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

In the Matter of the Petition for Reinstatement of:	)	
MARK ANTHONY KNIGHT	)	Case No. 800-2014-002269
Physician's and Surgeon's Certificate No. A 78828	)	OAH No. 2014120077
Petitioner.	)	

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 March 6, 2015.

IT IS SO ORDERED: February 6, 2015.

MEDICAL BOARD OF CALIFORNIA

Jamie Wright, JD, Chair
Panel A

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

In the Matter of the Petition for Reinstatement Against: MARK A. KNIGHT, Petitioner.	Case No. 800-2014-002269 OAH No. 2014120077

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, on January 13, 2015, at Los Angeles, California.

Petitioner, Mark A. Knight (Petitioner), was present and was represented by Peter R. Osinoff, Attorney at Law.

Pursuant to the provisions of Government Code Section 11522, the Attorney General of the State of California was represented by Colleen M. McGurrin, Deputy Attorney General.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

1. On April 24, 2002, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number A 78828 to Petitioner.

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2. On April 28, 2010, an Accusation was filed against Petitioner alleging that he had kissed a patient on the lips twice and attempted to kiss her a third time, all against her will, during a single post-operative office visit, and that he had engaged in sexual relations with another patient during a post-operative office visit. (*In the Matter of the Accusation Against Mark Anthony Knight, M.D.*, Case No. 06 2008-190093.) The first incident occurred on December 7, 2007; the second, on January 20, 2009. In addition to allegations of sexual misconduct, the Accusation contained causes for discipline for gross negligence, dishonest or corrupt acts, and failure to maintain adequate and accurate records.

3. Facing the allegations in the Accusation, Petitioner surrendered his license effective December 15, 2010. Paragraph 17 of the Stipulated Surrender of License and Order read:

> If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 06-2008-190093 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

4. Around the time Petitioner committed the acts of sexual misconduct, he was going through a time of personal emotional upheaval following the deaths of his younger brother from cancer, and of his second daughter from Sudden Infant Death Syndrome at age four months. There was also tension in his marriage that resulted in Petitioner's separating from his wife in 2006. Petitioner reconciled with his wife in 2008, but the relationship was not stable until sometime thereafter. Petitioner engaged in sexual relations with his patient after he had reconciled with his wife.

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5. In 2008, in an attempt to save their marriage, Petitioner and his wife engaged the services of Colleen McNamee, a friend who was also a family law mediation specialist. Over time, through their mutual efforts and Ms. McNamee's assistance, they were able to do so. During that time, Petitioner developed a new-found devotion to his family, which by then consisted of his wife, their older daughter, and their third daughter, who was born during their separation. On April 25, 2013, Ms. McNamee wrote:

> Over the following years, I have remained in contact with [Petitioner] and Jett [Petitioner's wife's nickname] in both a professional as well as personal capacity, and they with me. I have spoken individually with them on the phone, e-mailed back and forth, as well as visited them in their home. During this time, I have seen a remarkable change, or growth if you will, take place not only in their marriage, but also a rather drastic shift in [Petitioner's] reasons for wanting to stay in the marriage. This did not happen overnight and was clearly slow in coming, but it is my professional opinion based upon 12 years of personally mediating over 4,000 divorce cases/reconciliations, that [Petitioner] is no longer motivated to remain loyal, loving, and constant to his family and marriage by financial reasons, but out of genuine love for Jett and their two daughters. He has a new and profound appreciation for family, being a present parent, and for Maria [Petitioner's wife's given name] as a wife and mother.

(Exhibit 12, page 2.)

6, Since surrendering his license, Petitioner has chosen to remain at home to care for his two daughters while his wife works outside the home as a respiratory therapist. Through careful introspection, he has come to realize that, before his marriage and early into his marriage, he had been completely self-centered and interested only in furthering his career and his personal interests which included opening a surgery center and accumulating high-priced material possessions.[1] He has re-prioritized his life and is now a devoted husband and father.

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[1] Those possessions included a Ferrari which Petitioner wrecked in 2009 while driving under the influence of alcohol. The accident resulted in a criminal conviction for driving under the influence. That conviction occurred after Petitioner had surrendered his medical license.

7. In October 2010, January 2013, and October 2014, Petitioner saw psychiatrist, Nathan E. Lavid, M.D., at the request of Petitioner's attorney. Dr. Lavid performed a mental status examination and conducted a lengthy interview with Petitioner, and he sent Petitioner for a urine drug screening. Inexplicably, Dr. Lavid did not conduct any objective psychometric testing to rule out a probability that Petitioner was being dishonest or disingenuous with him. Dr. Lavid instead chose to simply take Petitioner at his word. Using the axes in the Diagnostic and Statistical Manual of Psychiatric Disorders, 4th edition, Text Revised, published by the American Psychiatric Association (DSM-IV TR), Dr. Lavid found no psychiatric disorder on Axis I, and he deferred a diagnosis regarding personality disorders on Axis II. His decision to defer rather than diagnose on Axis II was baffling in light of the reasons underlying the Accusation that resulted in Petitioner surrendering his license. Similarly, on Axis III, Dr. Lavid also failed to diagnose two of the three medical conditions Petitioner reported to him as having been previously diagnosed, namely atherosclerotic disease which contributed to erectile dysfunction. While Petitioner may or may not have been truthful with Dr. Lavid, Dr. Lavid's failure to test for that and to address the possibility of a personality disorder that may have led to Petitioner's sexual misconduct, portrayed Petitioner in an artificially positive light. For those reasons, Dr. Lavid's reports and testimony are given little weight.

8. More reliable are the observations of Petitioner's wife and the witnesses who testified and/or submitted letters on Petitioner's behalf. Today, Petitioner's wife believes Petitioner is a better person than he was before, more humble, family-oriented, "down-to-earth" and cautious about people. The witnesses who testified or submitted letters saw the same transformation between Petitioner as he was in the early stages of his marriage to the final reconciliation with his wife.

9. Petitioner has been active in remaining current with his medical knowledge. In 2012, he accrued 173.25 continuing medical education credits. Between 2013 and the present, he has accrued 67.75 credits. Those credits include two professional boundaries courses and an ethics course.

10. Petitioner admits that, at the time of his sexual misconduct, he was unconcerned about the consequences of his actions and was concerned only with his own desires. He is now deeply remorseful for his past indiscretions, not only because of the effect they had on his family, but also because of what he termed "a broader, social context." Having come from an impoverished area in Jamaica, Petitioner believes he had the opportunity to leave a legacy through his medical work, but that he squandered it and "stepped back miles." (Petitioner's testimony.) He wants to perform positive acts because the consequence of his prior actions is that those actions could reflect on other minorities who want to attend medical school. He would like to make amends to the patients he adversely affected, but has not approached them for "medical/legal reasons." (*Id.*)

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11. Petitioner views the loss of his license as a "wake-up call." (*Id.*) He believes the way he had been living was "fundamentally flawed" (*id.*) in that he was arrogant and pre-occupied with academics and success, and he ran away from marriage and fatherhood. He is committed to not making the same mistake again. Petitioner draws an analogy between the gardening he now does at home and his marriage: For a garden to be beautiful, one must recognize weeds and pull them out. Petitioner must recognize the counter-productive aspects of his marriage and work to eliminate them.

12. Since surrendering his license, Petitioner has also worked toward the betterment of people in third-world countries. He has been active in a project to develop employment opportunities for women in South Africa. He believes such employment will not only improve the financial stability of the area, but will also develop women who are students or business owners to be role models for following generations. Petitioner has also been active in a project to develop clean, potable water in Haiti. He is convinced that an abundance of clean water will go far in alleviating disease in the area. Petitioner has spent a great deal of time on these projects, all without remuneration.

13. Petitioner learned from the professional boundaries courses he took that his responsibilities extend not only to himself, but to his patients and to his profession. To that end, he developed a three-page "Boundary Protection Plan" (Exhibit 32) designed to protect patients, staff, and himself by holding his staff and himself accountable through the imposition of specific standards.

LEGAL CONCLUSIONS

1. Petitioner has established, by clear and convincing evidence to a reasonable certainty, that cause exists to grant the Petition under the provisions of Business and Professions Code section 2307, by reason of Findings 1 through 13.

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2. Business and Professions Code section 2307 states in relevant part:

(a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.

[¶] . . . [¶]

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

[¶] . . . [¶]

(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

3. California Code of Regulations, title 16, section 1360.2 states:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under [Business and Professions Code] Section 480.

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(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in [California Code of Regulations, title 16] Section 1360.1, subsections (b), (d) and (e).

(e) Evidence, if any, of rehabilitation submitted by the applicant.

4. Petitioner's acts were extremely serious. He betrayed the trust placed in him by two of his surgical patients. ("There is no other profession in which one passes so completely within the power and control of another as does the medical patient." *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 578 [146 Cal.Rptr. 653.]) The most recent act committed by Petitioner occurred in January 2009, approximately six years ago. Petitioner has not since engaged in any other such acts. On the contrary, he took stock of his life and set himself on a successful course of reform. He has re-joined his family as a committed husband and father, he has maintained his medical knowledge, and he has worked toward helping impoverished people in third-world countries. Petitioner has gained insight into what caused his wrongful conduct, and he has replaced that conduct with a commitment toward making himself a better human being and a physician worthy of his patients' and his family's trust.

5. Petitioner has earned another chance to be the kind of physician and surgeon from whom patients can benefit and whom they can trust. However, he is not yet ready to hold an unrestricted license. Petitioner will be given a trial period of probation under stringent terms and conditions to enable him to demonstrate that he no longer poses a threat to the public.

ORDER

The Petition of Mark A. Knight for reinstatement of his surrendered physician's and surgeon's certificate is granted. The license is reinstated. It is immediately revoked, and Petitioner is placed on probation for a period of five years under the following terms and conditions.

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1. 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 its 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 toward 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.

2. Monitoring - Practice

Within 30 calendar days of the effective date of this Decision, Petitioner shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Petitioner, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Petitioner's field of practice, and must agree to serve as Petitioner's monitor. Petitioner shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

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Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Petitioner's practice shall be monitored by the approved monitor. Petitioner shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Petitioner fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor shall submit a quarterly written report to the Board or its designee which includes an evaluation of Petitioner's performance, indicating whether Petitioner's practices are within the standards of practice of medicine, and whether Petitioner is practicing medicine safely. It shall be the sole responsibility of Petitioner to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Petitioner shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Petitioner fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Petitioner shall receive a notification from the Board or its designee to cease the practice of medicine. Within three calendar days after being so notified, Petitioner shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Petitioner may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Petitioner shall participate in the professional enhancement program at Petitioner's expense during the term of probation.

3. Solo Practice Prohibition

Petitioner is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Petitioner merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Petitioner is the sole physician practitioner at that location.

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If Petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, Petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, Petitioner's practice setting changes and Petitioner is no longer practicing in a setting in compliance with this Decision, Petitioner shall notify the Board or its designee within five calendar days of the practice setting change. If Petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, Petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

4. Third Party Chaperone

During probation, Petitioner shall have a third party chaperone present while consulting, examining or treating all patients. Petitioner shall, within 30 calendar days of the effective date of the Decision, submit to the Board or its designee for prior approval name(s) of persons who will act as the third party chaperone.

If Petitioner fails to obtain approval of a third party chaperone within 60 calendar days of the effective date of this Decision, Petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall cease the practice of medicine until a chaperone is approved to provide monitoring responsibility.

Each third party chaperone shall sign (in ink or electronically) and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party chaperone.

Petitioner shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient initials, address and telephone number; 2) medical record number; and 3) date of service. Petitioner shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

Petitioner is prohibited from terminating employment of a Board-approved third party chaperone solely because that person provided information as required to the Board or its designee.

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If the third party chaperone resigns or is no longer available, Petitioner shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name of the person(s) who will act as the third party chaperone. If Petitioner fails to obtain approval of a replacement chaperone within 60 calendar days of the resignation or unavailability of the chaperone, Petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall cease the practice of medicine until a replacement chaperone is approved and assumes monitoring responsibility.

Petitioner shall provide written notification to Petitioner's patients that a third party chaperone shall be present during all consultations, examination, or treatment with all patients. Petitioner shall maintain in the patient's file a copy of the written notification, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the notification for the entire term of probation.

5. Notification

Within seven days of the effective date of this Decision, Petitioner 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 Petitioner, at any other facility where Petitioner 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 Petitioner. Petitioner 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.

6. Supervision of Physician Assistants

During probation, Petitioner is prohibited from supervising physician assistants.

7. Obey All Laws

Petitioner 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.

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8. Quarterly Declarations

Petitioner 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.

Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

9. General Probation Requirements

Compliance with Probation Unit

Petitioner shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Petitioner shall, at all times, keep the Board informed of Petitioner'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, subdivision (b).

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

Petitioner 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 30 calendar days.

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

10. Interview with the Board or its Designee

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

11. Non-Practice While on Probation

Petitioner 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 Petitioner's return to practice. Non-practice is defined as any period of time Petitioner is not practicing medicine in California 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. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. 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 Petitioner's period of non-practice while on probation exceeds 18 calendar months, Petitioner shall successfully complete a clinical training 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.

Petitioner's period of non-practice while on probation shall not exceed two years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve Petitioner 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; and General Probation Requirements.

12. Completion of Probation

Petitioner 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, Petitioner's certificate shall be fully restored.

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13. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If Petitioner violates probation in any respect, the Board, after giving Petitioner 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 Petitioner 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.

14. License Surrender

Following the effective date of this Decision, if Petitioner ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Petitioner may request to surrender his license. The Board reserves the right to evaluate Petitioner'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, Petitioner shall, within 15 calendar days, deliver Petitioner's wallet and wall certificate to the Board or its designee and Petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If Petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. Probation Monitoring Costs

Petitioner 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.

Dated: January 22, 2015

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings