter states respondent was always professional and confident in his evaluation and interpretations of the tests.

ANALYSIS

28. Petitioner's evidence shows the PACE evaluations of respondent were regularly conducted and appropriate. The testimony from Cederquist and Merrill, and the letters from PACE to the Board, explain the evaluations and why respondent failed the PACE program on both occasions. Cederquist and Merrill both found significant deficiencies in respondent's performance of the mock patient encounters in 2023. While demonstrating appropriate knowledge of neurology in another part of the evaluation, respondent did not demonstrate competence in applying that knowledge to the assessment and treatment of patients. Cederquist and Merrill reached that

determination independently, and the video evidence of the encounters supports their descriptions of the mock patient encounters.

29. Respondent contends the PACE evaluations were flawed and unfair, and the Board should overrule or disregard PACE's determinations that he failed, even though his probation terms state those determinations are "solely within the program's [i.e., PACE's] jurisdiction." (Exhibit 1, p. A32.) The evidence does not show the PACE evaluations were flawed or unfair. Respondent criticized various aspects of PACE's methodology in his testimony, but the record includes no expert or other evidence to support those criticisms. With no such evidentiary support, there is no basis for the Board to overrule or disregard the determinations of PACE that respondent failed the program.

30. Lavid's testimony and examination of respondent support a finding that respondent is fit to practice from a mental health perspective. Indeed, petitioner does not contend otherwise. But respondent's clinical competence, not his mental health, is the issue on this petition. The PACE program twice determined respondent did not demonstrate clinical competence after performing comprehensive evaluations of him, and the evidence presented supports those determinations.

LEGAL CONCLUSIONS

1. The Board's decision reinstating respondent's physician's and surgeon's certificate includes a stayed revocation order and a probation term stating, "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." (Exhibit 1, p. A12.) Therefore, upon proof of a probation violation, the Board may revoke respondent's probation and carry out the order of revocation that was stayed. On a petition to revoke probation, the standard of proof for the alleged violations is proof by a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441.)

2. The evidence proves respondent violated the probation requirement that he successfully complete a Board-approved clinical competence assessment program within six months of initial enrollment, unless the Board or its designee agreed to an extension. (Exhibit 1, p. A31.) Respondent failed the PACE program twice, and it has now been over three years since he initially enrolled. The violation authorizes the Board to revoke probation and carry out the revocation order that was stayed.

3. Respondent's contention that the PACE evaluations were flawed and unfair lacks evidentiary support. Therefore, there is no basis for the Board to grant respondent's request to overrule or disregard PACE's determinations that he failed the PACE program.

4. Respondent also contends petitioner failed to produce the final PACE reports of his evaluations, which respondent asserts is a due process violation. This contention is unpersuasive. The evidence adequately documents and explains PACE's determinations, even though petitioner's evidence does not include the final reports themselves. Petitioner's exhibits were made available to respondent in advance of the hearing, and respondent was given a full opportunity to inquire about the PACE evaluations. Furthermore, the record does not include any motion to compel or subpoena from respondent with respect to the final reports.

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5. With proof of a probation violation, the Board must consider the appropriate disciplinary action, taking into account that "[p]rotection of the public shall be the highest priority for the . . . Board . . . in exercising its licensing, regulatory, and disciplinary functions." (Bus. & Prof. Code, § 2001.1.) The evidence presented compels the conclusion that the appropriate disciplinary action is revocation of probation and lifting the stay on revocation of respondent's certificate. Respondent has twice failed the PACE program, and his challenges to PACE's methodology and findings are unpersuasive. There is no basis for the Board to grant respondent's request to continue probation without requiring further participation in PACE, or to allow him to enroll in an unspecified different program. Respondent also does not ask to retake the PACE program, although he would do so as a last resort if necessary to keep his certificate. Respondent's two prior PACE results weigh against an order allowing respondent to repeat the PACE program a third time. Respondent has been unable to comply with the clinical competence assessment program term of his probation for an extended period of time, and the appropriate result at this point is to revoke his probation and certificate.

6. The petition also includes a request for the Board's costs of investigation and prosecution of the petition under Business and Professions Code section 125.3. But petitioner withdrew that request at the hearing, and the Board therefore does not need to address the request on the merits.

ORDER

The petition to revoke the probation of respondent Boniface O. Onubah, M.D., is granted. The stay of revocation contained in the Board's decision placing

respondent on probation is lifted, and Physician's and Surgeon's Certificate Number A 52415 issued to respondent is revoked.

DATE: 10/18/2024

Thomas Heller (Oct 18, 2024 16:55 PDT)

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings