

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

In the Matter of the Statement of Issues Against:

SEAN JAMES SIBURN

Applicant.

Case No. 800-2024-105866

OAH No. 2024060767

DECISION AFTER NON-ADOPTION

Kimberly J. Belvedere, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 16, 2024.

Joseph P. McKenna III, Deputy Attorney General, represented complainant Reji Varghese, Executive Director, Medical Board of California (board), Department of Consumer Affairs, State of California.

Jeffrey D. Lewis, Marvin Firestone, MD..JD & Associates, LLP, represented Applicant, Sean James Siburn, M.D., who was present.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on July 16, 2024.

On August 15, 2024, the Administrative Law Judge issued the Proposed Decision. On November 25, 2024, Panel B of the Medical Board (the Board) issued an Order of Non-Adoption of the Proposed Decision and afforded the parties the opportunity to submit written and oral argument. On January 27, 2025, both Complainant and Applicant submitted written argument. On February 12, 2025, the Board heard oral argument. The Board, having read the administrative record and considered the submitted oral and written argument, now makes and enters its Decision After Non-Adoption as follows:

FACTUAL FINDINGS

Background

1. Applicant received his medical degree from the Rutgers Robert Wood Johnson Medical School in 2019. In June 2019, Applicant started a four-year residency program in anesthesiology at the University of California, San Francisco (UCSF).
2. On June 24, 2020, the board issued Postgraduate Training License Number PTL 1804 to Applicant. Pursuant to Business and Professions Code section 2064.5, within 180 days of beginning a board-approved post graduate training program, a medical school graduate shall obtain a physician's and surgeon's postgraduate training license. A postgraduate training license is valid for 36 months. A physician's and surgeon's postgraduate training licensee may be disciplined by the board at any time for any of the grounds that would subject the holder of a physician's and surgeon's certificate to discipline. (Bus. & Prof. Code, § 2064.5, subds. (a), (b) & (d).)

Prior Disciplinary Proceedings

3. On November 30, 2022, complainant's predecessor signed an accusation

in his official capacity as executive officer for the board, in Case Number 800-2021-084208, alleging one cause for discipline against Applicant, that Applicant engaged in unprofessional conduct, and was dishonest, when he "surreptitiously recorded sexual acts without consent of his sexual partner [Person 1], in violation of Penal Code sections 647(j)(1) and 647(j)(3)(A)....." The factual basis for the accusation, in part, was:

12. On December 16, 2021, the Medical Board of California received an online complaint from Person 1 alleging that Applicant filmed the two of them engaging in sexual activities in Applicant's home without Person 1's consent.

[¶] . . . [¶]

14. On October 27, 2021, Applicant invited Person 1 to his residence. While Person 1 was engaged in sexual activity with Applicant, Person 1 noticed an iPhone under Applicant's desk concealed by clothing, but the distinctive three-camera lens arrangement was visible. Person picked up the phone and saw that the device had been recording for 44 minutes, which was approximately the time Person 1 had arrived at the apartment. Person 1 stopped the recording and confronted Applicant, who admitted he intended to use the video for sexual gratification. Applicant had asked Person 1 previously if he could record them engaging in sexual activity, but Person 1 had refused.

15. On August 22, 2022, Applicant was questioned by a Board investigator. In that interview, Applicant stated he had deleted all of his text messages with Person 1. Person 1 provided the Board

with copies of text exchanges with Applicant. On the night of October 27, 2021, Person 1 sent text messages to Applicant that stated, "Don't ask me to hang out again creep," and "I should call the cops that's not ok at all." Responded replied, "I am sorry. I was wrong." Person 1 also texted, "You don't record people naked without their permission, you creepy piece of shit." Applicant replied, "Please drive home safe. I won't bother you again."

16. During his interview, Applicant told the Board investigator the first he heard of the allegation he surreptitiously recorded a sexual encounter without consent was when his employer raised the issue. However, the text messages demonstrate he was confronted with the allegation of surreptitiously recording the night of the incident and the days following it.

4. Person 1 and Applicant exchanged several text messages regarding the video. At no time when confronted with his behavior did Applicant deny the truth of the allegations. On the contrary, Applicant agreed to allow Person 1 to personally inspect his iPhone and laptop to ensure the video was not backed up or still in existence. On October 30, 2021, Applicant and Person 1 texted about meeting in person to discuss the incident....OAH Administrative Law Judge Holly M. Baldwin conducted a hearing on the accusation on July 5 and 6, 2023.¹ During the hearing, Person 1 testified consistent with what was alleged in the accusation (that Applicant had surreptitiously recorded a video of their sexual encounter). Applicant, while under oath, accused Person 1 of making false allegations against him, denied that he made any video of him and Person 1 engaged in sexual activity, and asserted the text message chain recounted above in the body of the accusation was referring to Person

1 seeing a photograph of Applicant's boyfriend on Applicant's iPhone and becoming enraged, rather than a surreptitiously recorded video.

5. On August 7, 2023, OAH issued the Proposed Decision, finding Applicant culpable for unprofessional conduct. In the Proposed Decision, Administrative Law Judge Baldwin wrote:

[C]onsidering the evidence as a whole, [Person 1's] version of events was credible, and Applicant's was not. . . . [Person 1's] testimony was also consistent with the contemporaneous text messages exchanged between him and Applicant. Most telling is Applicant's failure in those text messages to deny [Person 1's] multiple and explicit accusations that he secretly recorded their sexual activity. . . . Applicant's version of events was told for the first time at hearing, and is not corroborated by any witness testimony or documents. . . . The evidence established that Applicant surreptitiously made a video recording of himself engaged in sexual activity with [Person 1], without [Person 1's consent], and that Applicant lied about having done so. . . .

6. On September 6, 2023, the board issued an Order of Non-Adoption of Proposed Decision, indicating that a board panel would instead decide the case on the record, and set oral argument to take place on November 29, 2023.

¹ Transcripts of the hearing were admitted as exhibits, and the summary in this paragraph was derived from both the transcript, as well as the board's final decision and order, to be described more fully later in this decision.

7. On September 6, 2023, the board issued an Order of Non-Adoption of Proposed Decision, indicating that a board panel would instead decide the case on the record, and set oral argument to take place on November 29, 2023.

8. During the oral argument before the board panel, Applicant was again sworn in and testified under oath. While under oath, Applicant admitted to "videotaping" his sexual encounter with Person 1 and that he did not have Person 1's consent to do so. Applicant testified in that proceeding, in part, as follows:

[T]hank you for the opportunity to speak before you today. I stand before you and accept the factual findings by the Administrative Law Judge. This has been the biggest life lesson that I have ever experienced, and I take full responsibility for my actions. It was wrong, ... What I did I now know was selfish. It was ethically and legally wrong. My decision to betray [Person 1's] trust has brought nothing but suffering for many. It was by far the worst decision I have ever made. I regret it and self-shame consumes my every thought on a daily basis. It is the first thing that comes to mind when I wake up and the last thing on my mind as I attempt to go to sleep each night. . . . I have no active plans of hurting or killing myself, but I must admit those thoughts often go through my mind. [M]y life has fallen apart because of my stupid and careless choice. I was fired from my residency program in January of this year for not having an active medical license since processing of the application was held up during the pendency of the accusation against me. Additionally, I was dismissed from the fellowship in which I was accepted as a result of not being able to complete my residency program. . . . Currently I'm working at a

gym and spend my days on hands and knees cleaning gym equipment and bathrooms. This is a vast departure from my being a resident in training, and the experience has been humbling to say the least. My parents are also suffering, experiencing financial pressure and are currently planning to sell their home in order to help me pay my legal bills and provide support for me. My bad actions completely destroyed their lives and retirement, I have brought so much shame not only to my own life but to theirs as well.

... During my time away from practice I have done everything I can to seek personal and mental growth. I voluntarily participated in the Western Institute of Legal Medicine immersive course on medical ethics and professionalism beginning in January of this year... I've received 23 continuing medical education credits for my participation from UC Irvine. ... I truly believe I have grown as a person from my participation in this program. I completed a six-month follow-up program and will have completed a 12-month follow-up aspect to this program next month in December. I have done my best to incorporate the lessons learned into every experience I have on a daily basis. I now meditate, reflect and journal every day. I reclaimed my lost faith and found my church to be a crux in my journey towards forgiveness. Unfortunately, I cannot afford a therapist on my current salary. Exercising, journaling and prayer serve as a small rung on the ladder leading me out of the darkness. But I know there is a lot of climbing yet to go for me. I stand before the Board begging for a second chance. I made a mistake, a horrible choice. I have learned the biggest lesson of my life. I have lost everything, and I can vouch to the Board I will

spend the rest of my life working every day to prove I'm a good person who made a bad decision.

9. Following the hearing, the board issued a Decision After Non-Adoption dismissing the case. The board wrote:

Considering the presented evidence, this matter asks the Board to act as a reviewer of private interactions between individuals in their personal relationships, which the Board declines to do. Applicant's conduct occurred in his residence with a consensual sexual partner, and while the partner did file a criminal complaint concerning the alleged video-recording, no criminal charges were ever brought or prosecuted. The Board does not see any connectivity between private sexual activity and the practice of medicine, thus, this matter is not appropriate for the Board's consideration. . . .

Current Statement of Issues

10. Applicant filed an application for a Transition from Postgraduate Training License to a Physician's and Surgeon's License on March 3, 2022, while the above-referenced prior disciplinary matter was pending.

11. On June 20, 2024, complainant filed the Statement of Issues in this case in his official capacity, denying Applicant's application. This Statement of Issues does not seek to re-litigate the subject matter of the prior disciplinary matter (i.e. surreptitiously recording Person 1). Rather, the two causes for denial in this matter are:

- First Cause for Denial: unprofessional conduct, for committing dishonest or corrupt acts, with the intent to substantially benefit himself, when Applicant lied in the July 5-6, 2023, administrative hearing, by denying, under oath, that he surreptitiously recorded Person 1 and himself during their sexual encounter on October 27, 2021. Complainant alleges Applicant's dishonesty in the administrative hearing is evidenced by his later admission, under oath, during the oral argument before the board panel on November 29, 2023, that he actually did make the surreptitious recording of the sexual encounter between himself and Person 1 without Person 1's consent, and he lied when he denied the accusation regarding the same. The first cause for denial further alleges that the dishonest or corrupt act of lying is substantially related to the qualifications, functions, and duties of a physician and surgeon.
- Second Cause for Denial: general unprofessional conduct, for committing "perjury and giving false testimony during the July 5-6, 2023, hearing," for the same reasons noted in the first cause for denial.

12. Applicant timely filed a notice of defense, and this hearing followed.

Cross-Examination of Applicant in This Hearing

13. Complainant relied on the certified transcripts of the July 5-6, 2023, administrative hearing and the November 29, 2023, board panel hearing to show the instances of dishonesty and cause for denial. However, complainant also attempted to question Applicant about the specific instances in the administrative hearing transcript where he was dishonest. Applicant refused to answer any questions posed by complainant's counsel and asserted his Fifth Amendment rights² not to testify. Notably, Applicant already admitted, under oath, in the November 29, 2023, hearing

before the board panel that he was essentially not honest in the original administrative hearing when he stated that he did, in fact, make the surreptitious recording.

Applicant's testimony before the Board during the November 29, 2023, hearing, also included statements of responsibility for his actions; efforts of rehabilitation, including employment, participation in the Western Institute of Legal Medicine immersive course on medical ethics and professionalism, pursuit of faith, meditation and daily journaling; and expression of humbleness and continuing pursuit of forgiveness.

14. Regarding the July 5-6, 2023, administrative hearing, complainant pointed out several instances in the transcript where Applicant either denied making a recording or was otherwise dishonest. A few of them are noted below:

- On page 181 of the transcript, Applicant was asked about the text message exchange noted above concerning the surreptitious video he had made, and why he did not respond to Person 1's text messages. Applicant answered that he did "not hear anything about the video" until the next day, despite the text messages showing Person 1 was asking him about the video. Applicant also said he did not know anything about any video until people at work the next day started showing him accusations that had been posted about him all over the internet, and that he was being stalked. Applicant testified when his employer asked him about the video, he denied it and said he was being stalked.

² Evidence Code section 913 precludes a negative inference being drawn when a fifth amendment privilege is exercised.

- On page 194 of the transcript, the Deputy Attorney General asked Applicant about the video, after pointing out that Applicant refused to previously answer the board investigator's questions about whether he surreptitiously recorded the video. After Applicant confirmed he was no longer asserting his Fifth Amendment rights, he stated he "was innocent" and there was "no evidence of anything." Applicant instead claimed that he was being stalked by Person 1.
- On page 236 of the transcript, Applicant accuses Person 1 of "falsely accusing" him about making the surreptitious video and said it "terrified [him] because it wasn't true." Applicant said he did not respond to Person 1's text messages inquiring about the video because he was "terrified" of "retaliation."
- On page 237 of the transcript, Applicant, after again accusing Person 1 of trying to ruin his life, stated, "there was no video."
- On page 242 of the transcript, Applicant accused Person 1 of putting all the statements regarding the video in his text messages to Applicant to make Applicant "look guilty."
- On page 248, Applicant testified that "none" of Person 1's "allegations were true."

15. Throughout the July 2023 administrative hearing, Applicant continuously denied he had ever made a video of himself, and Person 1 engaged in sexual relations without Person 1's knowledge or consent, and also accused Person 1 of making up the false accusation. He accused Person 1 of stalking and questioned

Person 1's character. Despite quite a lengthy cross-examination and opportunity to retract any of his testimony, Applicant did not.

16. On November 29, 2023, during the oral argument before the board panel, Applicant admitted, generally, that his earlier testimony (at the hearing) with respect to the video was dishonest. Below is a portion of the transcript of that proceeding, and some of the statements Applicant made to the board:

[Applicant], having been duly sworn . . . testifies as follows:

This has been the biggest life lesson that I have ever experienced, and I take full responsibility for my actions. It was wrong, and it does not follow any pattern of behavior that I have ever previously demonstrated. What

I did, I now know was selfish. It was ethically and legally wrong. My decision to betray [Person 1's] trust has brought nothing but suffering for many. It was by far the worst decision I have ever made. I regret it and self-shame consumes my every thought on a daily basis.....It is the first thing that comes to mind when I wake up and the last thing on my mind as I attempt to go to sleep each night. I have no active plans of hurting or killing myself, but I must admit those thoughts often go through my mind. My thought, my life has fallen apart because of my stupid and careless choice. I was fired from my residency program in January of this year for not having an active medical license since processing of the application was held up during the pendency of the accusation against meI'm under

extreme financial pressure..... It's been challenging to find any work..... My parents are also suffering, experiencing financial pressure and are currently planning to sell their home in order to help me pay my legal bills and provide support for me. My bad actions completely destroyed their lives and retirement, I have brought so much shame not only to my own life but to theirs as well..... My ex-fiancé called off our engagement, [and] left me because of my decision to cheat I assure you that I have never filmed myself or others without their permission at any time prior to this experience nor since. This action did not take place with a patient, I want to emphasize that. This occurred outside the practice of medicine. . . .

Arguments

17. Applicant argued at hearing and in his hearing brief that the Statement of Issues "never should have happened" because it concerns "issues not connected to the practice of medicine." Applicant argued that collateral estoppel should apply because this is essentially re-litigating the original case that the board dismissed. Applicant argued that there has been a "profound" delay in bringing this case, and the application filed by Applicant should have been decided long ago. Applicant finally argued that since the board found that the earlier action involved private conduct unrelated to the practice of medicine, Applicant's statements in the original proceeding are not "material." Applicant argued the Statement of Issues should be dismissed, and Applicant's application for a Transition from Postgraduate Training License to a Physician's and Surgeon's License should be granted.

18. Complainant argued that to suggest that a licensee can lie his way through a professional disciplinary proceeding, and not be prosecuted for it, is absurd. Applicant's argument regarding collateral estoppel or re-litigating the same matter is without merit because the original disciplinary proceeding did not involve any allegations of dishonesty. The board panel hearing also involved only issues of the proposed penalty, so it would not have been appropriate to take what was said in those proceedings and go back and amend the original accusation. The opportunity to amend the original accusation ended when the record closed. Lying is conduct that constitutes moral turpitude, and it is a "bizarre" position to suggest that Applicant's conduct of lying in an official board proceeding is not substantially related to the qualifications, functions, and duties of a physician. Applicant has not met his burden.

19. Applicant's arguments are all without merit. Applicant's argument that his dishonesty in the previous proceeding is not connected to the practice of medicine is unpersuasive. For the reasons discussed more fully in the Evaluation portion of the Legal Conclusions below, the trait of honesty is absolutely connected to the qualifications, functions, and duties of a physician and surgeon.

Applicant's argument that collateral estoppel should apply because this is essentially re-litigating the original case that the board dismissed is also incorrect. The doctrine of collateral estoppel, or issue preclusion, precludes complainant from re-litigating an issue previously decided. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342-344.) The collateral estoppel doctrine applies only if several threshold requirements are fulfilled: the issue sought to be precluded from re-litigation must be identical to that decided in a former proceeding; this issue must have been actually litigated in the former proceeding; it must have been necessarily decided in the former proceeding; the decision in the former proceeding must be final and on the merits; and the party against whom preclusion is sought must be the same as, or in privity

with, the party to the former proceeding. Even if these threshold requirements are satisfied, the doctrine will not be applied if such application would not serve its underlying fundamental principles. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 848-849.) Collateral estoppel clearly does not apply here because the original administrative proceeding involved the conduct of secretly recording a video of Person 1 without his consent, whereas this hearing involves an application being denied for lying during official board proceedings. The two issues are not identical and dishonesty for lying to the board was not litigated in that proceeding.

Applicant argued that there has been a “profound” delay in bringing this case, and the application filed by Applicant should have been decided long ago. This is essentially a laches argument. A successful laches defense requires the establishment of two elements: An unreasonable delay in bringing the action, and resulting prejudice to the responding party. (*Mt. San Antonio Community College District v. Public Employment Relations Board* (1989) 210 Cal.App.3d 178; *Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1.) Applicant’s application at issue in this case was filed in March of 2022. On November 30, 2022, the accusation at issue in the original administrative hearing was filed. It would not have been appropriate to make a ruling on Applicant’s application during the pendency of the prior disciplinary proceeding. Further, that case was not yet complete at the time of the hearing before the board panel on November 29, 2023, which was the first time complainant discovered Applicant’s dishonesty. Thereafter, complainant promptly investigated and filed the Statement of Issues in this case, on June 20, 2024, resulting in this hearing less than two months later. There is nothing unreasonable or unusual about the timing of this matter.

Regarding Applicant’s argument that since the board found that the earlier

action involved private conduct unrelated to the practice of medicine, and that Applicant's statements in the original proceeding are not "material," it is noted that materiality is not a requirement to prove unprofessional conduct based on dishonesty, as alleged in the first cause for discipline. Nor is it a requirement to prove unprofessional conduct for giving false testimony, as alleged in the second cause for discipline. Finally, although the board in their Decision After Non-Adoption explained that it did "not see any connectivity between private sexual activity and the practice of medicine," this case has nothing to do with private sexual activity; this case has to do with lying during an official disciplinary proceeding before the board.

LEGAL CONCLUSIONS

1. The Medical Practice Act governs the rights and responsibilities of the holder of a physician's and surgeon's certificate. (Bus. & Prof. Code, §§ 2000 et seq.) Protection of the public is the highest priority for the board in exercising its disciplinary authority and is paramount over other interests in conflict with that objective. (Bus. & Prof. Code, § 2001.1.)

2. Business and Professions Code section 475, provides:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

[¶] . . . [¶]

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

3. Business and Professions Code section 2234 provides:

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.

[1] . . . [1]

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

(f) Any action or conduct that would have warranted the denial of a certificate.

4. Business and Professions Code section 2221, subdivision (a), provides:

The board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of their license. The board, in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to specified terms and conditions.

5. Except as otherwise provided by law, a party asserting at an administrative hearing that he or she should be granted a certain benefit, such as a license or permit, has the burden to establish by a preponderance of the evidence that he or she should be granted that benefit. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-52.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

6. Cause exists to deny Applicant's application for a Transition from Postgraduate Training License to a Physician's and Surgeon's License pursuant to Business and Professions Code sections 475, subdivisions (a)(3) and (a)(4); and 2234, subdivisions (e), and (f); as alleged in the first cause for denial. Applicant committed dishonest and corrupt acts when he lied during a board disciplinary hearing.

7. Cause exists to deny Applicant's application for a Transition from Postgraduate Training License to a Physician's and Surgeon's License pursuant to Business and Professions Code sections 2221, subdivision (a), and 2234, subdivisions (a) and (e), as alleged in the second cause for denial.

8. The purpose of a disciplinary action is to protect the public, and not to punish the applicant. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Likewise, the objective of an administrative proceeding relating to licensing is to protect the public. Such proceedings are not for the primary purpose of punishment. (See *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

The evidence on the whole establishes that, Applicant continuously denied that he ever made a video recording of himself and Person 1 in the original July 5-6, 2023, administrative hearing. He did so after swearing under oath to tell the truth. The hearing was an official proceeding conducted by OAH for the board, who oversees discipline of physicians and surgeons in California. In that proceeding, Applicant also accused Person 1 of being a stalker and making up the allegation, among other things. The act of surreptitiously recording Person 1 was the core issue in the original administrative proceeding; by not being honest about it, Applicant deprived the board of the opportunity to obtain a full and complete record regarding the underlying facts of his conduct. By depriving the board of that record, and instead creating a false story to cover up his conduct, Applicant essentially interfered with the board's ability to protect the public. Applicant's subsequent testimony, however, at the Board Panel's November 29, 2023, oral argument acknowledged that the testimony he had given in the earlier proceeding was false. By doing so, Applicant took full ownership of his wrongdoing and demonstrated sincere remorse for his conduct. Applicant teared up before the Panel and spoke genuinely about the harm he had caused, not just to himself, but to his family and Person 1.

He also testified to his rehabilitation efforts, which included voluntarily studying medical ethics and professionalism, his employment at a gym cleaning equipment and bathrooms, rediscovering his faith, commencing daily reflection and journaling, and a commitment to continued.

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ORDER

The application of Applicant Sean James Siburn for a full and unrestricted Transition from Postgraduate Training License to a Physician's and Surgeon's License is denied. However, Applicant shall be issued a probationary license for five (5) years with the following terms and conditions:

1. Community Service

Within 60 calendar days of the effective date of this Decision, Applicant shall submit to the Board or its designee for prior approval a community service plan in which Applicant shall within the first 2 years of probation, provide 100 hours of free services (e.g., medical or nonmedical) to a community or non-profit organization. If the term of probation is designated for 2 years or less, the community service hours must be completed not later than 6 months prior to the completion of probation.

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

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

2. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, Applicant shall enroll in a professionalism program that meets the requirements of Title 16, California

Code of Regulations (CCR) section 1358.1. Applicant shall participate in and successfully complete that program. Applicant shall provide any information and documents that the program may deem pertinent. Applicant shall successfully complete the classroom component of the program not later than six (6) months after Applicant's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Applicant's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

3. Psychiatric Evaluation

Within 30 calendar days of the effective date of this decision, and on whatever periodic basis thereafter may be required by the Board or its designee, petitioner shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or

its designee.

Psychiatric evaluations conducted prior to the effective date of the decision shall not be accepted towards the fulfillment of this requirement. Petitioner shall pay the cost of all psychiatric evaluations and psychological testing.

Petitioner shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

Petitioner shall not engage in the practice of medicine until notified by the Board or its designee that petitioner is mentally fit to practice medicine safely. The period of time that petitioner is not practicing medicine shall not be counted toward completion of the term of probation.

4. Notification

Within seven (7) days of the effective date of this Decision, the Applicant shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Applicant, at any other facility where Applicant engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Applicant. Applicant shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

5. Supervision of Physician Assistants and Advanced Practice Nurses

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

6. Obey All Laws

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

7. Quarterly Declarations

Applicant shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Applicant shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

8. General Probation Requirements

Compliance with Probation Unit

Applicant shall comply with the Board's probation unit.

Address Changes:

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

Place of Practice:

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

licensed facility.

License Renewal:

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

Travel or Residence Outside California:

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

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

9. Interview with the Board or its Designee

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

10. Non-practice While on Probation.

Applicant 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 Applicant's return to practice. Non-practice is defined as any period of time Applicant 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 Applicant resides in California and is considered to be in non-practice, Applicant 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 Applicant from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Applicant's period of non-practice while on probation exceeds 18 calendar months, Applicant 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.

Applicant's period of non-practice while on probation shall not exceed two (2) years. Periods of non-practice will not apply to the reduction of the probationary term.

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

11. Completion of Probation

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

12. Violation of Probation

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

13. License Surrender

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

application shall be treated as a petition for reinstatement of a revoked certificate.

14. Probation Monitoring Costs

Applicant shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

This Decision shall become effective at 5:00 pm on April 16, 2025.

IT IS SO ORDERED: March 17, 2025.



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 Statement of Issues
Against Against:

Sean James Siburn, M.D.

Applicant.

Case No.: 800-2024-105866

OAH No: 2024060767

**ORDER OF NON-ADOPTION
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit directed at whether the level of discipline ordered is sufficient to protect the public. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Kennedy Court Reporter, 920 West 17th Street, 2nd Floor. The telephone number is 714-835-0366

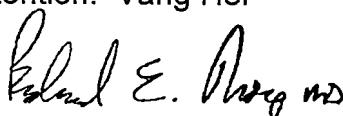
To order a copy of the exhibits, please submit a written request to this Board.

In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties' attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
(916) 263-2451
Attention: Vang Her

Date: November 25, 2024


Richard E. Thorp, Chair
Panel B

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

In the Matter of the Statement of Issues Against:

SEAN JAMES SIBURN, M.D.,

Respondent.

Case No. 800-2024-105866

OAH No. 2024060767

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 16, 2024.

Joseph P. McKenna III, Deputy Attorney General, represented complainant Reji Varghese, Executive Director, Medical Board of California (board), Department of Consumer Affairs, State of California.

Jeffrey D. Lewis, Marvin Firestone, MD..JD & Associates, LLP, represented respondent, Sean James Siburn, M.D., who was present.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on July 16, 2024.

FACTUAL FINDINGS

Background

1. Respondent received his medical degree from the Rutgers Robert Wood Johnson Medical School in 2019. In June 2019, respondent started a four-year residency program in anesthesiology at the University of California, San Francisco (UCSF).

2. On June 24, 2020, the board issued Postgraduate Training License Number PTL 1804 to respondent. Pursuant to Business and Professions Code section 2064.5, within 180 days of beginning a board-approved post graduate training program, a medical school graduate shall obtain a physician's and surgeon's postgraduate training license. A postgraduate training license is valid for 36 months. A physician's and surgeon's postgraduate training licensee may be disciplined by the board at any time for any of the grounds that would subject the holder of a physician's and surgeon's certificate to discipline. (Bus. & Prof. Code, § 2064.5, subds. (a), (b) & (d).)

Prior Disciplinary Proceedings

3. On November 30, 2022, complainant's predecessor signed an accusation in his official capacity as executive officer for the board, in Case Number 800-2021-084208, alleging one cause for discipline against respondent, that respondent engaged in unprofessional conduct, and was dishonest, when he "surreptitiously recorded sexual acts without consent of his sexual partner [Person 1], in violation of Penal Code sections 647(j)(1) and 647(j)(3)(A)" The factual basis for the accusation, in part, was:

12. On December 16, 2021, the Medical Board of California received an online complaint from Person 1 alleging that Respondent filmed the two of them engaging in sexual activities in Respondent's home without Person 1's consent.

[¶] . . . [¶]

14. On October 27, 2021, Respondent invited Person 1 to his residence. While Person 1 was engaged in sexual activity with Respondent, Person 1 noticed an iPhone under Respondent's desk concealed by clothing but the distinctive three-camera lens arrangement was visible. Person picked up the phone and saw that the device had been recording for 44 minutes, which was approximately the time Person 1 had arrived at the apartment. Person 1 stopped the recording and confronted Respondent, who admitted he intended to use the video for sexual gratification. Respondent had asked Person 1 previously if he could record them engaging in sexual activity, but Person 1 had refused.

15. On August 22, 2022, Respondent was questioned by a Board investigator. In that interview, Respondent stated he had deleted all of his text messages with Person 1. Person 1 provided the Board with copies of text exchanges with Respondent. On the night of October 27, 2021, Person 1 sent text messages to Respondent that stated, "Don't ask me to hang out again creep," and "I should call the cops

that's not ok at all." Responded replied, "I am sorry. I was wrong." Person 1 also texted, "You don't record people naked without their permission, you creepy piece of shit." Respondent replied, "Please drive home safe. I won't bother you again."

16. During his interview, Respondent told the Board investigator the first he heard of the allegation he surreptitiously recorded a sexual encounter without consent was when his employer raised the issue. However, the text messages demonstrate he was confronted with the allegation of surreptitiously recording the night of the incident and the days following it.

17. Person 1 and Respondent exchanged several text messages regarding the video. At no time when confronted with his behavior did Respondent deny the truth of the allegations. On the contrary, Respondent agreed to allow Person 1 to personally inspect his iphone and laptop to ensure the video was not backed up or still in existence. On October 30, 2021, Respondent and Person 1 texted about meeting in person to discuss the incident. . . .

4. OAH Administrative Law Judge Holly M. Baldwin conducted a hearing on the accusation on July 5 and 6, 2023.¹ During the hearing, Person 1 testified consistent with what was alleged in the accusation (that respondent had surreptitiously recorded a video of their sexual encounter). Respondent, while under oath, accused Person 1 of making false allegations against him, denied that he made any video of him and Person 1 engaged in sexual activity, and asserted the text message chain recounted above in the body of the accusation was referring to Person 1 seeing a photograph of respondent's boyfriend on respondent's iPhone and becoming enraged, rather than a surreptitiously recorded video.

5. On August 7, 2023, OAH issued the Proposed Decision, finding respondent culpable for unprofessional conduct. In the Proposed Decision, Administrative Law Judge Baldwin wrote:

[C]onsidering the evidence as a whole, [Person 1's] version of events was credible, and respondent's was not. . . .
[Person 1's] testimony was also consistent with the contemporaneous text messages exchanged between him and respondent. Most telling is respondent's failure in those text messages to deny [Person 1's multiple and explicit accusations that he secretly recorded their sexual activity]. . . . Respondent's version of events was told for the first time

¹ Transcripts of the hearing were admitted as exhibits, and the summary in this paragraph was derived from both the transcript, as well as the board's final decision and order, to be described more fully later in this decision.

at hearing, and is not corroborated by any witness testimony or documents The evidence established that respondent surreptitiously made a video recording of himself engaged in sexual activity with [Person 1], without [Person 1's consent], and that respondent lied about having done so. . . .

6. On September 6, 2023, the board issued an Order of Non-Adoption of Proposed Decision, indicating that a board panel would instead decide the case on the record, and set oral argument to take place on November 29, 2023.

7. During the oral argument before the board panel, respondent was again sworn in and testified under oath. While under oath, respondent admitted to "videotaping" his sexual encounter with Person 1 and that he did not have Person 1's consent to do so. Respondent testified in that proceeding as follows:

[T]hank you for the opportunity to speak before you today. I stand before you and accept the factual findings by the Administrative Law Judge. This has been the biggest life lesson that I have ever experienced, and I take full responsibility for my actions..... What I did I now know was selfish. It was ethically and legally wrong. My decision to betray [Person 1's] trust has brought nothing but suffering for many. It was by far the worst decision I have ever made.

... I have no active plans of hurting or killing myself, but I must admit those thoughts often go through my mind. [M]y life has fallen apart because of my stupid and careless choice. I was fired from my residency program in January of

this year for not having an active medical license since processing of the application was held up during the pendency of the accusation against me. Additionally, I was dismissed from the fellowship in which I was accepted as a result of not being able to complete my residency program.

... I have lost everything, and I can vouch to the Board I will spend the rest of my life working every day to prove I'm a good person who made a bad decision.....I understand that my choice to take advantage of [Person 1's] trust and lie about it seriously undermines my trustworthiness. . . .

8. Following the hearing, the board issued a Decision After Non-Adoption dismissing the case. The board wrote:

Considering the presented evidence, this matter asks the Board to act as a reviewer of private interactions between individuals in their personal relationships, which the Board declines to do. Respondent's conduct occurred in his residence with a consensual sexual partner, and while the partner did file a criminal complaint concerning the alleged video-recording, no criminal charges were ever brought or prosecuted. The Board does not see any connectivity between private sexual activity and the practice of medicine Thus, this matter is not appropriate for the Board's consideration. . . .

Current Statement of Issues

9. Respondent filed an application for a Transition from Postgraduate Training License to a Physician's and Surgeon's License on March 3, 2022, while the above-referenced prior disciplinary matter was pending.

10. On June 20, 2024, complainant filed the Statement of Issues in this case in his official capacity, denying respondent's application. This Statement of Issues does not seek to re-litigate the subject matter of the prior disciplinary matter (i.e. surreptitiously recording Person 1). Rather, the two causes for denial in this matter are:

- First Cause for Denial: unprofessional conduct, for committing dishonest or corrupt acts, with the intent to substantially benefit himself, when respondent lied in the July 5-6, 2023, administrative hearing, by denying, under oath, that he surreptitiously recorded Person 1 and himself during their sexual encounter on October 27, 2021. Complainant alleges respondent's dishonesty in the administrative hearing is evidenced by his later admission, under oath, during the oral argument before the board panel on November 29, 2023, that he actually did make the surreptitious recording of the sexual encounter between himself and Person 1 without Person 1's consent, and he lied when he denied the accusation regarding the same. The first cause for denial further alleges that the dishonest or corrupt act of lying is substantially related to the qualifications, functions, and duties of a physician and surgeon.
- Second Cause for Denial: general unprofessional conduct, for committing "perjury and giving false testimony during the July 5-6, 2023, hearing," for the same reasons noted in the first cause for denial.

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

Cross-Examination of Respondent in This Hearing

12. Complainant relied on the certified transcripts of the July 5-6, 2023, administrative hearing and the November 29, 2023, board panel hearing to show the instances of dishonesty and cause for denial. However, complainant also attempted to question respondent about the specific instances in the administrative hearing transcript where he was dishonest. Respondent refused to answer any questions posed by complainant's counsel, and asserted his Fifth Amendment rights² not to testify. Notably, respondent already admitted, under oath, in the November 29, 2023, hearing before the board panel that he was essentially not honest in the original administrative hearing when he stated that he did, in fact, make the surreptitious recording, so it is unclear why respondent would now refuse to provide any testimony. Because respondent did not testify at this hearing, he did not explain why he was dishonest at the July 2023 administrative hearing, did not explain what he has done since that hearing to rehabilitate himself, and did not provide any assurances to the board that he can be trusted not to be dishonest in the future.

13. Regarding the July 5-6, 2023, administrative hearing, complainant pointed out several instances in the transcript where respondent either denied making a recording or was otherwise dishonest. A few of them are noted below:

² Evidence Code section 913 precludes a negative inference being drawn when a fifth amendment privilege is exercised. However, Evidence Code section 413 permits the trier of fact to consider a party's failure to explain or deny the allegations, and that was how this testimony was considered.

- On page 181 of the transcript, respondent was asked about the text message exchange noted above concerning the surreptitious video he had made, and why he did not respond to Person 1's text messages. Respondent answered that he did "not hear anything about the video" until the next day, despite the text messages showing Person 1 was asking him about the video. Respondent also said he did know anything about any video until people at work the next day started showing him accusations that had been posted about him all over the internet, and that he was being stalked. Respondent testified when his employer asked him about the video, he denied it and said he was being stalked.
- On page 194 of the transcript, the Deputy Attorney General asked respondent about the video, after pointing out that respondent refused to previously answer the board investigator's questions about whether he surreptitiously recorded the video. After respondent confirmed he was no longer asserting his Fifth Amendment rights, he stated he "was innocent" and there was "no evidence of anything." Respondent instead claimed that he was being stalked by Person 1.
- On page 236 of the transcript, respondent accuses Person 1 of "falsely accusing" him about making the surreptitious video and said it "terrified [him] because it wasn't true." Respondent said he did not respond to Person 1's text messages inquiring about the video because he was "terrified" of "retaliation."
- On page 237 of the transcript, respondent, after again accusing Person 1 of trying to ruin his life, stated, "there was no video."

- On page 242 of the transcript, respondent accused Person 1 of putting all the statements regarding the video in his text messages to respondent to make respondent "look guilty."
- On page 248, respondent testified that "none" of Person 1's "allegations were true."

14. Throughout the July 2023 administrative hearing, respondent continuously denied he had ever made a video of himself and Person 1 engaged in sexual relations without Person 1's knowledge or consent, and also accused Person 1 of making up the false accusation. He accused Person 1 of stalking and questioned Person 1's character. Despite quite a lengthy cross-examination and opportunity to retract any of his testimony, respondent did not.

15. On November 29, 2023, during the oral argument before the board panel, respondent admitted, generally, that his earlier testimony (at the hearing) with respect to the video was dishonest. Below is a portion of the transcript of that proceeding, and some of the statements respondent mad to the board:

[Respondent], having been duly sworn . . . testifies as follows: This has been the biggest life lesson that I have ever experienced, and I take full responsibility for my actions. It was wrong, and it does not follow any pattern of behavior that I have ever previously demonstratedWhat I did I now know was selfish. It was ethically and legally wrong. My decision to betray [Person 1's] trust has brought nothing but suffering for many. It was by far the worst decision I have ever made. I regret it and self-shame

consumes my every thought on a daily basis.....It is the first thing that comes to mind when I wake up and the last thing on my mind as I attempt to go to sleep each night. I have no active plans of hurting or killing myself, but I must admit those thoughts often go through my mind. My thought, my life has fallen apart because of my stupid and careless choice. I was fired from my residency program in January of this year for not having an active medical license since processing of the application was held up during the pendency of the accusation against me.....I'm under extreme financial pressureIt's been challenging to find any work.....My parents are also suffering, experiencing financial pressure and are currently planning to sell their home in order to help me pay my legal bills and provide support for me. My bad actions completely destroyed their lives and retirement, I have brought so much shame not only to my own life but to theirs as wellMy ex-fiancé called off our engagement, [and] left me because of my decision to cheat.....I assure you that I have never filmed myself or others without their permission at any time prior to this experience nor since. This action did not take place with a patient, I want to emphasize that. This occurred outside the practice of medicine. . . .

Arguments

16. Respondent argued at hearing and in his hearing brief that the Statement of Issues "never should have happened" because it concerns "issues not connected to the practice of medicine." Respondent argued that collateral estoppel should apply because this is essentially re-litigating the original case that the board dismissed. Respondent argued that there has been a "profound" delay in bringing this case, and the application filed by respondent should have been decided long ago. Respondent finally argued that since the board found that the earlier action involved private conduct unrelated to the practice of medicine, respondent's statements in the original proceeding are not "material." Respondent argued the Statement of Issues should be dismissed, and respondent's application for a Transition from Postgraduate Training License to a Physician's and Surgeon's License should be granted.

17. Complainant argued that to suggest that a licensee can lie his way through a professional disciplinary proceeding, and not be prosecuted for it, is absurd. Respondent's argument regarding collateral estoppel or re-litigating the same matter is without merit because the original disciplinary proceeding did not involve any allegations of dishonesty. The board panel hearing also involved only issues of the proposed penalty, so it would not have been appropriate to take what was said in those proceedings and go back and amend the original accusation. The opportunity to amend the original accusation ended when the record closed. Lying is conduct that constitutes moral turpitude, and it is a "bizarre" position to suggest that respondent's conduct of lying in an official board proceeding is not substantially related to the qualifications, functions, and duties of a physician. Respondent has not met his burden.

18. Respondent's arguments are all without merit. Respondent's argument that his dishonesty in the previous proceeding is not connected to the practice of medicine is unpersuasive. For the reasons discussed more fully in the Evaluation portion of the Legal Conclusions below, the trait of honesty is absolutely connected to the qualifications, functions, and duties of a physician and surgeon.

Respondent's argument that collateral estoppel should apply because this is essentially re-litigating the original case that the board dismissed is also incorrect. The doctrine of collateral estoppel, or issue preclusion, precludes complainant from re-litigating an issue previously decided. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342-344.) The collateral estoppel doctrine applies only if several threshold requirements are fulfilled: the issue sought to be precluded from re-litigation must be identical to that decided in a former proceeding; this issue must have been actually litigated in the former proceeding; it must have been necessarily decided in the former proceeding; the decision in the former proceeding must be final and on the merits; and the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. Even if these threshold requirements are satisfied, the doctrine will not be applied if such application would not serve its underlying fundamental principles. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 848-849.) Collateral estoppel clearly does not apply here because the original administrative proceeding involved the conduct of secretly recording a video of Person 1 without his consent, whereas this hearing involves an application being denied for lying during official board proceedings. The two issues are not identical and dishonesty for lying to the board was not litigated in that proceeding.

Respondent argued that there has been a "profound" delay in bringing this case, and the application filed by respondent should have been decided long ago. This

is essentially a laches argument. A successful laches defense requires the establishment of two elements: An unreasonable delay in bringing the action, and resulting prejudice to the responding party. (*Mt. San Antonio Community College District v. Public Employment Relations Board* (1989) 210 Cal.App.3d 178; *Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1.) Respondent's application at issue in this case was filed in March of 2022. On November 30, 2022, the accusation at issue in the original administrative hearing was filed. It would not have been appropriate to make a ruling on respondent's application during the pendency of the prior disciplinary proceeding. Further, that case was not yet complete at the time of the hearing before the board panel on November 29, 2023, which was the first time complainant discovered respondent's dishonesty. Thereafter, complainant promptly investigated and filed the Statement of Issues in this case, on June 20, 2024, resulting in this hearing less than two months later. There is nothing unreasonable or unusual about the timing of this matter.

Regarding respondent's argument that since the board found that the earlier action involved private conduct unrelated to the practice of medicine, and that respondent's statements in the original proceeding are not "material," it is noted that materiality is not a requirement to prove unprofessional conduct based on dishonesty, as alleged in the first cause for discipline. Nor is it a requirement to prove unprofessional conduct for giving false testimony, as alleged in the second cause for discipline. Finally, although the board in their Decision After Non-Adoption explained that it did "not see any connectivity between private sexual activity and the practice of medicine," this case has nothing to do with private sexual activity; this case has to do with lying during an official disciplinary proceeding before the board.

LEGAL CONCLUSIONS

1. The Medical Practice Act governs the rights and responsibilities of the holder of a physician's and surgeon's certificate. (Bus. & Prof. Code, §§ 2000 et seq.) Protection of the public is the highest priority for the board in exercising its disciplinary authority and is paramount over other interests in conflict with that objective. (Bus. & Prof. Code, § 2001.1.)

2. Business and Professions Code section 475, provides:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

[¶] . . . [¶]

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

3. Business and Professions Code section 2234 provides:

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

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

[¶] . . . [¶]

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

(f) Any action or conduct that would have warranted the denial of a certificate.

4. Business and Professions Code section 2221, subdivision (a), provides:

The board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of their license. The board, in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to specified terms and conditions.

5. Except as otherwise provided by law, a party asserting at an administrative hearing that he or she should be granted a certain benefit, such as a license or permit, has the burden to establish by a preponderance of the evidence that he or she should be granted that benefit. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-52.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

Evaluation

6. Cause exists to deny respondent's application for a Transition from Postgraduate Training License to a Physician's and Surgeon's License pursuant to Business and Professions Code sections 475, subdivisions (a)(3) and (a)(4); and 2234, subdivisions (e), and (f); as alleged in the first cause for denial. Respondent committed dishonest and corrupt acts when he lied during a board disciplinary hearing. Given that respondent did not testify or otherwise provide any reason for lying, no mitigating evidence, no character witnesses, no character letters, or anything else that would establish rehabilitation was introduced – respondent did not meet his burden to show his application should be granted.

7. Cause exists to deny respondent's application for a Transition from Postgraduate Training License to a Physician's and Surgeon's License pursuant to Business and Professions Code sections 2221, subdivision (a), and 2234, subdivisions (a) and (e), as alleged in the second cause for denial.

8. Respondent continuously denied that he ever made a video recording of himself and Person 1 in the original July 5-6, 2023, administrative hearing. He did so after swearing under oath to tell the truth. The hearing was an official proceeding conducted by OAH for the board, who oversees discipline of physicians and surgeons in California. In that proceeding, respondent also accused Person 1 of being a stalker and making up the allegation, among other things. The act of surreptitiously recording Person 1 was the core issue in the original administrative proceeding; by not being honest about it, respondent deprived the board of the opportunity to obtain a full and complete record regarding the underlying facts of his conduct. By depriving the board of that record, and instead creating a false story to cover up his conduct, respondent essentially interfered with the board's ability to protect the public. While respondent's

later testimony during the board panel's November 29, 2023, oral argument reflected some appreciation for the gravity of what he did, and showed that the testimony he had given in the earlier proceeding was false, it appeared more focused on how respondent's poor decision to record Person 1 has created problems for respondent; there was very little reflection on the affect respondent's conduct had on the disciplinary process or the integrity of the medical profession.

A physician is, at all times, expected to exhibit good moral character and must be trusted to conduct him or herself with the utmost integrity. Doctors are often called upon to testify in official proceedings, make official reports, and provide statements in official investigations, not to mention their record keeping must be honest and accurate. Honesty, and conducting oneself in a manner that inspires confidence, goes to the heart of the medical profession. Being dishonest, under oath, in a professional disciplinary proceeding before the board, is not only substantially related to the qualifications, functions, and duties of a physician and surgeon, it is misconduct that strikes at the very core of the profession.³ It is not necessary for the misconduct forming the basis for discipline to have occurred in the actual practice of the profession (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402); intentional dishonesty alone demonstrates a lack of moral character, and satisfies a finding of unfitness to practice medicine. (*Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305.)

³ To be clear, this case is not about respondent's private conduct or what occurred between him and Person 1. Rather, it is about lying during an official proceeding concerning the accusation that stemmed from the making of an *illegal* surreptitious recording.

9. What is clear from the original administrative hearing and the later oral arguments before the board panel, is that respondent is more than willing to tell the board what he would like it to hear in order to either hide his unethical conduct or mitigate proposed discipline. It was bad enough that respondent lied with such ease in the original administrative hearing concerning the surreptitious filming of Person 1. What is even worse is that respondent continued to spin the lie throughout the hearing by continuously accusing Person 1 of not being truthful. Further, when he went before the board in November 2023, while he acknowledged responsibility for what occurred, most of his statement to the board was about the adverse effect the disciplinary action had on his life; not a recognition of how serious the conduct of lying in an official disciplinary proceeding is, or how it reflects on the medical profession as a whole.

10. Additionally, respondent presented *no* evidence to support granting his application, such as evidence about his current or former work, performance evaluations, or character witnesses testimony. His refusal to provide any testimony regarding the dishonesty leaves a notable absence of any evidence that respondent has learned from his experience, that he appreciates the seriousness of committing perjury in an official proceeding, and would be honest in the future, even if doing so could pose adverse consequences to him. In sum, respondent has left an evidentiary void to establish he has been rehabilitated or has the requisite character to practice medicine. Under these circumstances, he failed to establish the public would be protected even with a probationary license. Respondent's application must therefore be denied.

ORDER

The application of respondent Sean James Siburn for a Transition from Postgraduate Training License to a Physician's and Surgeon's License is denied.

DATE: August 15, 2024


Kimberly Belvedere (Aug 15, 2024 10:23 PDT)

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings