BEFORE THE

MEDICAL BOARD OF CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement of:

BONIFACE OKWUDILI ONUBAH, Petitioner

Agency Case No. 800-2019-055701 OAH No. 2020030111

DECISION AFTER NON-ADOPTION

Carla L. Garrett, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via videoconference on June 25, 2020.

Boniface Okwudili Onubah (Petitioner) appeared by video and represented himself. Wendy Widlus, Deputy Attorney General, appeared by video and represented the Attorney General as authorized by Government Code section 11522.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 25, 2020.

On September 14, 2020, Panel B (Panel) of the Board issued an Order of Non-Adoption of the Proposed Decision and informing the parties they would be afforded the opportunity to submit written argument. On October 1, 2020, the Panel informed the parties that October 22, 2020, is the last date to submit written argument. On October 15, 2020, The Panel issued a Notice of Hearing for Oral Argument, setting the hearing for November 12, 2020. On October 22, 2020, the Office of the Attorney General submitted written argument; Petitioner submitted none. The Panel fixed the date of oral argument for November 12, 2020. The Board having read and heard the administrative record and the

submitted written argument, and having heard oral argument, hereby renders its decision in the matter.

FACTUAL FINDINGS

Procedural Background

1. On October 6, 1993, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number A 52415 (certificate) to Petitioner. On July 8, 2013, the Board issued an Interim Suspension Order against Petitioner, restricting him from issuing prescriptions for substances listed in Schedules II, III, IV, and V, as set forth in Health and Safety Code sections 11055 and 11056. Effective November 14, 2014, the Board revoked Petitioner's certificate. On December 11, 2014, Petitioner filed a Petition for Administrative Mandamus in the Superior Court of California to appeal the Board's decision revoking his license. On December 16, 2014, the superior court denied the Petition for Administrative Mandamus. On May 8, 2019, Petitioner filed a Petition for Reinstatement (Petition). This hearing ensued.

Underlying Misconduct

2. In 2000, Petitioner was the subject of an FBI investigation. He was arrested for the issuance of prescriptions in his name for patients Petitioner had never seen. Petitioner was released shortly thereafter and no criminal charges were filed.

3. After receiving a consumer complaint regarding Petitioner, the Board reviewed documents outlining Petitioner's prescribing history from April 26, 2008 through May 10, 2012, and noted he wrote a number of prescriptions for controlled and highly addictive medications. The Board interviewed Petitioner on November 14, 2012, and Petitioner stated that he worked at several clinics controlled and managed by Anush Davtyan. At the time, Ms. Davtyan was under investigation by federal law enforcement, and she was subsequently convicted on May 2, 2013, of

conspiracy to possess with intent to distribute and of distribution of controlled substances, in violation of Title 21, United States Code, section 846. She was sentenced to 135 months in federal prison.

4. During the interview, Petitioner admitted to pre-signing prescriptions, sometimes leaving them blank with no patient's name. The Board traced these prescriptions to Patients JL, DL, WJ, RL, and FM, who were seen by chiropractors and other clinics at which Petitioner worked.

5. On August 25, 2014, Kimberly Kirchmeyer, Executive Officer of the Board (Complainant), filed a Second Amended Accusation against Petitioner alleging 11 causes for discipline: (1) gross negligence; (2) repeated acts of negligence; (3) prescribing without examination or indication; (4) excessive prescribing; (5) inadequate records; (6) unprofessional conduct; (7) dishonest and corrupt acts; (8) false documents; (9) pre-signing prescriptions; (10) prescribing to patients not under care or treatment; and (11) false or fictitious prescriptions.

6. The matter was heard at OAH from September 8, 2014, through September 12, 2014. The ALJ issued a proposed decision on October 3, 2014, revoking Petitioner's license. The proposed decision was subsequently adopted by the Board. The ALJ found that cause existed to discipline Petitioner's license for leaving pre- signed prescriptions at the clinic in which he worked, constituting gross negligence (First Cause for Discipline), repeated acts of negligence (Second Cause for Discipline), and unprofessional conduct (Third Cause for Discipline). The ALJ found that Complainant did not meet her burden of establishing Petitioner had prescribed medications without examination or indication (Third Cause of for Discipline), engaged in excessive prescribing (Fourth Cause of

Discipline), maintained inadequate records (Fifth Cause for Discipline), engaged in dishonest and corrupt acts (Seventh Cause for Discipline), created false documents (Eighth Cause for Discipline), prescribed to patients not under Petitioner's care or treatment, or wrote false or fictitious prescriptions (Eleventh Cause for Discipline).

Petition & Petitioner's Testimony

7. In support of his Petition, Petitioner submitted a 27-page narrative explaining why he believed the Board should reinstate his license. He stated, in part, the following:

> In over 4 years, since my license was revoked, I have had time for detailed reflection on my California Medical Board's Administrative case and action; to conduct full soul searching, and examine my professional activities, overall circumstances and behavior that drew the attention, scrutiny and eventual action of concerned authorities, especially the medical board of California that led to revocation of my license to practice medicine in the great state of California.

(Exhibit 1, p. AG005.)

8. Petitioner is also seeking restatement because he wishes to "restore the faith that everyone who knew [him] ... had in [him] and [his] abilities, by following a professional path of exemplary and laudable physician's practice and activities while repairing for good all reputational damage and other untoward side effects of the revocation of [his] physician's license and the unfortunate actions that led to it." (Exhibit 1, p.

AG0012.)

9. Petitioner testified that he realized what he had done was wrong and promised that it would not happen again. Petitioner further testified that he was willing to do whatever it takes to get his license back, including abiding by whatever conditions the Board attaches to his license. Petitioner was apologetic and demonstrated remorse.

10. Petitioner has completed continuing education courses and seminars on controlled substances, abuse, and medical ethics, and has engaged in extensive study of current textbooks, medical journals, publications, and medical news. He has also consulted with colleagues, legal experts, law enforcement, and health insurance personnel, all to bolster and fortify Petitioner's practical knowledge of controlled substances and optimal prescription practices. Petitioner also "gained much more knowledge and awareness of the many deceitful and illicit schemes and tactics of unscrupulous or bad actors in medical clinics that prey on unsuspecting physicians and exposing patients and physicians to jeopardy." (Exhibit 1, p. AG009.)

11. Petitioner has also been developing assistive algorithms designed to help physicians reduce the instances in which they prescribe drugs unnecessarily. Additionally, Petitioner has been performing medical transcriptions and editing for physicians, as well as ensuring they are following the appropriate rules and regulations when billing patients. In exchange for the service he provides to physicians, the physicians sometimes pay him, but mostly they provide him access to their subscriptions to medical journals, because he cannot independently afford them.

Character Evidence

12. Sim C. Hoffman, .M.D., wrote a letter of reference dated December 14, 2018, on Petitioner's behalf. Dr. Hoffman has known Petitioner since December 2000, and has worked with him in several clinical settings in Southern California for more than 15 years. He stated the following:

> I understand that [Petitioner's] license was revoked in November, 2014 due to Gross Negligence relating to potentially harmful and unethical prescription practices. I have *never* witnessed him doing this. From my discussions with [Petitioner], he has undergone medical education and character adjustments as to not repeat such actions again. I also understand, and counseled him, that he deserves a fresh start, and he agrees to work only with people of proper moral character and principles. He agrees to be vigilant as to avoid any appearance of impropriety, unethical or illegal activities.

(Exhibit 1, p. AGO0037.)

13. Bashamber Chabra, M.D., of the Metropolitan Health Medical Group, wrote a letter of reference dated December 18, 2018 on Petitioner's behalf. Dr. Chabra has known Petitioner since 2005, after Petitioner joined his multispecialty practice as a consulting neurologist. Dr. Chabra stated, in part, the following regarding Petitioner:

> He worked with honor, integrity, distinction and dedication to his profession and patients. He was a dependable, skilled and

vastly knowledgeable and experienced specialist who displayed compassion and eagerness to care for his patients and help anyone around him in any way he could.

[. . .]

I was stunned when I learned that his California physician and surgeon's license was revoked because of gross negligence allegedly related to risky or potentially harmful unethical prescription practices, because the [Petitioner] I know, would never engage in impropriety or acts of negligence, malpractice or incompetence.

[. . .]

After his license was revoked true to his nature, [Petitioner] as usual has kept in touch with the medical group offering mostly research, editing and occasional technical advice on neurodiagnostic equipment and continuing medical education (CME) and other patient education resources. He was also helpful in researching and helping our industrial practice keep abreast of the latest industrial / occupational guidelines (ACOEM Guidelines) and latest general medicine, neurologic, neuropsychiatric, psychologic, surgical, orthopedic, neurosurgical, rehabilitation and neuropharmacological approaches to improve overall patient care.

(Exhibit 1, p. AGO034.)

14. Dr. Jeremiah Agulou, M.D., Ph.D, F.A.A.F.P., Medical Director of the Centinela Medical Center of South Bay, wrote a letter of reference dated January 12, 2019, on Petitioner's behalf. Dr. Agulou has known

Petitioner for more than 15 years. He stated the following:

> Professionally, I have practiced with [Petitioner] in the past within my office and he has been an integral part of my practice as someone with a deep knowledge base and a true love for medicine. Since then, he has developed into a respected physician with an acute understanding of critical medical procedures and processes. I have always known him to be a man of integrity and a compassionate physician. He has exemplified that by donating his time and wisdom through seeing patients (pro bona) who have no insurance and unable to pay.

(Exhibit 1, p AGO036.)

15. Sarah Peters, Special Investigator in the Complaint Investigation Office for the Board, performed a telephone interview of Dr. Chabra on August 15, 2019. Dr. Chabra stated Petitioner did not tell him the circumstances that led to his license revocation. He also advised Investigator Peters that he did not know what Petitioner had been doing for work since the revocation of his license and could not answer whether Petitioner had accepted responsibility for the circumstances that led to his revocation. Dr. Chabra was also unaware of any efforts Petitioner had made toward rehabilitation and had no idea of Petitioner's plans should he be reinstated. Dr. Chabra told Investigator Peters that he did not have enough information to support Petitioner in his reinstatement and asked to withdraw his letter of support.

LEGAL CONCLUSIONS

1. Petitioner bore the burden of proving both his rehabilitation and his fitness to practice medicine. *(Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence to a reasonable certainty. *(Hippard v. State Bar* (1989) 49 Cal.3d 1084; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.) Petitioner's burden required a showing that he was no longer deserving of the adverse character judgment associated with the discipline imposed against his certificate. *(Tardiffv. State Bar* (1980) 27 Cal.3d 395.)

2. The petition must 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." (Bus. & Prof. Code, § 2307, subd. (c).) Consideration may be given to "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." (Bus. & Prof. Code, § 2307, subd. (e).)

3. California Code of Regulations, title 16, section 1360.2, sets forth the following criteria by which evidence of rehabilitation must be evaluated when considering a petition for reinstatement of a revoked or surrendered license:

A. The nature and severity of the acts or crimes under consideration as grounds for denial.

B. Evidence of any acts or crimes committed subsequent to the acts or crimes under consideration as grounds for denial which also could be considered as grounds for denial under Business and Professions Code section 480.[1]

C. The time that has elapsed since the commission of the acts or crimes under consideration.

D. In the case of a revocation based upon the conviction of a crime: (1) the total criminal record; (2) whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person; and (3) evidence of expungement proceedings pursuant to Penal Code section 1203.4. (Cal. Code Regs., tit. 16, § 1360.1.)

E. Evidence, if any, of rehabilitation submitted by the applicant.

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[1] Business and Professions Code section 480 provides: "A board may deny a license regulated by this code on the grounds that the applicant has one of the following: (1) Been convicted of a crime. . . . (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another. (3) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license ...only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made."

4. Rehabilitation is a state of mind and the law looks with favor upon rewarding one who has achieved reformation and regeneration with the opportunity to serve. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) Cases authorizing reinstatement to a professional practice commonly involve a substantial period of exemplary conduct following the misdeeds. The more serious the misconduct, the stronger the showing of rehabilitation must be. (*In re Gossage* (2000) 23 Cal.4th 1080, 1098.)

5. The task in disciplinary cases is preventative, protective and remedial, not punitive. (*In re Kelley* (1990) 52 Cal.3d 487.) But, public protection is the highest priority for the Medical Board. (Bus. & Prof. Code, § 2229.) A decision may include any terms and conditions the Board reasonably deems appropriate to impose reinstatement. (Gov. Code, § 11522.) This is consistent with the Board's broad discretion in imposing initial discipline. (*Borden v. Division of Med. Quality* (1994) 30 Cal.App.4th 874, 884.)

6. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Although artificial acts of contrition are not required in an administrative action (*Calaway v. State Bar* (1986) 41 Cal.3d 743, 747-748; *Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 744-745), acceptance of responsibility for one's wrongdoing is.

7. In this case, the nature of the acts resulting in the discipline of

Petitioner's license involved Petitioner leaving pre-signed prescriptions at the clinic in which he worked, constituting gross negligence, repeated acts of negligence, and unprofessional conduct. These acts, as described in the proposed decision adopted by the Board, occurred approximately eight years ago. Importantly, there was no patient harm. Petitioner was apologetic and promised he would not repeat the same mistakes, demonstrating his remorsefulness.

8. Since the revocation of his license, Petitioner has remained abreast of best practices in medicine by completing a number of continuing education courses and seminars, studying medical journals, and consulting with colleagues, legal experts, and law enforcement, all to inform his practical knowledge of controlled substances and optimal prescription practices.

9. Petitioner has presented clear and convincing evidence of rehabilitation to warrant reinstatement of his medical license subject to terms and conditions of probation for five years that will protect the public and further Petitioner's continuing rehabilitation. Based on the entire administrative record, including, most notably, Petitioner's lengthy absence from the practice of medicine, the Panel finds that additional optional terms and conditions are necessary. First, Petitioner shall complete a clinical competence assessment program. Second, Petitioner shall complete a professionalism program. Third, shall complete a prescribing practices course. Fourth, Petitioner is prohibited from engaging in the solo practice of medicine. Fifth, Petitioner shall refrain from supervising physician's assistants and advance practice nurses. Finally, Petitioner shall obtain a practice monitor.

Under these imposed terms and conditions, Petitioner will be subject to a

rigorous program of monitoring by multiple individuals to ensure he is competent and ensure he is practicing medicine safely.

ORDER

The petition of Boniface Okwudili Onubah for reinstatement is granted. Physician's and Surgeon's Certificate Number A52415 shall be reinstated and immediately revoked. However, the revocation is stayed and Petitioner is placed on probation for five years upon 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 (6) months after Petitioner's initial enrollment unless the Board or its designee agrees in writing to an extension of that time, but in no event shall Petitioner successfully complete the program later than the conclusion of the one-year imposed suspension.

The program shall consist of a comprehensive assessment of Petitioner's physical and mental health and the six (6) 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 (3) and no more than five (5) 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. 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 California Code of Regulations, title 16, section 1358. 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 (6) 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 (1) 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.

3. Prescribing Practices Course

Within 60 calendar days of the effective date of this Decision, Petitioner shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Petitioner shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Petitioner shall participate in and successfully complete the classroom component of the course not later than six (6) months after the Petitioner's initial enrollment. Petitioner shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

Petitioner shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully

completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

4. 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 (3) 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 five (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 (3) calendar days after being so notified. The Petitioner shall not resume practice until an appropriate practice setting is established.

5. Supervision of Physician Assistants and Advanced Practice Nurses

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

6. Practice Monitor

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 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 Decisions and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decisions, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decisions and Accusation, 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 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 dates 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 (3) 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.

7. Notification

Within seven (7) 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.

8. 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.

9. 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.

10. 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(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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

This Decision shall become effective at 5:00 pm on JAN 15 2021.

IT IS SO ORDERED DEC 17 2020.

KRISTINA D. LAWSON, J.D., CHAIR
PANEL B

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

In the Matter of the Petition for Reinstatement of: **Boniface Okwudili Onubah** Petitioner	Case No. 800-2019-055701

NOTICE OF HEARING FOR ORAL ARGUMENT

To all parties:

Please take notice that the hearing for oral argument before a Panel of the Medical Board of California will be held as follows:

Date: **November 12, 2020**

Time: **10:00 a.m.**

Place: **WebEx Online Meeting**

The agenda will be updated with the WebEx online Meeting link closer to the meeting.

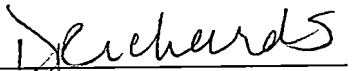
The following time limitations will be strictly enforced:

1. Opening argument by respondent: 15 minutes
2. Responsive argument by complainant: 15 minutes
3. Closing argument by respondent: 5 minutes
4. Closing argument by complainant: 5 minutes

Arguments must be based on the existing record and no new evidence will be heard. A party may be asked to support its oral argument on any matter within a specific citation to the record. The Board directs the parties' attention to Title 16 of the California Code of Regulations sections 1364.30 and 1364.32 for the requirement regarding the submission of oral and written argument. An Administrative Law Judge from the Office of Administrative Hearings will be present to sit with the agency. A court reporter will be present to record the proceedings.

Although not required to attend, the respondent is encouraged to personally attend this hearing and meet the agency. **No continuances will be granted.** All times are approximate and subject to change.

DATED: October 15, 2020



Dianne Richards, Associate Analyst
Discipline Coordination Unit

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

In the Matter of the Petition for Reinstatement of:	)		
Boniface Okwudili Onubah	)	Case No.:	800-2019-055701
Physician's and Surgeon's Certificate No. A 52415	)	OAH No.:	2020030111
Petitioner	)		

ORDER OF NON-ADOPTION
OF PROPOSED DECISION

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

To order a copy of the transcript, please contact Kennedy Court Reporters, 920 West 17th Street, Second Floor, Santa Ana, CA 92706. The telephone number is (714) 835-0366.

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

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

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

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

Date: September 14, 2020

Kristina D. Lawson, Chair
Panel B

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

In the Matter of the Petition for Reinstatement of:

BONIFACE OKWUDILI ONUBAH, Petitioner

Agency Case No. 800-2019-055-5701

OAH No. 2020030111

PROPOSED DECISION

Carla L. Garrett, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via videoconference on June 25, 2020.

Boniface Okwudili Onubah (Petitioner) appeared by video and represented himself. Wendy Widlus, Deputy Attorney General, appeared by video and represented the Attorney General as authorized by Government Code section 11522.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 25, 2020.

FACTUAL FINDINGS

Procedural Background

1. On October 6, 1993, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number A 52415 (certificate) to Petitioner. Effective November 14, 2014, the Board revoked Petitioner's certificate. On July 8, 2013, the Board issued an Interim Suspension Order against Petitioner, restricting him from issuing prescriptions for substances listed in Schedules II, III, IV, and V, as set forth in Health and Safety Code sections 11055 and 11056. On December 11, 2014, Petitioner filed a Petition for Administrative Mandamus in the Superior Court of California to appeal the Board's decision revoking his license. On December 16, 2014, the superior court denied the Petition for Administrative Mandamus. On May 8, 2019, Petitioner filed a Petition for Reinstatement (Petition). This hearing ensued.

Underlying Misconduct

2. In 2000, Petitioner was the subject of an FBI investigation. He was arrested for the issuance of prescriptions in his name for patients Petitioner had never seen. Petitioner was released shortly thereafter and no criminal charges were filed.

3. After receiving a consumer complaint regarding Petitioner, the Board reviewed documents outlining Petitioner's prescribing history from April 26, 2008 through May 10, 2012, and noted he wrote a number of prescriptions for controlled and highly addictive medications. The Board interviewed Petitioner on November 14, 2012, and Petitioner stated that he worked at several clinics controlled and managed by Anush Davtyan. At the time, Ms. Davtyan was under investigation by federal law enforcement, and she was subsequently convicted on May 2, 2013 of conspiracy to

possess with intent to distribute and of distribution of controlled substances, in violation of Title 21, United States Code, section 846. She was sentenced to 135 months in federal prison.

4. During the interview, Petitioner admitted to pre-signing prescriptions, sometimes leaving them blank with no patient's name. The Board traced these prescriptions to Patients JL, DL, WJ, RL, and FM, who were seen by chiropractors and other clinics at which Petitioner worked.

5. On August 25, 2014, Kimberly Kirchmeyer, Executive Officer of the Board (Complainant), filed a Second Amended Accusation against Petitioner alleging 11 causes for discipline: (1) gross negligence; (2) repeated acts of negligence; (3) prescribing without examination or indication; (4) excessive prescribing; (5) inadequate records; (6) unprofessional conduct; (7) dishonest and corrupt acts; (8) false documents; (9) pre-signing prescriptions; (10) prescribing to patients not under care or treatment; and (11) false or fictitious prescriptions.

6. The matter was heard at OAH from September 8, 2014, through September 12, 2014. The ALJ issued a proposed decision on October 3, 2014, revoking Petitioner's license. The proposed decision was subsequently adopted by the Board. The ALJ found that cause existed to discipline Petitioner's license for leaving pre-signed prescriptions at the clinic in which he worked, constituting gross negligence (First Cause for Discipline), repeated acts of negligence (Second Cause for Discipline), and unprofessional conduct (Third Cause for Discipline). The ALJ found that Complainant did not meet her burden of establishing Petitioner had prescribed medications without examination or indication (Third Cause of for Discipline), engaged in excessive prescribing (Fourth Cause of Discipline), maintained inadequate records (Fifth Cause for Discipline), engaged in dishonest and corrupt acts (Seventh Cause for

Discipline), created false documents (Eighth Cause for Discipline), prescribed to patients not under Petitioner's care or treatment, or wrote false or fictitious prescriptions (Eleventh Cause for Discipline).

Petition

7. In support of his Petition, Petitioner submitted a 27-page narrative explaining why he believed the Board should reinstate his license. He stated, in part, the following:

> In over 4 years, since my license was revoked, I have had time for detailed reflection on my California Medical Board's Administrative case and action; to conduct full soul searching, and examine my professional activities, overall circumstances and behavior that drew the attention, scrutiny and eventual action of concerned authorities, especially the medical board of California that led to revocation of my license to practice medicine in the great state of California.

(Exhibit 1, p. AG005.)

8. At hearing, Petitioner stated he "was invited to an ambush interview" by the Board in November 2012, and attributed his revocation "almost entirely on gross misunderstandings of [his] truthful but not clearly defined and unfocused answers." (Exhibit 1, p. AG006.) Petitioner contends he was coerced into attending the interview, and asserted he had suffered 36 to48 hours of sleep deprivation just prior to the interview. Petitioner also explained he suffered extreme mental and physical fatigue at the interview, and significant cognitive impairment, due to months of being the sole

caregiver for his disabled son, who suffered from severe autism, severe childhood anxiety disorder, Cerebella syndrome, and sleep apnea. Additionally, at that time, Petitioner was undergoing a divorce and child custody proceedings, and managing an extensive workers' compensation workload, as well as a consulting clinical practice. Petitioner contends Deputy Attorney General (DAG) Tan Tran was aware of his difficulties at the interview and should have offered to discontinue it. He also asserts DAG Tran should have "sought clarification of [his] answers which were [taken] out of truthful context." (*Ibid.*) At hearing, Petitioner stated that because he is a black man from Nigeria, DAG Tran "had an absolute hatred against him," "was prejudiced as hell," and "was cold, calculated, and prejudiced."

9. At the hearing, Petitioner contended that the ALJ professed to know the truth, but did not. In his petition, Petitioner repeatedly asserted his lack of culpability for the causes of discipline upheld by the ALJ and the Board, stating the following:

> The assertion by [the ALJ] that I was evasive and not credible was most hurtful as veracity, openness, exactitude, morality, industry, absolutist adherence to applicable laws and regulations, indefatigable pursuit of knowledge and selfless service to humanity has defined my entire life . . . My obvious African English dialectal disadvantages imposed on me the lack of the gift of oratory of educational American and presentation skills that would have been persuasive.

(Exhibit 1, p. AG0018.)

10. Petitioner also complained that the Board did not provide him with a copy of the interview recording until one business day prior to the May 6, 2013 Interim Suspension Order (ISO) hearing. He also alleged that DAG Tran doctored the tapes, but Petitioner proffered no supporting evidence establishing this contention. Petitioner explained he could not prepare an effective defense and had inadequate time to procure good legal help. Petitioner stated the following:

> While I was not given time by the Deputy [Attorney General] to prepare any useful or efficient defense . . . it was impossible to mount any effective defense and my last minute subpar lawyer tried unsuccessfully at the hearing to get an extension to avoid adverse decisions or sanctions against me or my practice, that was denied by the ISO Judge, who admittedly had gone through all evidence and filings against me with the Deputy [Attorney General] who had 8 months to prepare and file his case against me. The ISO judge had his ample time with the case and legal filings, I was the only one who [had] no time to even fully read all that was filed against me. With the judge's refusal to give me due extension, I knew I was doomed. I am black and hail from Nigeria and this is the United [States] of America and my [fate] was sealed.

(Exhibit 1, p. AG0021-AG0022.)

11. Petitioner denied having prescription pads made for him, and denied authorizing anyone to do so on his behalf. Petitioner asserted he "was completely misunderstood when [he] said [he] left prescriptions for patients under [his] care."

(Exhibit 1, p. AG0020.) He stated he "never gave a signed prescription outside [his] consultation room and presence or vicinity of [his] clinic office / procedure room. No proof exists anywhere in this world that [he] did such a thing." (Exhibit 1, p. AG0021.) Additionally, at hearing, Petitioner flatly denied doing anything wrong, and stated he could not apologize for doing something he did not do.

12. Petitioner seeks reinstatement in order to remain on "the path of [his] divine call and nobility of providing compassionate professional preventative and curative medical services to fellow humans and communities in need. . . ." (Exhibit 1, p. AG008.) Additionally, practicing medicine would afford Petitioner "the income to take care of [his] family's socioeconomic needs, responsibility to [his] community and the society at large, opportunity for local and international philanthropy and . . . retirement funds." *(Ibid.)* Finally, the restoration of Petitioner's license would enable [his] individual and collaborative clinical research and investigative activities through acceptance by professional colleagues, agencies, institutions and more." (*Ibid.*)

13. Petitioner is also seeking restatement because he wishes to "restore the faith that everyone who knew [him] . . . had in [him] and [his] abilities, by following a professional path of exemplary and laudable physician's practice and activities while repairing for good all reputational damage and other untoward side effects of the revocation of [his] physician's license and the unfortunate actions that led to it." (Exhibit 1, p. AG0012.)

14. Petitioner has completed continuing education courses and seminars on controlled substances, abuse, and medical ethics, and has engaged in extensive study of current textbooks, medical journals, publications, and medical news. He has also consulted with colleagues, legal experts, law enforcement, and health insurance personnel, all to bolster and fortify Petitioner's practical knowledge of controlled

substances and optimal prescription practices. Petitioner also "gained much more knowledge and awareness of the many deceitful and illicit schemes and tactics of unscrupulous or bad actors in medical clinics that prey on unsuspecting physicians and exposing patients and physicians to jeopardy." (Exhibit 1, p. AG009.)

15. Petitioner has also been developing assistive algorithms designed to help physicians reduce the instances in which they prescribe drugs unnecessarily. Additionally, Petitioner has been performing medical transcriptions and editing for physicians, as well as ensuring they are following the appropriate rules and regulations when billing patients. In exchange for the service he provides to physicians, the physicians sometimes pay him, but mostly they provide him access to their subscriptions to medical journals, because he cannot independently afford them.

Character Evidence

16. Sim C. Hoffman, M.D., wrote a letter of reference dated December 14, 2018 on Petitioner's behalf. Dr. Hoffman has known Petitioner since December 2000, and has worked with him in several clinical settings in Southern California for more than 15 years. He stated the following:

> I understand that [Petitioner's] license was revoked in November, 2014 due to Gross Negligence relating to potentially harmful and unethical prescription practices. I have never witnessed him doing this. From my discussions with [Petitioner], he has undergone medical education and character adjustments as to not repeat such actions again. I also understand, and counseled him, that he deserves a fresh start, and he agrees to work only with people of

> proper moral character and principles. He agrees to be vigilant as to avoid any appearance of impropriety, unethical or illegal activities.

(Exhibit 1, p. AGO0037.)

17. Bashamber Chabra, M.D., of the Metropolitan Health Medical Group, wrote a letter of reference dated December 18, 2018 on Petitioner's behalf. Dr. Chabra has known Petitioner since 2005, after Petitioner joined his multispecialty practice as a consulting neurologist. Dr. Chabra stated, in part, the following regarding Petitioner:

> He worked with honor, integrity, distinction and dedication to his profession and patients. He was a dependable, skilled and vastly knowledgeable and experienced specialist who displayed compassion and eagerness to care for his patients and help anyone around him in any way he could.
>
> [¶ . . . ¶]
>
> I was stunned when I learned that his California physician and surgeon's license was revoked because of gross negligence allegedly related to risky or potentially harmful unethical prescription practices, because the [Petitioner] I know, would never engage in impropriety or acts of negligence, malpractice or incompetence.
>
> After his license was revoked true to his nature, [Petitioner] as usual has kept in touch with the medical group offering mostly research, editing and occasional technical advice on

> neurodiagnostic equipment and continuing medical education (CME) and other patient education resources. He was also helpful in researching and helping our industrial practice keep abreast of the latest industrial / occupational guidelines (ACOEM Guidelines) and latest general medicine, neurologic, neuropsychiatric, psychologic, surgical, orthopedic, neurosurgical, rehabilitation and neuropharmacological approaches to improve overall patient care.

(Exhibit 1, p. AGO034.)

18. Dr. Jeremiah Agulou, M.D., Ph.D, F.A.A.F.P., Medical Director of the Centinela Medical Center of South Bay, wrote a letter of reference dated January 12, 2019 on Petitioner's behalf. Dr. Agulou has known Petitioner for more than 15 years. He stated the following:

> Professionally, I have practiced with [Petitioner] in the past within my office and he has been an integral part of my practice as someone with a deep knowledge base and a true love for medicine. Since then, he has developed into a respected physician with an acute understanding of critical medical procedures and processes. I have always known him to be a man of integrity and a compassionate physician. He has exemplified that by donating his time and wisdom through seeing patients (pro bono) who have no insurance and unable to pay.

(Exhibit 1, p AGO036.)

19. Sarah Peters, Special Investigator in the Complaint Investigation Office for the Board, performed a telephone interview of Dr. Chabra on August 15, 2019. Dr. Chabra stated Petitioner did not tell him the circumstances that led to his license revocation. He also advised Investigator Peters that he did not know what Petitioner had been doing for work since the revocation of his license, and could not answer whether Petitioner had accepted responsibility for the circumstances that led to his revocation. Dr. Chabra was also unaware of any efforts Petitioner had made toward rehabilitation and had no idea of Petitioner's plans should he be reinstated. Dr. Chabra told Investigator Peters that he did not have enough information to support Petitioner in his reinstatement, and asked to withdraw his letter of support.

LEGAL CONCLUSIONS

1. Petitioner bore the burden of proving both his rehabilitation and his fitness to practice medicine. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.) Petitioner's burden required a showing that he was no longer deserving of the adverse character judgment associated with the discipline imposed against his certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395.)

2. The purpose of the Medical Practice Act is to assure the high quality of medical practice. In furtherance of that goal, the board seeks to keep unqualified and undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.)

3. California Code of Regulations, title 16, section 1360.2, sets forth the following criteria by which evidence of rehabilitation must be evaluated when considering a petition for reinstatement of a revoked or surrendered license:

A. The nature and severity of the acts or crimes under consideration as grounds for denial.

B. Evidence of any acts or crimes committed subsequent to the acts or crimes under consideration as grounds for denial which also could be considered as grounds for denial under Business and Professions Code section 480.[1]

C. The time that has elapsed since the commission of the acts or crimes under consideration.

D. In the case of a revocation based upon the conviction of a crime: (1) the total criminal record; (2) whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions

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[1] Business and Professions Code section 480 provides: "A board may deny a license regulated by this code on the grounds that the applicant has one of the following: (1) Been convicted of a crime. . . . (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another. (3) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license . . . only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made."

lawfully imposed against such person; and (3) evidence of expungement proceedings pursuant to Penal Code section 1203.4. (Cal. Code Regs., tit. 16, § 1360.1.)

E. Evidence, if any, of rehabilitation submitted by the applicant.

4. Cases authorizing reinstatement to a professional practice commonly involve a substantial period of exemplary conduct following the misdeeds. The more serious the misconduct, the stronger the showing of rehabilitation must be. (*In re Gossage* (2000) 23 Cal.4th 1080, 1098.)

5. In this case, the nature of the acts resulting in the discipline of Petitioner's license involved Petitioner leaving pre-signed prescriptions at the clinic in which he worked, constituting gross negligence, repeated acts of negligence, and unprofessional conduct. These acts, as described in the proposed decision adopted by the Board, occurred approximately eight years ago, and were severe. Since the revocation of his license, Petitioner has remained abreast of best practices in medicine by completing a number of continuing education courses and seminars, studying medical journals, and consulting with colleagues, legal experts, and law enforcement, all to inform his practical knowledge of controlled substances and optimal prescription practices.

6. While it is commendable that Petitioner has taken steps to remain abreast of current trends in medicine, and to contribute to the practice of medicine in a positive way, Petitioner has demonstrated an absolute lack of remorse for the actions that led to the revocation of his license. Instead, Petitioner wrote a 27-page narrative, the vast majority of it consisting of Petitioner blaming DAG Tran and the ALJ for his license revocation. Specifically, he expounded, at length, and without evidence, about how he was victimized by DAG Tran's trickery and racist motives, resulting in Petitioner

making damning admissions during his interview with the Board, which were intentionally misconstrued by DAG Tran. Additionally, Petitioner asserts that as a result of DAG Tran's manipulation of information, the ALJ rendered a decision that lacked truth and demonstrated a lack of knowledge. Petitioner took absolutely no responsibility for leaving pre-signed prescriptions at the clinic where he worked.

7. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Although artificial acts of contrition are not required in an administrative action (*Calaway v. State Bar* (1986) 41 Cal.3d 743, 747-748; *Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 744-745), acceptance of responsibility for one's wrongdoing is. Here, Petitioner's attitude has not changed since the time he committed the acts that led to his revocation, and he has denied, and continues to deny, any and all culpability.

8. The purpose of an administrative disciplinary case such as this one is not to punish Petitioner, but to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Absent an acknowledgement of responsibility and appropriate remorse for his wrongdoing, the public safety, welfare and interest cannot be adequately protected if Petitioner's license is reinstated at this time.

9. Given the above, Petitioner has failed to prove by clear and convincing evidence that he is entitled to penalty relief under Business and Professions Code section 2307. Accordingly, Petitioner's request for reinstatement shall be denied.

ORDER

The petition of Boniface Okwudili Onubah for reinstatement of his revoked certificate is denied.

DATE: July 23, 2020

DocuSigned by:
Carla L. Garrett
40D88C3B8950438

CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings