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

In the Matter of the Accusation and Petition to Revoke Probation Against: David R. Yutuc, M.D. Physician's & Surgeon's Certificate No A 81938 Petitioner.	Case No.: 800-2024-105056

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by Albert Garcia, Esq., attorney for David R. Yutuc, M.D., for the reconsideration of the decision in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on June 16, 2025.

IT IS SO ORDERED: June 16, 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 Accusation and Petition to Revoke Probation Against:	**Case No. 800-2024-105056**
David R. Yutuc, M.D.	**ORDER GRANTING STAY**
Physician's & Surgeon's Certificate No. A 81938	**(Government Code Section 11521)**
Respondent.	

Complainant Reji Varghese, Executive Director, has filed a Request for Stay of execution of the Decision in this matter with an effective date of June 11, 2025, at 5:00 p.m.

Execution is stayed until June 16, 2025, at 5:00 p.m.

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

DATED: June 6, 2025

for

Reji Varghese
Executive Director
Medical Board of California

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

In the Matter of the Accusation and Petition to Revoke Probation Against: David R. Yutuc, M.D. Physician's and Surgeon's Certificate No. A 81938 Respondent.	Case No. 800-2024-105056

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 June 11, 2025 .

IT IS SO ORDERED May 12, 2025.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, Chair
Panel B

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

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

DAVID R. YUTUC, M.D., Respondent

Physician's and Surgeon's Certificate No. A 81938

Agency Case No. 800-2024-105056

OAH No. 2024120136

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on April 1 and 2, 2025.

Andres T. Carnahan, Deputy Attorney General, Department of Justice, State of California, represented complainant, Reji Varghese, Executive Director, Medical Board of California (board), Department of Consumer Affairs, State of California.

Albert Garcia, Attorney at Law, represented David R. Yutuc, M.D., respondent, who was present for all but the first half hour of the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on April 2, 2025.

PROTECTIVE ORDER SEALING CONFIDENTIAL RECORDS

A protective order has been issued sealing the exhibits identified in that order. After submission, two more exhibits (28 and B) were sealed as they contained confidential information. It is not practical to redact those documents. This sealing order governs the release of the documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517, may review the documents subject to this order, provided that such documents are protected from release to the public.

FACTUAL FINDINGS

Licensing History and Jurisdictional Background

1. The board issued Physician's and Surgeon's Certificate No. A 81938 to respondent on February 14, 2003. The certificate expired on February 28, 2025, and is currently in delinquent status. The board retains jurisdiction to discipline respondent's expired license pursuant to Business and Professions Code section 118, subdivision (b).

2. On September 20, 2017, the board's then-Executive Officer filed an accusation entitled *In the Matter of the Accusation Against David R. Yutuc, M.D.*, Case No. 800-2015-013962, alleging gross negligence regarding respondent's care and treatment of 17 patients, repeated negligence regarding his care and treatment of

those 17 patients plus three more patients, failure to maintain adequate and accurate records for all 20 patients, and general unprofessional conduct.

3. Effective July 27, 2018, pursuant to a stipulated settlement signed by respondent, who was represented by counsel, the board revoked respondent's license, stayed the revocation, and placed his license on probation for five years with various terms and conditions. Those terms included requirements that respondent complete coursework (Condition Nos. 1, 2 and 3), participate in a clinical competence assessment program (Condition No. 4), obtain a practice and billing monitor who would submit quarterly reports to the board (Condition No. 5), obey all laws (Condition No. 8), submit quarterly declarations to the board (Condition No. 9), acknowledge that failing to comply with any of the probation conditions constituted a violation of probation (Condition No. 14), and that respondent notify the board of any periods of non-practice lasting more than 30 calendar days, with the caveat that: "A Board-ordered suspension of practice shall not be considered as a period of non-practice" (Condition No. 15).

4. Respondent's probation was originally set to expire on July 27, 2023.

5. On September 27, 2023, the board issued a Cease Practice Order (CPO) due to respondent's failure to comply with probation, as detailed below. The CPO was terminated on February 16, 2024.

6. During the December 28, 2023, quarterly probation meeting, respondent's probation monitor had concerns regarding respondent's health given his appearance at the meeting. As a result, she requested a new investigation.

7. A second request for investigation was made in February 2024, due to the probation monitor's concerns respondent violated the CPO, as detailed below.

8. Based upon the findings made during those new investigations, including the neurological exam respondent underwent, an Interim Suspension Order (ISO) was issued on September 6, 2024, suspending respondent's license pending a hearing. His license remains suspended pending the outcome of this hearing.

9. The accusation and petition to revoke probation was signed by complainant on September 27, 2024, seeking to discipline respondent's license and revoke his probation. The pleading alleged one cause for action: having a mental or physical illness affecting competency; three causes for discipline: committing dishonest or corrupt acts, violating the Medical Practice Act, and committing general unprofessional conduct; and four causes to revoke probation: violating Condition Nos. 5 (practice monitor), 9 (quarterly declarations), 14 (violating the Cease Practice Order), and 8 (obey all laws).[1] The pleading referenced the board's 2018 Order as a disciplinary consideration and sought costs.

10. Complainant served all required jurisdictional documents on respondent who timely filed a notice of defense, and this hearing followed.

Respondent's Education and Employment History

11. Respondent obtained his Bachelor of Arts in psychology in 1979 at the University of the Philippines Clark Air Base. He received his Doctor of Medicine in 1987

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[1] The pleading alleged that respondent violated Condition No. 8 when he violated Business and Professions Code sections 2227, 2234, and 2266, but no evidence of respondent violating Section 2266 was offered, and it is presumed that was a typographical error in the pleading.

from Angeles University Foundation College of Medicine in the Philippines. He did his residency in anesthesia at State University of New York Health Science Center in New York, and cardiothoracic anesthesia training at Tufts-New England Medical Center in Boston. He is board eligible in anesthesia. He has received numerous honors and awards, including being recognized as the "Most Outstanding Intern" during his internship at Central Luzon Regional Hospital in 1987-1988. He was a clinical instructor in the Philippines, has worked at several clinics, medical centers and hospitals, and is a member of many medical associations.

Evidence Introduced at Hearing

12. Five witnesses testified, including respondent, and numerous documents were introduced. The findings reached herein are based on that evidence.

13. On July 31, 2018, respondent's original probation monitor sent him a "Probation Compliance" letter confirming the terms of his probation and their discussion at his intake interview.

14. Rachel Asendorf, a board Probation Inspector, was assigned as respondent's probation monitor effective April 1, 2022.

15. While on probation, respondent received multiple Non-Compliance letters due to his violating several probation terms and conditions. Additionally, because of his multiple periods of non-practice time, respondent's probation was repeatedly extended. Currently, his probation is set to end on July 29, 2027.

Violations of Probation Condition Number 5

16. Probation Condition Number 5 required respondent to have an approved practice monitor who would submit quarterly reports to the board. There were several

periods of time during which no practice monitor was in place because respondent was not practicing or did not have a designated practice monitor.

17. On July 3, 2019, respondent was sent a Non-Compliance letter for not having an approved practice monitor. He was given until July 8, 2019, to comply. The letter stated that respondent's requested practice monitor had not been approved because he did not meet the board's criteria. Respondent was given until July 8, 2019, to have a practice monitor approved and in place.

18. On July 20, 2020, a letter was sent to respondent's new practice monitor confirming he was approved starting July 15, 2020. The letter provided the practice monitor with the dates when quarterly reports were due.

19. The board's "Quarter 4 October - December 2020" report identified the approved practice monitor.

20. On January 28, 2021, respondent was sent a Non-Compliance letter because his practice monitor failed to submit quarterly reports that were due October 10, 2020, and January 10, 2021. Respondent was given until February 5, 2020, to submit those reports.

21. As of April 5, 2021, respondent's practice monitor had not submitted reports for the third and fourth quarters of 2020.

22. On May 13, 2021, a Citation Order was issued to respondent for his failure to submit outstanding practice monitor reports for the third and fourth quarters of 2020. He was fined $350 and issued an Order of Abatement requiring him to submit those reports.

23. On April 20, 2022, respondent was sent a Non-Compliance letter because his approved practice monitor failed to submit the required reports. Respondent was given until May 5, 2022, to submit the name and qualifications of a replacement practice monitor

24. On August 17, 2022, respondent was sent a letter advising him that he had paid the $350 fine required by the Citation Order, but had not complied with the Order of Abatement requiring him to submit practice monitor reports. To date, those reports were not submitted.

25. On December 28, 2022, a new practice monitor was approved. That practice monitor was given information regarding his roles and responsibilities.

26. A May 24, 2023, Non-Compliance letter was sent to respondent because his practice monitor failed to submit quarterly reports for the first, second, third, and fourth quarters of 2022, and the first quarter of 2023, and because respondent had not submitted his declaration for the first quarter of 2023. Respondent was given until June 5, 2023, to comply.

27. A June 29, 2023, Non-Compliance letter was issued when respondent failed to provide the practice monitor reports by June 5, 2023, as required by the May 24, 2023, Non-Compliance letter. He was given until July 7, 2023 to comply.

28. On September 6, 2023, a CPO was issued to respondent because he failed to obtain approval for a replacement practice monitor within 60 calendar days of the resignation of his other practice monitor. Respondent advised Inspector Asendorf that he was seeking to enroll in the Physician Assessment and Clinical Education (PACE) Physician Enhancement Program (PEP), at the University of California San Diego

(UCSD) School of Medicine. PACE PEP is accepted by the board as an alternative to a practice monitor.

29. Inspector Asendorf told respondent that the CPO would not be lifted until the board received a letter from PEP advising that he was officially enrolled.

30. On February 16, 2024, the CPO was terminated because respondent was officially enrolled in PEP.

31. A June 21, 2024, Non-Compliance letter was sent to respondent advising him that on May 6, 2024, PEP notified the board that PEP had informed respondent it had not yet received his outstanding PEP submissions and payments. As such, effective immediately, PEP suspended him from participating in their program until those issues were resolved. As required by Probation Condition Number 5, if respondent's practice monitor resigns or is no longer available, he must submit for approval the name and qualifications of a replacement practice monitor within five days. Respondent failed to do so. He was given until June 26, 2024, to comply and advised that his failure to do so by July 6, 2024, would result in a CPO being issued.

Violations of Probation Condition Number 9

32. Probation Condition Number 9 required respondent to submit quarterly declarations to his probation monitor. Respondent failed to do so numerous times during probation.

33. The probation records and Inspector Asendorf's testimony established that respondent submitted late quarterly declarations for the third quarter of 2018, the second quarter of 2019, the second quarter of 2020, the fourth quarter of 2022, and the first quarter of 2024.

34. The May 24, 2023, Non-Compliance letter, referenced above, also cited respondent for failing to submit his quarterly declaration for the first quarter of 2023. Respondent was given until June 5, 2023 to comply.

35. Respondent was required to submit his quarterly declarations under penalty of perjury, attesting to the truthfulness of the statements contained therein. Many of his declarations falsely stated that he was complying with probation when, as shown by the numerous violations he committed, he was not. His declarations also failed to fully disclose all his places of employment.

Violations of Probation Condition Number 14

36. Probation Condition Number 14 required respondent to comply with all terms and conditions of his probation.

VIOLATION OF CPO

37. On September 6, 2023, the board issued a CPO that was not lifted until February 16, 2024.

38. As part of the PEP, respondent submitted his anesthesia records for review. Among those records, was one from Chino Premier Surgery Center (Chino) that had a date of service of January 17 with the year redacted. Inspector Asendorf contacted Chino and learned that respondent worked there approximately once per month, providing anesthesia for pain cases, not surgical cases, providing monitored anesthesia care or conscious sedation, and had most recently provided anesthesia services in January 2024.

39. Inspector Asendorf asked respondent during their first quarter of 2024 quarterly interview if he had practiced while the CPO was in place. Respondent denied

working during the CPO. He said he last worked at Chino in July or September 2023. When she asked him why, again, he had not submitted a Notification of Decision with a copy of the decision informing the board that he worked at Chino and that Chino was aware of the board's decision, respondent stated that because he only rarely worked there, he did not think to do so.

40. Given that respondent was practicing when the CPO was in place, his quarterly declaration attesting to being in compliance with the terms of his probation was false.

41. Owing to her concerns that respondent practiced while a CPO was in place, Inspector Asendorf submitted a request to initiate a new case to the board's investigation unit.

FALSE STATEMENTS REGARDING EMPLOYMENT

42. On July 29, 2023, Inspector Asendorf met with respondent at Cornerstone Surgical Center (Cornerstone), where respondent claimed to work. Respondent told Inspector Asendorf that Cornerstone was his primary place of practice where he worked 30 hours per week. Following their meeting, the Cornerstone office manager was waiting outside for Inspector Asendorf. The office manager stated she overheard Inspector Asendorf and respondent, and said respondent had not worked at Cornerstone since November 2022, and she "was furious when he just showed up today, unannounced." She reported trying to contact respondent multiple times when his license was in delinquent status, and he had "'ghosted'" her and did not respond to her messages or calls. The office manager was upset that respondent was lying to a board representative about working at Cornerstone. The office manager also advised her that respondent was working at another facility in El Monte.

43. Thereafter, Inspector Asendorf tried repeatedly to contact respondent, to no avail.

FAILURE TO DISCLOSE PLACES OF EMPLOYMENT

44. Probation Condition Number 6 required respondent to provide his employers and malpractice carrier with a copy of the decision and accusation, and submit proof of having done so via a Notification of Decision form.

45. On April 17, 2023, respondent was sent a Non-Compliance letter because he failed to provide proof that Cornerstone had been provided with copies of the decision and accusation. Respondent was given until April 24, 2023, to comply.

46. On October 16, 2023, a Non-Compliance letter was sent to respondent requiring he submit proof of malpractice insurance.

47. On July 15, 2024, respondent was sent a Non-Compliance letter for failing to provide proof he had provided Premier Surgery Center, which he identified as an employer, with a copy of the decision and accusation. He was given until July 23, 2024, to comply.

48. After learning from the Cornerstone office manager that respondent may be working at a facility in El Monte, Inspector Asendorf determined the identity of that facility, Rosemead Aesthetic Surgery and Medical Center (Rosemead), and conducted two unannounced visits there in August 2023. She learned that respondent had been providing anesthesia services at the facility, as recently as a few days before her unannounced visits. The Rosemead office manager confirmed that respondent had not provided her with a Notification of Decision form or a copy of the board's decision.

49. Respondent had never disclosed working at Rosemead. Inspector Asendorf said respondent failed to identify all of his places of employment in his quarterly declarations.

Inspector Asendorf's Additional Testimony Regarding Probation

50. There were "periods of time" when Inspector Asendorf attempted to contact respondent, to no avail. On one occasion in 2023 when she finally reached him, he told her that he had been in the hospital and had no access to his phone. Inspector Asendorf documented in her report the three attempts she made in February and March 2023 to reach respondent, and the March 23, 2023, phone call from him advising her about his hospitalization. During that call, respondent said he was having trouble regulating his blood pressure, was not practicing, and was considering surrendering his license. He asked about the license surrender process.

51. During the call, Inspector Asendorf scheduled an in-person meeting which took place on March 30, 2023. Respondent appeared at that meeting wearing medical scrubs with his shirt inside out, and appeared "unkempt and disheveled." Inspector Asendorf documented respondent's appearance because it was something out of the ordinary and it might be related to his mental or physical health.

52. Inspector Asendorf agreed respondent never told her he was hospitalized "several times."

53. Inspector Asendorf had a quarterly interview with respondent on December 28, 2023. Respondent's appearance was "overall unkempt and disheveled." He wore medical scrubs, and walked slowly with a walking cane while holding onto the hallway wall with his other hand. Respondent stated he still has high blood pressure and frequently loses his balance. He cannot stand for more than three to five minutes.

He said his mind still "works good" and "as an anesthesiologist he can just sit." He also advised that "in the past while working, he notified staff to keep an eye on him, so he does not 'dose off' while working. He stated that if he starts to sleep he notified staff to wake him up." He also "sometimes sleeps up to 16 hours a day due to fatigue."

54. Respondent argued that documenting his appearance made Inspector Asendorf a biased witness. This argument was unpersuasive. She had a duty as a probation monitor to record what she observed, especially when she observed something concerning. Moreover, Inspector Asendorf presented as a gregarious, upbeat witness who was trying to have her assigned probationer, respondent, successfully comply with probation. She did not present as a biased witness.

55. Inspector Asendorf said respondent's dishonesty with her made it difficult to properly monitor him. He had a pattern of contradicting himself and she felt that he was lying to her. He did not advise her of all the places where he worked. She always gave him a chance to "fix things" and submit reports, but he did not do so. It was very hard to monitor him.

VIOLATIONS OF PROBATION CONDITION NUMBER 8 (OBEY ALL LAWS)

56. Respondent's probation required him to obey all laws. Given the findings below that respondent violated Business and Professions Code section 2234, he violated this term of his probation.

PACE Evaluation

57. Probation Condition Number 4 required respondent to undergo a clinical competency assessment, which was performed by PACE. After conducting that assessment, in August 2019, PACE determined that respondent's "knowledge base,

communication and perioperative management assessed during an oral clinical exam and simulation case scenarios meet minimum standard to practice Anesthesia safely."

58. Respondent received a Category 2 rating, which meant "Pass with Recommendations." PACE recommended (1) that respondent follow-up with his personal healthcare provider regarding the findings and recommendations made by the PACE examining physician, and (2) that he undergo a neuropsychological evaluation based on his performance on the MicroCog, cognitive screening evaluation.

59. Given PACE's recommendation, respondent was provided with the contact information for the board-approved physician who was to perform that neuropsychological evaluation. On November 21, 2019, respondent was advised that the board had received the results of the evaluation performed on October 10, 2019. That physician determined respondent was safe to practice medicine. Of note, this exam was performed before respondent's 2022 stroke.

New Board Investigations

60. Carlos Silva, an investigator with the Division of Investigation, Health Quality Investigation Unit, was assigned to investigate whether respondent was safe to practice and if he had violated the CPO.

61. On February 23, 2024, Investigator Silva received a call from respondent who told him he had applied to get a monitor and to have the CPO lifted.

62. As part of Investigator Silva's investigation, respondent underwent both mental and physical examinations. The psychiatrist determined respondent did not have a mental condition making him unsafe to practice. Surasak Phuphanich, M.D., the

neurologist who performed the physical exam, referenced below, determined respondent suffered from a physical illness making him unsafe to practice.

63. Owing to Dr. Phuphanich's findings, the board sought an ISO which was issued on September 6, 2024. The ISO found respondent was unsafe to practice due to his physical illness.

64. Investigator Silva also determined respondent violated the CPO on January 17, 2024, at Chino when he provided anesthesia services to nine patients.

65. On October 14, 2024, Investigator Silva interviewed Bryan Lee, M.D., the surgeon who worked with respondent on January 17, 2024. Dr. Lee advised Investigator Silva he was not aware a CPO was in place, nor did respondent tell him.

Evidence Regarding Mental or Physical Illness

66. In addition to the probation violations, complainant also alleged that respondent was mentally or physically unable to safely practice. Complainant called Dr. Phuphanich, the neurologist referenced above, as his expert. Respondent refuted he was unsafe to practice and called Moses Salibian, M.D., as his expert. Each physician testified and authored reports consistent with their testimony.

SURASAK PHUPHANICH, M.D.'S QUALIFICATIONS

67. Dr. Phuphanich received his Bachelor of Science from Mahidol University in Thailand in 1973. He received his medical degree from Ramathibodi Hospital, Mahidol University, in Thailand in 1975. He did a rotating internship and residency in internal medicine and psychiatry at Ramathibodi Hospital, Mahidol University, from 1975 to 1977. He did a residency in internal medicine from 1977 to 1978 at St. Francis Hospital in Illinois. He did a residency in neurology from 1978 to 1981 at the University

of Illinois Hospital. He was a Clinical Research Fellow in neural-oncology and brain tumor research at the Center Department of Neurosurgery at University of California, San Francisco, from 1981 to 1983.

68. Dr. Phuphanich has been licensed in numerous states and is board certified by the American Board of Neurology and Psychiatry as a neurologist. He has taught as a professor of neurology and neurosurgery, oncology, hematology, and medicine at several universities. He currently is a traumatic brain injury consultant for Veterans Evaluation Services, a medical legal consultant, an expert reviewer for the board, and an independent medical examiner consultant. He has been a member of numerous professional societies and provided editorial services for several publications. He has authored many publications. He has received several honors and awards, including being recognized several times as a "Top Doctor."

SURASAK PHUPHANICH, M.D.'S OPINIONS

69. On May 28, 2024, Dr. Phuphanich examined respondent and authored a report. He documented respondent's past medical history, including the stroke he suffered on June 9, 2022, in the operating room and following which he was hospitalized for three days. Respondent was on probation at the time of his stroke. Dr. Phuphanich reviewed records, took histories, and performed a physical examination.

70. He noted that respondent had cataracts in both eyes, walked with a cane, had difficulty getting on and off the sofa, had a left big toe ulcer with discoloration of both tibial areas and diminished pedal pulses with dry scaly skin and brittle toenails. Respondent had mild left central facial weakness. He had mild weakness of his left quadriceps and hamstring, mild atrophy of both first interosseous and thenar eminence. He had decreased sensation to light touch, pinprick simulation as stocking

and glove to midcalf and forearm. Respondent had mild dysmetria (poor hand coordination) and dysdiadochokinesis (an impaired ability to perform rapid, alternating movements) with mild tremor of both hands, left greater than right. Respondent was "unable to tandem walking from unsteady gait" and dragged his left leg. His reflexes were 1+ and absent both ankle jerks. He had positive bilateral palmental [*sic*] reflexes. Respondent reported smoking one pack of cigarettes for the past four years, and smoking seven to eight cigarettes a day following his stroke.

71. In his report, Dr. Phuphanich cited the records from respondent's primary care physician, Corazon Medina, M.D., who documented an examination of respondent on February 28, 2024, wherein she noted respondent had gait imbalance, and fell five times in the last year. Dr. Phuphanich testified that those falls are not normal for a person respondent's age, and they are directly related to his previous stroke which affected his balance, coordination, and gait because respondent suffered a brain stem stroke. The brain stem is the area of the brain that regulates balance and coordination.

72. Based on his physical examination of respondent and review of records, Dr. Phuphanich found that respondent had multiple medical issues with long-standing diabetes and complication of peripheral arterial disease, angiopathy, peripheral neuropathy, hypertension, chronic kidney disease stage 3b, hyperlipidemia, angina, cardiomyopathy/congestive heart failure, and chronic obstructive pulmonary disease/bronchitis. Following his stroke, respondent continues to have dysmetria, hand tremors, unsteady gait with poor balance, and mild weakness of his left leg. There was evidence of microvascular diseases from poor diabetes and hypertension control on the brain CT/MRI. Respondent had stopped taking medication because he was afraid of hemorrhage complication, but that put him at very high risk for acute stroke or myocardial infarction with his underlying diseases.

73. Dr. Phuphanich opined that respondent's difficulty with tremor of both hands, left more than right, and his poor coordination, may impact his ability to start venous access or intubation. He was also at a very high risk for acute stroke or myocardial infarction and it may occur again in the operating room like the last stroke.

74. Dr. Phuphanich diagnosed respondent with:

1. Right Brainstem Infarction with weakness of left leg and unsteady gait/poor balance.

2. Old Bilateral Thalamic Lacunar Infarctions.

3. Left Internal Carotid Stenosis.

4. Angina Pectoris with Congestive Heart Failure and Cardiomyopathy.

5. Diabetes Mellitus Type II.

6. Diabetes Mellitus with Angiopathy, neuropathy.

7. Peripheral Arterial Disease.

8. Atherosclerosis of Aorta.

9. Left Big Toe Ulcer from Diabetes Complication.

10. Hypertension.

11. Chronic Kidney Disease.

12. Chronic Obstructive Pulmonary Disease with Chronic Bronchitis.

13. Bilateral cataracts.

75. Dr. Phuphanich concluded, as of May 2024, that respondent was not currently safe to practice medicine without restrictions, He explained that he interpreted the question to ask if respondent could practice without being monitored, and he does not feel that he can. He also found respondent was unable to safely practice due to a physical illness or condition. He found respondent did not require a mental examination. He opined that respondent should be examined and followed up annually because of his multiple medical conditions.

76. Dr. Phuphanich testified consistent with his report. He explained the atrophy was not due to the stroke, it was caused by respondent's diabetes and peripheral neuropathy. He opined respondent was not safe to practice because of the work an anesthesiologist must perform including starting IVs, starting venous access, having hand eye coordination, intubating patients, and having motor coordination. Respondent's decreased hand sensation would also interfere with his duties. An anesthesiologist must have steady hands to perform his duties, which respondent does not have due to his tremors. He was also at risk to have another stroke.

77. Dr. Phuphanich refuted respondent's contention that he has made a full recovery from his stroke. Respondent still has residual weakness on his left side, an unsteady gait, and poor balance. More than just the stroke, respondent has multiple medical conditions that cause him to be impaired to safely practice medicine.

78. Dr. Phuphanich agreed that Dr. Medina did not document that respondent had a tremor, but he explained that general practitioners do not perform as detailed an examination as a neurologist performs, so may not have looked for hand tremors. Dr. Phuphanich acknowledged that no one has ever reported or

observed problems in the operating room due to respondent having hand tremors. Dr. Phuphanich agreed that the tremors could have been a temporary result of the stress of undergoing the examination Dr. Phuphanich performed. However, he explained that more than just the tremors, respondent has trouble with the prime movement of his hands which is why Dr. Phuphanich diagnosed mild dysmetria and dysdiadochokinesis.

79. Dr. Phuphanich also agreed respondent has never had a myocardial infarction, but he is at risk for one. The risk factors for a heart attack are the same as the risk factors for stroke. He further agreed that the risk factors can be reduced with lifestyle changes. However, they cannot be completely eliminated, only reduced.

MOSES SALIBIAN, M.D.'S QUALIFICATIONS

80. Dr. Salibian received his Doctor of Medicine from Yerevan State Medical Institute in Armenia in 1990. He did a general surgery internship from 1999 to 2000, and an anesthesiology residency from 2000 to 2003, both at State University of New York Health Sciences Center. He is licensed in both New York and California, and has worked at several hospitals. He is a board certified general anesthesiologist.

MOSES SALIBIAN, M.D.'S OPINIONS

81. Dr. Salibian reviewed records and performed a consultation to determine respondent's ability to safely practice anesthesiology. He authored a report dated February 3, 2025, when he examined respondent at Dr. Salibian's home, which he did because Dr. Salibian is "very busy." Respondent drove to the appointment alone, getting in and out of his car without assistance, but had "sluggish walking with the aid of the cane 'for balance'." Respondent appeared well nourished, well groomed, had appropriate behavior and answered all questions intelligently.

82. Dr. Salibian took a past medical history, other histories, and performed a physical exam. Respondent was still smoking cigarettes, but was "quitting." As a result of respondent's June 9, 2022, stroke, his residual symptoms are that he walks with the aid of a cane for balance support, has bilateral FID (acronym not explained), dorsal interosseous muscles atrophy, bilateral knee deep tendon reflexes are absent, bilateral feet with reduces [*sic*] sensation of pinprick and vibration, and he still complains of tingling in his feet. He reported that his neurologist is ordering an EMG test.

83. On examination, respondent had normal coordination with finger-nose-finger. He was alert and oriented times four. He had normal speech and language. His cranial nerves 2-12 are intact, and he has no focal deficits.

84. Dr. Salibian reviewed various diagnostic tests, noting that respondent's EKG on April 25, 2025, was normal. There was no evidence of abdominal aortic aneurysm but there was arteriosclerosis of the proximal right common iliac artery on the February 23, 2024, aortal ultrasound. The February 23, 2024, ultrasound duplex arterial bilateral lower extremities showed no hemodynamically significant arterial stenosis throughout the imaged vessels of both lower extremities.

85. Dr. Salibian reviewed respondent's labs taken May 11, 2018, February 14, 2024, and September 5, 2024. Over those three dates, respondent's total cholesterol improved from 438 to 163 to 135. His HDL went from 51 to 81 back down to 51. His triglycerides went from 2,599 to 200 to 116. His cholesterol/HDL ratio went from 8.6 to 2.0 to 2.6. His hemoglobin A1c went from 9.4 to 6.9 to 5.9.

86. Dr. Salibian concluded that from all the studies and diagnostic images, there was currently no surgical intervention to improve or correct respondent's condition. His hypertension, diabetes mellitus, and lipid levels had not been well-

controlled, resulting in his stroke. After which, respondent "took heroic measures to reduce his risk factors," and succeeded in lowering his sugar and lipid factors. He was currently "working closely with his cardiologist to fine tune his current medication to keep his [blood pressure] below the current level, 146/85."

87. Based on respondent's current condition, Dr. Salibian opined that respondent does not have a physical illness or condition that impact his ability to safely engage in the practice of medicine. However, Dr. Salibian opined that respondent was not able to practice safely without any restrictions or conditions and recommended respondent only work "[p]art time work with few cases per day." Dr. Salibian opined that respondent practicing medicine did not pose a danger or threat to the public health, welfare or safety. He further opined that due to respondent's physical illness or condition, he "needs close monitoring with cardiologist, neurologist and [primary care physician] to maintain his present health."

88. Attached to Dr. Salibian's report were the results of neurology and cardiology exams respondent underwent. Respondent had a neurology examination on January 16, 2025, with Yewen Wang, M.D. Dr. Wang's report documented the history he took, and the review of systems and physical examination he performed. Dr. Wang noted that on June 9, 2022, respondent experienced sudden onset of headaches and both his legs were paralyzed. He was hospitalized, had a CT of the head, and his symptoms resolved in three days. A March 30, 2024, brain MRI showed chronic infarcts involving the bilateral thalami. Respondent never followed up with a neurologist after the stroke although advised to do so by his primary care physician.

89. On examination, Dr. Wang found that respondent's extremities were normal, with no dysmorphism. There was some muscle atrophy but otherwise normal muscle tone, muscle bulk, and muscle strength. There was normal coordination with

finger-nose-finger, and his bilateral feet had reduced sensation of pinprick and vibration, otherwise normal light touch and temperature. Dr. Wang diagnosed respondent with cerebral infarction unspecified; other specified polyneuropathies; type II diabetes mellitus with diabetic neuropathy unspecified; and lesion of ulnar nerve, bilateral upper limbs. Dr. Wang's assessment included that respondent work with his primary care physician to control his blood pressure, hemoglobin and LDL. Dr. Wang ordered a lipid panel and an EMG/NCS for possible diabetic neuropathy because of respondent's numbness and tingling in his feet and another EMG/NCS to check for ulnar neuropathy because of respondent's bilateral hand FDI (acronym not explained) and interosseous muscles atrophy.

90. An echocardiogram was performed on April 25, 2024, and was "a technically good study." The left ventricle size was normal with an ejection fraction of 61 percent. No wall motion abnormalities were seen. Mild concentric left ventricular hypertrophy was seen. There was mild aortic valve sclerosis without stenosis.

91. The February 23, 2024, aorta ultrasound showed no evidence of abdominal aortic aneurysm and atherosclerosis of the proximal right comment iliac artery.

92. At hearing, Dr. Salibian testified he met respondent in 1999/2000 during Dr. Salibian's internship and residency and the two have a personal relationship. After their training, the two lost touch but when Dr. Salibian applied for hospital privileges in 2007/08, and respondent was his proctor. Dr. Salibian last observed respondent in an operating room in 2015.

93. Dr. Salibian requested current labs and wanted a current neurological exam and cardiac evaluations so that he had "fresh information."

94. Dr. Salibian opined that the echocardiogram demonstrates that "all is in perfect condition," although there is some hypertrophy because respondent has hypertension. Dr. Salibian explained that the labs demonstrate respondent has reduced his stroke and cardiac risk factors. The neurological exam performed by Dr. Wang demonstrated that respondent's extremities were normal with no dysmorphism. The normal coordination with finger-nose-finger was "most important." Dr. Salibian's main concerns were whether respondent had any cognitive difficulties and the neurology findings showed he did not. There were no deficits shown that would impair respondent from being able to perform anesthesia.

95. Dr. Salibian stated that these findings refute the hand tremor findings made by Dr. Phuphanich. Dr. Salibian found no tremors during his examination nor did Dr. Wang. Moreover, the stress of undergoing the board-ordered examination could have caused respondent to have mild hand tremors when Dr. Phuphanich examined him.

96. Dr. Salibian opined that risk factors for stroke can be reduced, which is what respondent has been doing. Respondent's physical condition does not render him unable to practice.

97. When asked about respondent's gait, Dr. Salibian stated that respondent uses a cane for balance. In addition, respondent's nickname before suffering his stroke was "walking in the park" because he always walked slow, but after the stroke he walked even slower.

98. Dr. Salibian recommends respondent work part-time because he is spending much more effort to do tasks, so he needs to practice less, see fewer patients, and do fewer cases. However, respondent can safely practice and his doing so

is not a danger to the public. In fact, if a member of Dr. Salibian's family needed anesthesia, he would not hesitate to retain respondent's services, and would "be happy to have respondent perform anesthesia to my relatives."

99. Dr. Salibian agreed that diabetic neuropathy cannot be reversed. It can cause vision problems. It can cause hearing problems, and it can cause loss of balance. He acknowledged that anesthesia is a stressful practice, but noted that respondent only practices in operating centers which "are not above SA3" (level of anesthesia provided), and respondent's expertise and skills are very high.

Respondent's Testimony

100. Respondent detailed his education and employment history.

101. Respondent acknowledged performing anesthesia on January 17, 2024, when the CPO was in place, stating: "My mistake, I did not intend to violate the CPO - it has not crossed my mind I was still under the CPO, an honest mistake, I did not intend to do it, the moment I was reminded by my probation monitor, I realized I violated the order, I committed a mistake."

102. Respondent admitted violating Probation Condition Number 9 by not providing timely quarterly declarations, stating: "On occasions I missed the deadline but I always follow through on the next phase with my report." He "accepted responsibility for that." His reports may have been late, but he always submitted them.

103. Respondent disagreed that he did not inform his probation monitor of all locations where he practiced. He did provide that information, "but it took some time for the paperwork to get to her." He explained "that particular center was not open all the time and I needed the signature from the medical director." Of note, it was unclear

which surgical center respondent was referencing. Respondent said it was not his intention to misrepresent any facts in his quarterly declarations regarding locations where he was practicing, or misrepresent any information. He had no intent to hide anything from the board.

104. Respondent disputed the Cornerstone office manager's claim that he had not worked there since November 2022, as he had been working there for three years. On the day Inspector Asendorf came to Cornerstone, respondent was in the middle of a case, he "stepped out of the operating room" for a short interview with his probation monitor, and "that was it." Respondent disagreed that he had not been at Cornerstone "for some time," as he had been going there for many occasions.

105. Respondent disputed having difficulty walking and holding onto the wall during his December 28, 2023, meeting with Inspector Asendorf. He acknowledged having a cane and walking slowly, but has "no recollection of holding the wall."

106. Respondent disputed telling Inspector Asendorf he asked staff to watch him during surgeries so he does not doze off, stating he recalled saying he had fatigue issues, he is still doing physical therapy, he sometimes has weakness and physical therapy helps a lot, he is getting stronger, but he does not recall making any of the other statements Inspector Asendorf claims he made.

107. Respondent also disputed how the stroke has been characterized by complainant. He explained that on June 9, 2022, while in the operating room, he suddenly could not move his legs. He did not pass out. He still had his mental abilities, and he finished the case safely. The only symptom he had during the surgery was an inability to move his legs. He could move his arms. He was aware of his surroundings. He was not aware he had a stroke. The symptoms began at the end of the surgery. He

was waking the patient up. He woke the patient up properly, and she went safely to the recovery room. He asked a nurse to take his blood pressure, and it was high. He did not collapse in the operating room. The OR tech lifted respondent on a gurney, he could move his hands but his legs were paralyzed. He was hospitalized, and did not know he had a stroke until after the CT scan was performed.

108. Respondent denied having hand tremors. That is a symptom he has "never experienced ever." Dr. Medina has been respondent's primary care physician for 10 years, and she has never diagnosed him with hand tremors or told him she ever observed any.

109. Respondent disputed that he has been hospitalized "several times." He was hospitalized once for blood pressure and another time for diagnostic testing. However, he admitted that his declaration signed under penalty of perjury and filed in support of his opposition to the ISO, which stated "I was hospitalized on the one occasion in June 2022, and no other occasions" was not accurate.

110. Respondent claimed it was difficult to get his practice monitors to submit quarterly reports.

111. Respondent did not recall telling Inspector Asendorf that he slept 16 hours per day every day. He did this "on occasion," but does not recall telling her his sleeping habits.

112. Respondent denied falling five times, testifying he "probably" fell twice. Of note, that testimony was contrary to Dr. Medina's records.

113. Respondent has been working with a pain medicine physician, Bryan Lee, M.D., and has given anesthesia to approximately 300 of Dr. Lee's patients. Respondent

has never had any problems starting venous access or doing intubation. There have never been any patient complaints and Dr. Lee requests respondent "all the time" for his procedures.

114. Respondent detailed the many efforts he has made to reduce his risk factors. He has changed his diet to a vegetarian diet. He has lost weight. He does physical therapy and exercise. He takes medication to lower his blood pressure. He has reduced his cholesterol intake and added vitamins to his diet. He takes medication to reduce his blood sugar levels. He does intermittent fasting. He had cataract surgery in 2024, so vision issues are no longer a concern. He is undergoing the close monitoring that Dr. Phuphanich recommended.

115. Respondent's workload did not change due to the stroke. Prior to it, there was "not much work to do," and it was a time of his life when he was starting to slow down his workload. He stopped working nights, obstetrics, at hospitals, and on weekends before his stroke.

116. Respondent said he is able to safely practice anesthesia, and would be willing to accept any terms and conditions of probation. He agreed anesthesia is stressful, but he has been practicing for 29 years, and it is like "riding a bike."

117. Respondent would not be able to pay the investigation and enforcement costs complainant is seeking. Before the ISO, he was only working one or two days per month, and not making much money. At the present time, his only source of income is Social Security and some partial investments he made in the past. He only earns approximately $1,800 per month.

Declarations from Dr. Medina and Dr. Lee

118. Official notice was taken at the declarations of Corazon Medina, M.D., and Bryan Lee, M.D., that were submitted in opposition to the ISO petition.

119. Dr. Medina is respondent's primary care physician. As of the date of her declaration, August 27, 2024, she had been treating respondent for nine years, during which time she never observed any indications respondent has hand tremors. Further, respondent has consistently followed her treatment plans.

120. Dr. Lee practices pain management at Chino, where respondent has administered anesthesia to Dr. Lee's patients for the last two years. Respondent administers anesthesia primarily on short cases which last from 10 to 15 minutes. Dr. Lee estimates that during this time, respondent has performed over 300 procedures without incident.

121. Dr. Lee never observed respondent to have any physical or mental conditions that impaired his ability to perform anesthetic services, and respondent has performed competently. Dr. Lee has never observed respondent to have hand tremors.

122. Dr. Lee was aware respondent had a practice monitor, but did not identify that person in his declaration. This unidentified practice monitor never brought any deficiencies in respondent's practice to Dr. Lee's attention, and respondent has had no patient complaints.

Letter of Support

123. James J. Shariati, M.D., is the Medical Director of Airport Urgent Care and Industrial Medicine. He has known respondent since 2015 when respondent served as an anesthesiologist at the Endoscopy Center. In February 2019, respondent worked

under Dr. Shariati's direct supervision as a covering physician at the urgent care clinic, during which time he had the opportunity to observe respondent's clinical practice.

124. Dr. Shariati has reviewed the pleadings and is aware of the allegations. Based on Dr. Shariati's "professional interactions with [respondent], I can attest to his diligence, professionalism, and commitment to patient care." During respondent's tenure at the urgent care clinic, he "demonstrated a high level of competence, ensuring patient safety and adhering to clinical protocols." Although respondent's background is in anesthesiology, "he adapted seamlessly to the urgent care setting, managing a variety of acute conditions with attentiveness and thoroughness." Dr. Shariati described respondent's interaction with patients as "compassionate and respectful, and he consistently maintained detailed documentation of his clinical assessments and treatments. At no time did I observe any concerns regarding his clinical judgment, competency, or ethical conduct."

125. Dr. Shariati wrote that respondent "has always communicated transparently with both staff and patients, upheld confidentiality standards, and exhibited a strong dedication to continuous learning." Although Dr. Shariati "cannot speak directly to [respondent's] practice as an anesthesiologist," his observations of respondent in the urgent care "reflect the qualities of a responsible and conscientious physician who prioritizes patient welfare."

126. Dr. Shariati was identified in the probation reports as having been approved to be respondent's practice monitor on July 20, 2020. As documented in the August 18, 2023, noncompliance report authored by Inspector Asendorf, Dr. Shariati failed to submit any practice monitor reports, resulting in the Non-Compliance letters and Citation issued to respondent.

127. On May 20, 2022, respondent submitted a Practice Monitor Nomination form, again nominating Dr. Shariati. In response thereto, Inspector Asendorf contacted Dr. Shariati, who advised there had been a "miscommunication" with respondent as to what was required of Dr. Shariati. Inspector Asendorf explained to Dr. Shariati his roles and responsibilities as a practice monitor, and he agreed to resume his practice monitor role. However, Dr. Shariati again did not submit any practice monitor reports.

128. Accordingly, Dr. Shariati's failure to submit those reports, plus the fact that he did not observe or render any opinions regarding respondent's ability to safely practice anesthesia, the opinions set forth in his letter are given little weight.

Enforcement Costs

129. Complainant seeks recovery of the enforcement costs pursuant to Business and Professions Code section 125.3, in the amount of $34,536.75 for the hours spent on this case by the Office of the Attorney General. The deputy who tried the matter was well prepared. The costs incurred were supported by documentation specifying the activity, amount billed, rates, and other pertinent information which complied with California Code of Regulations, title 1, section 1042, subdivision (b)(1), and supported a finding that costs of $34,536.75 are reasonable in both the nature and extent of the work performed.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. The purpose of the Medical Practice Act (Chapter I, Division 2, of the Business and Professions Code) is to assure the high quality of medical practice; in

other words, to keep unqualified and undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.)

2. The purpose of administrative discipline is not to punish, but to protect the public by eliminating those practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

Burdens and Standards of Proof

3. Complainant must prove the alleged grounds to suspend or revoke respondent's license by "clear and convincing evidence to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.) "Clear and convincing evidence" requires a finding of high probability for the propositions advanced in an Accusation against a licensee. It must be so clear as to leave no substantial doubt and to command the unhesitating assent of every reasonable mind. (I*n re Michael G.* (1998) 63 Cal.App.4th 700.)

4. Complainant must prove the alleged grounds to revoke probation by a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441.) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex. rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Code Sections

5. If the board determines a licensee's ability to practice his profession safely is impaired because the licensee is mentally ill, or physically ill affecting competency, the board may take appropriate action. The board "shall not reinstate a . .

. suspended . . . license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated." (Bus. & Prof. Code, § 822.)

6. Business and Professions Code section 2227 authorizes the board to discipline physicians who violate applicable laws and regulations.

7. Business and Professions Code section 2234 authorizes discipline for physicians who violate the Medical Practice Act (*id.* at subd. (a)) or commit dishonest or corrupt acts (*id.* at subd. (e)).

Suspension Versus Non-Practice Issue

8. Probation Condition Number 12 requires respondent to notify the board, within 15 calendar days, of any periods of non-practice lasting more than 30 calendar days. This condition contains the following language: "A Board-ordered suspension of practice shall not be considered as a period of non-practice."

9. An issue arose at hearing regarding whether the CPO counted as a period of non-practice since it was a board-ordered suspension. Complainant considered the CPO to be a period of non-practice with Inspector Asendorf testifying that probation monitors have been instructed that the aforementioned language in the probation condition only applies if suspension is ordered as a term and condition of probation as opposed to it being ordered via a CPO. Respondent asserted it should not be counted towards non-practice because it was board-ordered.

10. While arguably, the board's interpretation could be considered an underground regulation,[2] that issue need not be decided here. The issue was whether respondent violated the CPO which was issued because he failed to comply with Probation Condition Number 5, the requirement he have a practice monitor. The CPO clearly and unambiguously stated that respondent was "prohibited from engaging in the practice of medicine. Respondent shall not resume the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility."

The CPO was ordered on September 6, 2023, and terminated effective February 16, 2024, once a practice monitor was in place. Respondent was prohibited from practicing medicine from September 6, 2023, until February 16, 2024. His practicing medicine on January 17, 2024, at Chino violated the CPO.

Applicable Case Law

11. California courts have considered the term "dishonesty" within various statutory schemes and have relied on the common understanding involving fraud, deception, betrayal, faithlessness; absence of integrity; a disposition to cheat, deceive, or defraud. (*Chodur v. Edmonds* (1985) 174 Cal.App.3d 565, 570, citations.)

12. "The term 'dishonesty' has been defined in . . . disciplinary proceedings as follows: 'Dishonesty' necessarily includes the element of bad faith. As defined in the

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[2] One purpose of Government Code section 11340, et seq. (Administrative Regulations and Rulemaking), is to prevent the adoption of what amounts to a regulation that implements a law without giving a voice to the people affected. This unauthorized adoption is commonly referred to as an underground regulation. (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 558-559.)

dictionaries and in judicial decisions, it means fraud, deception, betrayal, faithlessness . . . . 'Dishonesty' denotes an absence of integrity; a disposition to cheat, deceive, or defraud; deceive and betray." (*Small v. Smith* (1971) 16 Cal.App.3d 450, 456, citations.)

13. "Fraud" and "dishonesty" are closely synonymous. Fraud is defined as "a dishonest stratagem." (Webster's Third New International Dictionary, p. 904.) It "may consist in the misrepresentation or the concealment of material facts." (*Fort v. Board of Medical Quality Assurance* (1982) 136 Cal.App.3d 12, 19–20, citations.)

Evaluation of the Cause for Action

FIRST CAUSE FOR ACTION (PHYSICAL ILLNESS AFFECTING COMPETENCY)

14. Complainant did not establish by clear and convincing evidence that respondent's ability to practice medicine safely is impaired because he is mentally or physically ill which affects his competency. No evidence supported a finding that respondent had a mental condition that affected his competency, as the evidence presented at hearing only pertained to respondent's physical condition.

Regarding the evidence presented concerning respondent's physical condition, Dr. Phuphanich was the only physician who observed hand tremors. Dr. Medina, respondent's primary care physician for the past 10 years, has never observed hand tremors. Dr. Phuphanich's examination took place in May 2024, whereas Dr. Salibian's exam took place more recently in February 2025, and took into account more recent medical examinations and diagnostic studies. Although he recommended respondent work less, he found him safe to practice. Dr. Lee's declaration demonstrated that respondent has safely and competently performed anesthesia for over 300 patients in the years following his 2022 stroke. Although given little weight, Dr. Shariati described

respondent's excellent medical skills and patient care, albeit he did not assess respondent's anesthesia skills.

Dr. Phuphanich's opinions also appeared more geared to what "could" happen, not necessarily what "would" happen, and he did agree that reducing risk factors, which respondent has done, decreases his risks for another stroke. His concerns about how respondent could be limited by his current physical condition was not supported by what is actually occurring in the operating room as Dr. Lee attested. While respondent's physical condition is complex, on this record it was not established by clear and convincing evidence that respondent's physical condition makes him unsafe to practice.

Evaluation of the Causes for Discipline

FIRST CAUSE FOR DISCIPLINE (DISHONEST OR CORRUPT ACTS)

15. Complainant established by clear and convincing evidence that respondent committed dishonesty or corrupt acts that were substantially related to his profession and violated Business and Professions Code section 2234, subdivision (e). Respondent submitted several quarterly declarations where he declared under penalty of perjury he was in compliance with the terms and conditions of his probation when he was not. Respondent failed to timely turn in quarterly declarations, quarterly practice monitor reports, disclose all of his places of employment, and/or submit notifications of decision demonstrating he had notified his employers of the board's decision and accusation. The Cornerstone office manager would have no reason to fabricate that respondent did not work at the surgery center; her statements to Inspector Asendorf are accepted over respondent's testimony. Moreover, his testimony

that he left the operating room to have a quick interview with Inspector Asendorf was not credible.

Respondent also disputed statements attributed to him in the probation monitor reports, but those statements were more credible than respondent's testimony. Inspector Asendorf would have no reason to fabricate her reports and the repeated nature of respondent's probation violations, even with his prior probation monitor, demonstrated that those reports were likely more accurate than respondent's testimony to the contrary. Respondent also acknowledged that his declaration signed under penalty of perjury in opposition to the ISO contained an inaccurate statement regarding his hospitalizations. He also testified contrary to information contained in Dr. Medina's records.

Respondent practiced medicine while a CPO was in place. His testimony regarding his intention is irrelevant. It was also concerning that it was not until his probation monitor "reminded" him of the CPO, that he realized he had practiced while suspended. When the licensing agency orders a licensee to cease practice, it expects the licensee to comply. Failure to do so is a dishonest and/or corrupt act.

SECOND CAUSE FOR DISCIPLINE (VIOLATING MEDICAL PRACTICE ACT)

16. Complainant established by clear and convincing evidence that respondent violated provisions of the Medical Practice Act for the reasons set forth above.

THIRD CAUSE FOR DISCIPLINE (GENERAL UNPROFESSIONAL CONDUCT)

17. Complainant established by clear and convincing evidence that respondent engaged in general unprofessional conduct for the reasons stated above and for the reasons stated below regarding his numerous probation violations.

Evaluation of the Causes to Revoke Probation

FIRST CAUSE TO REVOKE PROBATION (PRACTICE MONITOR)

18. Complainant established by a preponderance of the evidence that cause exists to revoke respondent's probation, set aside the stay order, and impose the stayed discipline (revocation) on respondent's license because he failed to comply with Probation Condition Number 5 when he failed to ensure that his practice monitor(s) submitted timely and/or complete quarterly written reports. It was respondent's responsibility to obtain a board-approved practice monitor and ensure that his practice monitor complied with the board's requirements. The onus at all times was on respondent and he cannot escape responsibility by blaming his practice monitor.

SECOND CAUSE TO REVOKE PROBATION (QUARTERLY DECLARATIONS)

19. Cause exists to revoke respondent's probation, set aside the stay order, and impose the stayed discipline (revocation) on respondent's license because he violated Probation Condition Number 9. Complainant established by a preponderance of the evidence that respondent failed to timely submit quarterly declarations for the third quarter of 2018, the second quarter of 2019, the second quarter of 2020, the fourth quarter of 2022, and the first quarter of 2024.

THIRD CAUSE TO REVOKE PROBATION (VIOLATING CPO)

20. Cause exists to revoke respondent's probation, set aside the stay order, and impose the stayed discipline (revocation) on respondent's license pursuant to Probation Condition Number 14. Complainant established by a preponderance of the evidence that respondent violated his probation when he practiced medicine on January 17, 2024, while the September 6, 2023, CPO was in place. The CPO had been issued because respondent violated his probation, specifically Probation Condition Number 5, which required him to have a practice monitor in place. Because the CPO came about because of respondent's probation violation, it now became a term and condition of his probation, and practicing while it was in place violated his probation.

FOURTH CAUSE TO REVOKE PROBATION (FAILURE TO OBEY A LAWS)

21. Cause exists to revoke respondent's probation, set aside the stay order, and impose the stayed discipline (revocation) on respondent's license because respondent violated Probation Condition Number 8. Complainant established by a preponderance of the evidence that respondent failed to obey all laws, when he violated Business and Professions Code section 2234, as set forth more fully above.

Evaluation of Appropriate Discipline

22. Having found cause to discipline respondent and revoke his probation, the issue is what discipline to impose. In 2018, respondent was placed on probation because of his gross negligence regarding the care and treatment of 17 patients, his repeated negligence regarding his care and treatment of those 17 patients plus three more patients, his failure to maintain adequate and accurate records for all 20 patients, and his general unprofessional conduct. Complainant alleged this prior discipline, which involved multiple instances of misconduct, as a disciplinary consideration.

Owing to his numerous periods of non-practice, respondent's probation was repeatedly extended, and will currently expire in 2027.

There were numerous terms and conditions ordered with his probation. As documented voluminously in the probation records, respondent repeatedly failed to comply with those terms and conditions. He failed to have his practice monitor(s) submit timely quarterly reports. He had extended periods where he had no practice monitor in place. He did not timely submit several quarterly declarations. He was not forthcoming with his probation monitors regarding his places of employment, and he practiced medicine while a CPO was in place. Overall, he exhibited a disregard for his probation, and it is highly likely he would continue to disregard any terms or conditions imposed at this juncture.

The board expects that individuals on probation will comply with the terms and conditions imposed. A licensee's repeated and flagrant failure to do so is highly alarming and puts the public at risk. On this record, the only discipline that will safely protect the public is revoking respondent's probation, and revoking respondent's license.

The Reasonable Costs of Enforcement

23. Business and Professions Code section 125.3 permits complainant to request that an administrative law judge "direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

24. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court decided that in order to determine whether the actual costs of investigation and prosecution sought by a regulatory board under a regulation

substantially identical to Business and Professions Code 125.3 are "reasonable," the agency must decide: (a) Whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

25. Applying those factors here, respondent was successful in having one of the charges dismissed because complainant did not establish that respondent has a physical or mental condition that makes him unsafe to practice. Respondent had a good faith belief in the merits of his position, and raised a colorable challenge to the proposed discipline. He is financially unable to pay the costs requested. The scope of the investigation was appropriate given the allegations. Accordingly, a reduction of the total costs of $34,536.75 being sought is appropriate.

On this record, given respondent's financial condition and that his license is being revoked, reasonable costs are determined to be $6,000, which respondent will be required to pay if he ever seeks reinstatement.

ORDER

The probation the board granted in Case No. 800-2015-013962 is revoked. The disciplinary order that was stayed is set aside, and the stayed discipline (revocation) is imposed.

Physician's and Surgeon's Certificate No. A 81938 issued to respondent, David R. Yutuc, M.D., is revoked.

Respondent is ordered to pay the board's enforcement costs in the amount of $6,000. The order of costs is stayed, however, until respondent seeks reinstatement of his certificate, at which time costs in the amount of $6,000 shall be paid as a condition of reinstatement, which can be done via a board-approved payment plan. Nothing in this Order prohibits the board from reducing those costs.

DATE: April 24, 2025

Mary Agnes Matyszewski (Apr 24, 2025 16:56 PDT)

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings