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

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|---|---|
| In the Matter of the Petition to Revoke Probation Against:<br><br>Lawrence Hart Livingston, M.D.<br><br>Physician's and Surgeon's Certificate No. G 27982<br><br>Respondent. | Case No. 800-2020-063593 |

## 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 July 17, 2020.

IT IS SO ORDERED: June 19, 2020.

MEDICAL BOARD OF CALIFORNIA

Ronald H. Lewis, M.D., Chair
Panel A

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

**In the Matter of the Petition to Revoke Probation Against:**

**LAWRENCE HART LIVINGSTON, M.D.,**

**Physician's and Surgeon's Certificate No. G 27982**

**Respondent.**

**Case No. 800-2020-063593**

**OAH No. 2020040449**

## PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter telephonically on May 6, 2020.

Attorney Mary Cain-Simon represented complainant Christine J. Lally, Interim Executive Director of the Medical Board of California.

Respondent Lawrence Hart Livingston, M.D., represented himself.

The matter was submitted for decision on May 6, 2020.

## FACTUAL FINDINGS

1. Respondent Lawrence Hart Livingston, M.D., received Physician's and Surgeon's Certificate No. G 27982 in 1974.

2. With disciplinary action pending against him, respondent offered in early 2012 to surrender his physician's and surgeon's certificate. Effective April 13, 2012, the Medical Board of California (Board) accepted respondent's offer.

3. Effective September 11, 2019, the Board reinstated respondent's certificate. The Board immediately revoked the certificate, stayed the revocation, and placed respondent on probation for three years. At the time of the hearing, respondent's certificate was scheduled to expire February 28, 2021.

4. On January 15, 2020, acting in her official capacity as Interim Executive Director of the Board, complainant Christine J. Lally issued an order directing respondent to cease medical practice in California. This order remained in effect at the time of the hearing, and states that respondent may resume medical practice if the final decision in this matter permits him to do so.

5. Again acting in her official capacity, on February 14, 2020, complainant filed a petition with the Board to revoke respondent's probation. As cause to revoke respondent's probation, the petition alleges that respondent failed on four occasions to provide biological fluid samples in accordance with his probation conditions.

6. Respondent requested a hearing.

## Random Biological Fluid Testing

7. Condition 3 of respondent's probation requires him to abstain completely from using or possessing controlled substances, except in accordance with another physician's prescription. Condition 4 requires respondent to abstain completely from consuming alcohol.

8. Condition 5 of respondent's probation requires him to undergo random biological fluid testing to confirm his continuing abstinence from alcohol and unprescribed controlled substances. Condition 19 of respondent's probation makes his failure to follow Condition 5 (or any other probation condition) grounds for revoking probation.

9. The protocol for the random biological fluid testing described in Finding 8 requires respondent to determine every day whether the Board-approved testing service with which he has enrolled has selected him randomly to provide a sample that day for testing. If the service has selected him for a test, respondent must provide his sample on that same day, at an approved sample-collection location.

10. In September and October 2019, respondent called a telephone number every day to learn whether he needed to provide a biological fluid sample that day. He set an alarm on his mobile telephone to remind him to call. On October 15, 2019, and again on October 24, 2019, his system failed. On both days, he forgot to call to learn whether he needed to test; by failing to call, he missed learning that the service had selected him to test that day; and by missing his testing notification, he failed to provide a test sample.

11. After respondent's second missed test on October 24, 2019, the Board staff member responsible for monitoring respondent's compliance with the random

biological fluid testing program contacted him to discuss these problems.[1] At about this same time, respondent began using a mobile telephone application to check automatically for him every day whether he needed to provide a test sample, and to alert him if he did. He testified credibly that he has learned how to configure and use this application and that he has not missed a notification since October 24, 2019.

12. The testing service selected respondent for testing on December 24, 2019. He was not at home, and did not realize then that he could call the service for directions to a sample-collection location where he was. Instead, he drove home, but arrived after the sample-collection location he had been using regularly had closed for Christmas Eve. Rather than contacting the testing service or any Board staff member for immediate instructions, respondent provided an unscheduled sample for testing on December 26, 2019 (the next day the sample-collection location was open).

13. In early January 2020, respondent suddenly developed hypertension, with no prior history of circulatory problems or heart disease. His chief symptom was worrisome shortness of breath. The testing service selected him for testing on January 9, 2020, but he did not go to give a sample until late afternoon because he had spent the day coordinating several urgent medical appointments relating to his hypertension. When respondent finally went to the sample-collection location on January 9, 2020, the staff member responsible for observing samples already had left for the day. Respondent again failed to contact the testing service or any Board staff

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[1] The Board also issued a citation to respondent for these missed tests. He paid it promptly.

member for immediate instructions; instead, he provided an unscheduled sample for testing on January 10, 2020.

14. Complainant issued the cease practice order described above in Finding 4 because respondent had missed four tests (as described in Findings 10, 12, and 13). Since January 10, 2020, respondent has not missed any further tests. He has switched to a new, more reliable sample-collection location; in addition, he now understands that the testing service has staff members available by telephone at all times to help him find a sample-collection location or solve other testing problems.

15. Respondent has abstained from alcohol and unprescribed controlled substances since March 10, 2013. After receiving the petition described in Finding 5, he underwent hair sample testing that confirmed his continuing abstinence.

## Other Probation Requirements

16. Condition 1 of respondent's probation requires him to enroll in and to compete a clinical competence assessment program. Respondent enrolled timely in a Board-approved clinical competence assessment program, borrowing money to pay the program fee. He had planned to attend the in-person assessment and training component of the program in spring 2020, but the COVID-19 public health emergency forced the program to suspend all in-person activities.

17. Condition 1 of respondent's probation also forbids him to resume medical practice, despite reinstatement to licensure, until he has completed the clinical competence assessment program. Because he had not yet had the opportunity to satisfy Condition 1, respondent had not resumed practicing medicine before complainant issued the cease practice order described above in Finding 4.

18. Condition 5 of respondent's probation confirms that any period during which respondent is not practicing medicine because of a cease practice order such as the order described in Finding 4 shall not apply to reduce the total amount of time respondent spends on probation.

19. Condition 6 of respondent's probation requires him to enroll in and complete a professionalism course. He has done so.

20. Respondent testified credibly that he wishes to return to medical practice, even though he is at an age when many people retire, because he misses both the intellectual challenge of medical practice and the income. He feels physically able to practice, because appropriate medication currently is controlling the hypertension and shortness of breath described in Finding 13.

## LEGAL CONCLUSIONS

1. The matters stated in Findings 3 and 8 establish that the Board may revoke respondent's probation for failure to comply with the biological fluid testing program. The matters stated in Findings 10, 12, and 13 constitute cause to revoke respondent's probation.

2. The matters stated in Findings 11 through 15 demonstrate respondent's willingness to follow the biological fluid testing program, his success in learning from his early errors, and his continuing sobriety. In addition, the matters stated in Finding 16 through 20 show respondent's good faith efforts to satisfy his other probation conditions.

3. Under all circumstances of this case, an order revoking respondent's probation is not necessary to protect public safety. Continuation of respondent's probation on the same conditions, with an extension of the three-year term to reflect respondent's initial failure to follow the probation conditions scrupulously, will permit the Board to continue monitoring respondent as he moves to resume his medical practice.

## ORDER

The petition to revoke probation against respondent Lawrence Hart Livingston, M.D., is denied. Respondent shall remain on probation, on all terms stated in the order effective September 11, 2019, by the Medical Board of California regarding respondent, except that term of respondent's probation shall continue until three years have elapsed from the effective date of this order.

DATE: May 18, 2020

DocuSigned by:
Juliet E. Cox
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JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings

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*Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 14 2020
BY: Shari Wilkie ANALYST

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

| | |
|---|---|
| In the Matter of the Petition to Revoke Probation Against:<br><br>**LAWRENCE HART LIVINGSTON, M.D.**<br><br>**336 Hidden Lane**<br>**Santa Cruz, CA 95060-1276**<br>**Physician's and Surgeon's Certificate No. G 27982**<br><br>Respondent. | Case No. 800-2020-063593<br><br>PETITION TO REVOKE PROBATION |

Complainant alleges:

**PARTIES**

1. Christine J. Lally (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On August 28, 1974, the Board issued Physician's and Surgeon's Certificate Number G 27982 to Lawrence Hart Livingston (Respondent). The Physician's and Surgeon's Certificate is current and will expire on February 28, 2021, unless renewed. On January 15, 2020, Complainant issued a Cease Practice Order suspending Respondent's license.

3. In a disciplinary action titled "In the Matter of Petition for Reinstatement Against Lawrence Hart Livingston," Case No. 800-2019-052119, the Medical Board of California, issued

a decision, effective September 11, 2019, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

## JURISDICTION

4. This Petition to Revoke Probation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2004 of the Code provides that the Board shall have the responsibility for the enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

6. Section 2227 of the Code states:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.
>
> (b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

7. Section 2228 of the Code states:

> The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

(d) Providing the option of alternative community service in cases other than violations relating to quality of care.

Code of Regulations, title 16, section 1361.52, states:

(a) A licensee who does any of the following shall be deemed to have committed a major violation of his or her probation:

. . .

(5) Fails to undergo biological fluid testing when ordered;

. . .

(b) If a licensee commits a major violation, the Board will take one or more of the following actions:

(1) Issue an immediate cease-practice order and order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee. Any order issued by the Board pursuant to this subsection shall state that the licensee must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice.

(2) Increase the frequency of biological fluid testing.

(3) Refer the licensee for further disciplinary action, such as suspension, revocation, or other action as determined by the Board.

. . .

(e) Nothing in this section shall be considered a limitation on the Board's authority to revoke the probation of a licensee who has violated a term or condition of that probation.

**SEPTEMBER 11, 2019 DECISION**

8. In an action entitled "In the Matter of the Petition for Reinstatement of Surrendered Certificate of Lawrence Hart Livingston, Petitioner." Case No. 800-2019-052119, the Board issued a decision, effective September 11, 2019, in which Respondent's Physician's and Surgeon's

Certificate was reinstated, immediately revoked, stayed, and placed on probation for a period of three years with certain terms and conditions, including conditions requiring him to abstain from the use of controlled substances and alcohol, and to submit to biological fluid testing. The 2019 order was based on Petitioner's history of controlled substance abuse and impairment due to controlled substance abuse disorder.

9. A copy of the 2019 Decision is attached as **Exhibit A.**

## PROBATION HISTORY

## FACTS

10. On August 13, 2019, the Board analyst assigned to monitor Respondent's compliance with the biological fluid testing required as a condition of his probation sent Respondent a letter introducing herself and review of the testing procedures. The letter explicitly informed Respondent that he was to enroll and participate in the FirstSource testing program and that Respondent was to check the FirstSource system daily to determine if he was to provide a biological fluid sample.

11. On September 25, 2019, Respondent received a copy of the September 11, 2019 Decision with full explanation of his probation conditions. On that day, Respondent signed an "Acknowledgement of Decision" indicating he understood his probation conditions.

12. On October 15, 2019, and again on October 24, 2019, Respondent failed to provide biological fluid samples when selected to do so. On November 7, 2019, Respondent was issued a Citation Order for those two violations.

13. On December 24, 2019, Respondent was selected to undergo a biological fluid test, and failed to submit a sample. On December 26, 2019, Respondent sent an email to the Board analyst assigned to monitor his compliance, explaining that he had been visiting his girlfriend on the day that the test was required and that he had failed to make it to the collection site before they closed. Respondent voluntarily submitted a urine sample on December 26, 2019 and it was negative.

14. On January 9, 2020, Respondent was selected to undergo a biological fluid test and failed to submit a sample. On January 9, 2020, Respondent sent an email to the Board analyst

stating he had forgotten to provide the sample, and offering to provide the sample the following day.

15. On January 15, 2020, the Board issued a Cease Practice Order against Respondent for his failure to supply a biological fluid sample on October 15, 2019, October 24, 2019, December 24, 2019 and January 9, 2020, in violation of his probation. The Cease Practice Order remains in effect and Respondent is prohibited from practicing medicine until the final decision on this Petition to Revoke Probation becomes effective.

## CAUSE TO REVOKE PROBATION

(Biological Fluid Testing)

16. At all times after the effective date of Respondent's probation, Condition 5 (Biological Fluid Testing) requires Respondent to submit biological fluid samples for testing upon request by the designated testing laboratory. Condition 5 states, in part, as follows:

> Petitioner shall immediately submit to biological fluid testing, at petitioner's expense, upon the request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Prior to practicing medicine, petitioner shall contract with a laboratory or service approved in advance by the Board or its designees that will conduct random, unannounced, observed, biological fluid testing....If petitioner fails to cooperate in a random biological fluid testing program within the specified time frame, petitioner shall receive notification from the Board or its designee to immediately cease the practice of medicine. The petitioner shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective.

17. Respondent's probation is subject to revocation because he failed to provide a biological fluid sample when selected to do so on October 15 and 24, 2019, December 24, 2019 and January 9, 2020, thereby violating Conditions 5 and 19 of his probation and Code of Regulations, title 16, section 1361.52, subsection (a)(5) (failure to undergo biological fluid testing when ordered). Respondent's conduct constitutes a major violation of his probation within the meaning of Condition 19 of his probation and Code of Regulations, title 16, section 1361.52, and his probation is therefore subject to revocation.

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## DISCIPLINE CONSIDERATIONS

18. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about March 9, 2012, in a prior disciplinary action titled "In the Matter of the Accusation Against Lawrence Hart Livingston before the Medical Board of California," in Case No. 03-2011-216473, Respondent's license was surrendered pursuant to the Board's Decision adopting the Stipulated Surrender of License. That decision is now final and is incorporated by reference as if fully set forth.

## PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking the probation that was granted by the Medical Board of California in Case No. 800-2019-052119 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. G 27982 issued to Respondent;

2. Revoking, suspending or denying approval of Respondent's authority to supervise physician's assistants and advanced practice nurses;

3. Ordering Respondent, to pay the Board the costs of probation monitoring;

4. Taking such other and further action as deemed necessary and proper.

DATED: FEB 14 2020

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
*Complainant*

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# Exhibit A

**Decision and Order**

**Medical Board of California Case No. 800-2019-052119**

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

| | | |
|---|---|---|
| In the Matter of the Petition for Reinstatement of Surrendered Certificate of: | ) | |
| LAWRENCE HART LIVINGSTON | ) | Case No. 800-2019-052119 |
| Physician's and Surgeon's Certificate No. G27982 | ) | OAH No. 2019060668 |
| 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 September 11, 2019.

IT IS SO ORDERED: August 12, 2019.

MEDICAL BOARD OF CALIFORNIA

Ronald H Lewis, MD

Ronald Lewis, M.D., Chair
Panel A

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

| | |
|---|---|
| In the Matter of the Petition for Reinstatement of Surrendered Certificate of:<br><br>LAWRENCE HART LIVINGSTON,<br><br>Petitioner. | Case No. 800-2019-052119<br><br>OAH No. 2019060668 |

## PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on July 8, 2019, in Oakland, California.

Certified Law Student Sean Frawley represented the Office of the Attorney General, Department of Justice. Deputy Attorney General Brenda P. Reyes was also present.

Petitioner Lawrence Hart Livingston represented himself.

The matter was submitted for decision on July 8, 2019.

## FACTUAL FINDINGS

*Procedural History*

1. On August 28, 1974, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 27982 to Lawrence Hart Livingston (petitioner).

2. On March 9, 2012, the Board filed an accusation against petitioner. The misconduct alleged in the accusation involved a patient petitioner treated in 2011. Petitioner wrote prescriptions for opiates, benzodiazepines and Adderall for the patient and her husband (who was not his patient), then purchased the controlled substances from them for his own use. The patient sued petitioner for malpractice and his misconduct was reported to the Board. During a tape recorded pretext telephone call between petitioner and the patient, petitioner advised the patient to lie to the Board to protect him. During petitioner's November 2011 Board interview, he denied his misconduct and described his patient as a

drug-seeking, mentally deteriorating patient who engaged in bizarre, hysterical, hostile, inappropriate and seductive behavior. On April 6, 2012, the Board adopted as its decision a stipulated surrender of petitioner's license, effective April 13, 2012.

3. In December 2014, in the Superior Court of California, County of Santa Clara, petitioner pled guilty to six felony counts involving the appropriation of prescriptions for controlled substances from a patient, and writing prescriptions to an individual who was not a patient. Imposition of sentence was suspended and petitioner was placed on formal probation for a period of three years on conditions that included residential treatment for substance abuse.

4. On January 15, 2019, petitioner signed a petition for reinstatement of his surrendered certificate, and this hearing followed.

*Petitioner's Education and Employment History*

5. Petitioner attended medical school at the University of California, San Francisco from 1969 to 1973. He completed a residency in internal medicine at Highland Hospital in 1976. Petitioner was board certified in internal medicine in 1976, and in emergency medicine in 1985. Petitioner lost his board certifications after surrendering his license in 2012.

6. Petitioner worked as an emergency room physician in various hospitals in the Bay Area, Santa Cruz, Gilroy and Modesto areas between 1976 and 2009. He worked at Saratoga Medical Clinic from 2009 to 2012.

*Substance Abuse History and Treatment*

7. Petitioner has a lengthy substance abuse history. He first used Flurazepam[1] and Oxycodone[2] in 1968, at age 21. He also has a history of cocaine and marijuana use.

8. In 1981, petitioner's hip was shattered during a ski accident. He has undergone four to five hip surgeries, culminating with a hip replacement in 2004. Petitioner became addicted to prescribed opiate medication, including Fentanyl[3] patches, following the injury.

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[1] Flurazepam, sold under the brand name Dalmane, is a benzodiazepine and a Schedule IV controlled substance pursuant to Health and Safety Code section 11057.

[2] Oxycodone is an opiate medication; it is a Schedule II controlled substance pursuant to Health and Safety Code section 11055.

[3] Fentanyl is an opioid analgesic and a Schedule II controlled substance pursuant to Health and Safety Code section 11055.

9. In 1983, petitioner was referred to the Board's substance abuse diversion program. He completed a 28-day residential treatment program for opiate and Flurazepam abuse as part of the program. He was clean and sober for approximately five years following the treatment. Petitioner successfully completed the five-year diversion program.

10. Petitioner was treated for depression and bipolar disorder by Richard Robinson, M.D., from 1986 to 2010. In 2008, petitioner reports that Dr. Robinson prescribed Adderall,[4] which prompted a manic episode. Petitioner began to act erratically and irrationally; he was overspending and had a disagreement with his partners where he worked in the emergency department at Doctors Hospital in Modesto. Petitioner left the practice and opened Saratoga Medical Clinic. It was at this clinic where petitioner's drug diversion led to his certificate surrender and the filing of criminal charges.

11. On March 10, 2013, on the advice of his criminal defense attorney, petitioner entered treatment at Hazelden Betty Ford Clinic in Oregon (Hazelden). Hazelden classified petitioner's substance abuse as severe. On entry, petitioner was dependent on Flurazepam, Fentanyl and Oxycodone; he had stopped using Adderall on his own in 2012. Petitioner went through detoxification and treatment and remained at the facility for 90 days; he successfully completed the program on June 4, 2013. Petitioner's sobriety date is March 10, 2013.

12. On August 7, 2013, petitioner began treating with Stephen Stein, M.D., an addiction specialist. Dr. Stein treats petitioner's bipolar disorder and substance use disorder; he has treated petitioner with Abilify, Lamictal and Trazodone, which has been effective. Petitioner sees Dr. Stein every four to six months.

13. On January 6, 2015, as a condition of his criminal probation, petitioner entered a sober living environment run by Amicus House in San Jose. He resided there for three months, followed by six months of outpatient treatment. While in the sober living environment, petitioner abided by the rules, completed required assignments and was a positive influence on his house peers. He attended six 12-step meetings per week. While in the outpatient program, petitioner attended two two-hour group meetings and one one-hour individual counseling session, and three 12-step meetings each week. While participating in the Amicus House programs, petitioner submitted to random urinalysis testing; all test results were negative for controlled substances.

14. Lori Johnson, Executive Director of Amicus House, wrote a letter for the Board's consideration dated May 1, 2019. Johnson writes to confirm that since petitioner's discharge, petitioner continues to practice recovery tools necessary to ensure long-term sobriety. She reports that petitioner continues to attend meetings regularly, work with his sponsor, and entrench himself in the recovery process and community.

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[4] Adderall is a stimulant and a Schedule II controlled substance pursuant to Health and Safety Code section 11055.

*Petitioner's Testimony*

15. Petitioner accepts full responsibility for, and is humiliated by, his misconduct. Petitioner lost his marriage, his career and his financial stability as a result of his addiction. For the past five years he has survived financially on social security and by renting rooms in his home. Petitioner would like to return to the practice of medicine for financial reasons and because he misses it.

16. Petitioner continues to attend Narcotics Anonymous meetings twice per week. He works with his sponsor and has developed a circle of support within the recovery community. Petitioner's sister has recently moved in with him and is supportive of his recovery efforts.

17. Petitioner reports that he no longer craves controlled substances and feels stable in his recovery. He also feels that his bipolar disorder is stable and that his medication regimen has helped him maintain his mental health.

18. Dr. Stein wrote a letter for the Board's consideration dated August 28, 2018. Dr. Stein reports that petitioner has been diligent in working his recovery program and has maintained his sobriety during treatment. Dr. Stein reports that petitioner is compliant with taking his medications and has had no episodes of bipolar mania or depression during his treatment. Dr. Stein supports the reinstatement of petitioner's certificate. He believes petitioner is capable of functioning in a safe and competent manner.

19. Kevin D. Fischer, M.D., wrote a letter for the Board's consideration dated November 5, 2018. Dr. Fischer attended the Hazelden rehabilitation program while petitioner was at the treatment facility. Dr. Fischer is a board certified allopathic physician licensed in the state of Washington. Dr. Fischer and petitioner have maintained a friendship since leaving Hazelden and Dr. Fischer visits petitioner in his home several times each year. Dr. Fischer reports having observed a remarkable change in petitioner over the years. He notes that petitioner has accepted responsibility for his misconduct and has remained active as a positive influence with members of his sober living environment community. Dr. Fischer vouches for petitioner's continuing commitment to sobriety and ongoing participation in 12-step recovery. Dr. Fischer supports reinstatement of petitioner's certificate.

20. Petitioner has no intention of returning to emergency medicine. He would like to work with Dr. Stein assisting recovering addicts and reports that Dr. Stein has offered him a position in his office. Petitioner plans to pursue certification in addiction medicine.

21. Petitioner regularly reads Journal Watch online. Between April 16 and May 8, 2019, petitioner earned 23 hours of continuing medical education from Harvard Medical School in the subject of substance use disorders and understanding addiction.

22. Petitioner is agreeable to accepting and complying with a probationary certificate, including substance abuse treatment conditions and the engagement of a practice monitor.

## LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 2307, subdivision (b)(1), reinstatement petitions may be filed three years after an individual surrenders his license for unprofessional conduct. Petitioner's petition is timely. (Factual Findings 2 and 4.)

2. In a proceeding for the restoration of a license, the burden rests on the petitioner to establish that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

3. The primary purpose of this proceeding is to protect the public, while aiding petitioner in his continued rehabilitation. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; Bus. & Prof. Code, § 2229, subd. (a).)

4. Business and Professions Code section 2307, subdivision (e), provides that relevant factors to consider concerning a petition for reinstatement of a surrendered license include "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."

In addition, the Board has set forth the following factors to be considered: a) the nature and severity of the act(s) under consideration; b) evidence of any subsequent misconduct; c) the amount of time that has elapsed since commission of the underlying act(s); and d) evidence of rehabilitation. (Cal. Code Regs., tit. 16, § 1360.2)

5. Petitioner has abused controlled substances over many years during his lifetime. He successfully completed the Board's diversion program in the 1980's, but relapsed after being prescribed controlled substances following surgery. However, petitioner has been sober for six years and is actively engaged in efforts to ensure his continued sobriety. Petitioner has established that he is rehabilitated and safe to practice medicine under the heightened scrutiny of probation including substance abuse treatment conditions, a practice monitor and a prohibition on prescribing controlled substances. Because petitioner has not practiced since 2012, completion of a clinical competency assessment program prior to resuming practice is also warranted to protect the public. Good cause exists to reinstate petitioner's surrendered certificate under appropriate probationary conditions pursuant to Business and Professions Code section 2307.

## ORDER

The petition of Lawrence Hart Livingston, M.D., for reinstatement of his surrendered license is granted. Physician's and Surgeon's Certificate No. G 27982 is reinstated. The certificate is immediately revoked and petitioner is placed on probation for three years on the following terms and conditions.

1. Clinical Competence Assessment Program

   Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Petitioner shall successfully complete the program not later than six months after petitioner's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

   The program shall consist of a comprehensive assessment of petitioner's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to petitioner's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require petitioner's on-site participation for a minimum of three and no more than five days as determined by the program for the assessment and clinical education evaluation. Petitioner shall pay all expenses associated with the clinical competence assessment program.

   At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the petitioner has demonstrated the ability to practice safely and independently. Based on petitioner's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with the program's recommendations.

   Determination as to whether petitioner successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

   Petitioner shall not practice medicine until petitioner has successfully completed the program and has been so notified by the Board or its designee in writing.

2. Controlled Substances – Total Restriction

Petitioner shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

Petitioner shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5.

If petitioner forms the medical opinion, after an appropriate prior examination and a medical indication, that a patient's medical condition may benefit from the use of marijuana, petitioner shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and a medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, petitioner shall inform the patient or the patient's primary caregiver that petitioner is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on petitioner's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Petitioner shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits petitioner from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

3. Controlled Substances – Abstain from Use

Petitioner shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to petitioner by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, petitioner shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If petitioner has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The petitioner shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the petitioner with a hearing within 30 days of the request, unless the petitioner stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be disoolved.

4. Alcohol – Abstain from Use

Petitioner shall abstain completely from the use of products or beverages containing alcohol.

If petitioner has a confirmed positive biological fluid test for alcohol, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The petitioner shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the petitioner with a hearing within 30 days of the request, unless the petitioner stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good

cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to; non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

5. Biological Fluid Testing

Petitioner shall immediately submit to biological fluid testing, at petitioner's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Prior to practicing medicine, petitioner shall contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Petitioner shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and petitioner.

If petitioner fails to cooperate in a random biological fluid testing program within the specified time frame, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The petitioner shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the petitioner with a hearing within 30 days of the request, unless the petitioner stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause

includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

6. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Petitioner shall participate in and successfully complete that program. Petitioner shall provide any information and documents that the program may deem pertinent. Petitioner shall successfully complete the classroom component of the program not later than six months after petitioner's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

7. Psychiatric Evaluation

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

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

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

8. Psychotherapy

Within 60 calendar days of the effective date of this Decision, petitioner shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, petitioner shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Petitioner shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Petitioner shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require petitioner to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, petitioner is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over petitioner's license and the period of probation shall be extended until the Board determines that petitioner is mentally fit to resume the practice of medicine without restrictions.

Petitioner shall pay the cost of all psychotherapy and psychiatric evaluations.

9. 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.

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 (3) calendar days after being so notified. Petitioner shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) 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, billing appropriately or both. 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 5 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 approved in advance by the Board or its designee, 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.

10. 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.

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. The petitioner shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the petitioner's practice setting changes and the petitioner is no longer practicing in a setting in compliance with this Decision, the petitioner shall notify the Board or its designee within 5 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. The petitioner shall not resume practice until an appropriate practice setting is established.

11. Notification

Within seven days of the effective date of this Decision, the 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.

12. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, petitioner is prohibited form supervising physician assistants and advanced practice nurses.

13. 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.

14. 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 conditions of probation.

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

15. General Probation Requirements

Compliance with Probation Unit
Petitioner shall comply with the Board's probation unit.

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.

16. 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.

17. 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 as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If petitioner resides in California and is considered to be in non-practice, petitioner shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve petitioner from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event petitioner's period of non-practice while on probation exceeds 18 calendar months, petitioner shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Petitioner's period of non-practice while on probation shall not exceed two (2) years.

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

Periods of non-practice for a petitioner residing outside of California 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; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

18. Completion of Probation

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

19. 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.

20. 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 or her 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.

21. 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: July 18, 2019

DocuSigned by:
Jill Schlichtmann
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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings