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

In the Matter of the Petition for Reinstatement of: Jose Luis Flores, M.D. Physician's and Surgeon's Certificate No. A 69861 Petitioner.	Case No. 800-2018-050423

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 January 15, 2021.

IT IS SO ORDERED: December 17, 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 for Reinstatement of:

JOSE LUIS FLORES, Petitioner

Case No. 800-2018-050423

OAH No. 2020070475

PROPOSED DECISION

Marcie Larson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically and by video on October 15, 2020, in Sacramento, California.

Aaron Lent, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Paul Chan, Attorney at Law, represented petitioner Jose Luis Flores, who appeared at the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on October 15, 2020.

FACTUAL FINDINGS

Background and Procedural History

1. On September 24, 1999, the Medical Board of California (Board) issued petitioner Physician's and Surgeon's Certificate Number A69861 (certificate).

2. On January 28, 2014, following the issuance of an Ex Parte Interim Suspension Order pursuant to Government Code section 11529, complainant Kimberly Kirchmeyer, the former Executive Director for the Board, filed a First Amended Accusation (Accusation) against petitioner. Complainant contended petitioner's certificate was subject to revocation for violations of the Business and Professions Code. Generally, complainant alleged petitioner had a mental and or physical illness affecting his competency, used controlled substances and alcoholic beverages to the extent or in a manner that was harmful to himself and others, engaged in gross negligence and repeated acts of negligence in the care and treatment of eight patients, prescribed dangerous drugs to patients without performing an appropriate examination, and excessively prescribed controlled substances and dangerous drugs to patients.

Concerning petitioner's mental fitness, the Accusation alleged that on August 21, 2013, Markham Kirsten, M.D., a Board certified psychiatry expert, conducted an evaluation of petitioner at the request of the Board. The request resulted from information the Board received that petitioner had been arrested several times between January and March 2012. Additionally, petitioner had tested positive for alcohol. After conducting an evaluation, Dr. Kirsten diagnosed petitioner with "[a]lcohol use disorder, moderate to severe (more than 6 symptoms); [p]robable cocaine use disorder moderate to severe; [p]robable amphetamine use disorder

moderate to severe; [p]robable amphetamine use disorder moderate to severe; [p]robable Xanax use disorder, mild; [g]ambling disorder; [and] [p]ersonality disorder with borderline and antisocial features."

3. On February 7, 2014, petitioner signed a Stipulated Surrender of License and Disciplinary Order (Surrender). Petitioner admitted to the "complete truth and accuracy of each and every charge" in the Accusation. On April 9, 2014, the Board adopted the Surrender, which became effective on April 16, 2014.

Petition for Reinstatement

4. On November 29, 2018, petitioner signed and thereafter filed with the Board the instant Petition in which he seeks reinstatement of his license. Petitioner has not previously applied for reinstatement. In support of his Petition, petitioner submitted letters of support from five physicians and eight non-physicians. Petitioner also submitted evidence of completing hundreds of hours of continuing medical education.

5. On January 18, 2019, Lauren Nickell, Special Investigator for the Board, was assigned to review and investigate the Petition. Ms. Nickell prepared a report detailing the records she reviewed and interviews she conducted, including an interview with petitioner. The information petitioner provided Ms. Nickell is consistent with the testimony he provided at hearing.

6. At hearing, petitioner explained the issues that gave rise to the surrender of his certificate and the efforts he has made to rehabilitate. Petitioner explained that he has suffered from alcoholism since he was young. Both of petitioner's parents are alcoholics. Petitioner's alcoholism started in college and increased in medical school. His substance abuse increased after medical school when he began having marital

problems. Petitioner began consuming alcohol every day. As a result, he began having major problems with his private and professional life.

7. In 2003, 2004, 2007, and 2012, petitioner completed drug and alcohol rehabilitation programs. Petitioner had also participated in the Board's drug diversion program. However, he continued to use alcohol and drugs. Petitioner explained the rehabilitation programs did not stop his addiction because he was in denial and did not "surrender."

8. On August 8, 2014, petitioner's sobriety date, he surrendered to his addiction and asked God for help. Petitioner entered the Salvation Army drug and alcohol program on that date and began his recovery. Petitioner completed six-months of inpatient treatment at the Salvation Army, followed by outpatient care. Petitioner explained that his decision to stop using drugs and alcohol in August 2014, was different from previous attempts, because up until that time, he believed he could control his addiction. Once he surrendered to God, he found joy in his recovery. Petitioner completed the Salvation Army program on February 11, 2015.

9. Through treatment at the Salvation Army, petitioner learned that he drank alcohol and used drugs to cope with the stress he felt from his dysfunctional family and relationships. He would also use Xanax to cope with withdrawal from alcohol. Petitioner developed a relapse prevention plan which includes maintaining a healthy lifestyle through exercise and volunteering. Petitioner attends at least two to three Alcoholics Anonymous (AA) meeting per week and works the steps of AA and Narcotics Anonymous (NA) with a sponsor. Petitioner meets with his sponsor at least two times per week. Petitioner also participates in a physician substance abuse support group one day per week.

Petitioner is not currently under care of a psychiatrist because he does not have health insurance. However, once he is working in a position that provides him with health insurance, he is willing to begin treatment with a psychiatrist. Petitioner believes that Dr. Kirsten misdiagnosed his conditions. Petitioner believes his evaluation was affected by his alcohol and drug use at the time. Since he has been sober, petitioner does not have the same issues that gave rise to the diagnosis identified by Dr. Kirsten.

10. Service is a significant portion of petitioner's life since completing the Salvation Army program. Petitioner volunteers at the Salvation Army 10 to 15 hours per week. He is certified in relapse prevention and serves as a Relapse Prevention instructor. Petitioner teaches weekly Smoking Cessation and Relapse Prevention classes. He sponsors and mentors approximately 30 individuals in their on-going recovery. Petitioner also has a strong support network that consists of members of the Salvation Army community.

11. From August 2016, until October 2018, petitioner worked as Substance Abuse Counselor and Case Manager for the Bay Area Addiction Research and Treatment (BAART) Clinic, in Fresno, California. Petitioner's duties included performing intake, assessment, and treatment for clients with addictions. Petitioner assisted clients with incorporating the 12 steps programs of AA and NA into their lives.

Since November 2018, petitioner has worked as a Driving Under the Influence (DUI) Addiction Prevention Counselor and Health Educator for the Special Services Community Center. Petitioner teaches bilingual DUI substance abuse prevention classes. Petitioner is fluent in Spanish. He also serves as the migrant farmworker class moderator and facilitator.

12. Petitioner explained that he feels ready to return to practicing medicine. To address the deficiencies identified by the Board, petitioner completed over 300 hours of continuing education, which included courses in the proper prescribing of controlled substances, ethics, and medical record keeping. Petitioner has also "shadowed" several doctors two to four hours per week, including Jose Luis Bautista, M.D., who wrote a letter of support for petitioner and testified at hearing. If petitioner's certificate is reinstated, he hopes to work for Dr. Bautista at his medical clinic in the Central Valley.

13. Petitioner understands the Board's concerns about his ability to safely practice medicine, considering his long history of substance abuse. He is willing to comply with any terms of probation imposed by the Board, so that he can return to practicing medicine, which is his passion.

WITNESS TESTIMONY AND CHARACTER LETTERS

14. Dr. Bautista has been licensed by the Board since approximately 1989. Dr. Bautista owns and operates Bautista Medical Group, a family practice. The practice treats patients in the Central Valley who do not have insurance.

15. Dr. Bautista has known petitioner since 1996. He consulted with petitioner on a few patient cases when petitioner was working in a practice in the Central Valley. Dr. Bautista is aware of petitioner's substance abuse history and the surrender of his certificate. Dr. Bautista explained that since petitioner has been sober he is a "totally different person." Petitioner is patient, kind, and humble. From 2019, until June 2020, Dr. Bautista allowed petitioner to shadow him at his practice. Dr. Bautista described petitioner as "very intelligent" and up to date in most modern

treatments for family practice. He also explained that petitioner is a "fast learner" who knows his limitations.

16. Dr. Bautista is willing to hire petitioner if his certificate is reinstated. Dr. Bautista would mentor and supervise petitioner. Dr. Bautista is creating a not-for-profit medical clinic that will allow Dr. Bautista to expand his treatment of patients without medical insurance. Dr. Bautista explained that petitioner would be a good addition to his staff. Petitioner is bilingual. He communicates effectively with patients. The staff and patients are comfortable with petitioner. Dr. Bautista would also ensure petitioner has time to comply with any requirements imposed by the Board.

17. Petitioner submitted several letters from physicians and colleagues he worked with over the years. The authors describe petitioner as a person who has overcome his substance abuse and is dedicated to sobriety. The authors of the letters support petitioner's return to medicine and believe he is capable of practicing safely. Petitioner also submitted several letters from the Salvation Army community. The authors describe petitioner as a person who is not only dedicated to his own sobriety, but actively helps to support others in their recovery, through volunteering his time in bible study, AA and NA meetings, and facilitating various support classes.

Analysis

18. The conduct that gave rise to the surrender of petitioner's certificate was dangerous and troubling. Petitioner abused drugs and alcohol and engaged in conduct that posed a risk to his patients and the public. Additionally, petitioner has a very long history of substance abuse and many failed attempts a sobriety. However, petitioner made a lasting commitment to his sobriety on August 8, 2014. He completed a rehabilitation program, and incorporates daily practices that support

continued sobriety. Petitioner accepts full responsibility for his past conduct and understands that the only way to have a healthy and peaceful life is to remain sober. His testimony was sincere and demonstrated a strong desire to continue to learn from his past, while moving towards a future that will allow him to practice medicine again. Petitioner has a strong support network, including his Salvation Army community, and the support of physicians in his community willing to give him the opportunity to practice again.

19. When all of the evidence is considered, petitioner has demonstrated sufficient rehabilitation to warrant the reinstatement of his certificate, on a probationary basis, with terms and conditions, including undergoing a clinical evaluation, that will continue to support his recovery and ensure the public is protected.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2307, provides in pertinent part:

> (a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.
>
> (b) The person may file the petition after a period of not less than the following minimum periods have elapsed from

the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

2. In considering a petition for reinstatement, the Board may consider "all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability." (Bus. & Prof. Code, § 2307, subd. (e).) The administrative law judge hearing the petition "may recommend the imposition of any terms and conditions deemed necessary." (Bus. & Prof. Code, § 2307, subd. (f).)

3. In this proceeding, the burden is on petitioner to present clear and convincing evidence of rehabilitation to support his petition for reinstatement. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 316.) As set forth in the Factual Findings as a whole, petitioner produced sufficient evidence to establish that it would be consistent with public health, safety, and welfare to grant his request for reinstatement on a probationary basis. Consequently, his Petition is granted.

ORDER

Petitioner Jose Luis Flores' petition for reinstatement of surrendered certificate is hereby GRANTED. A certificate shall be ISSUED to petitioner. Said certificate shall

immediately be REVOKED. However, the revocation is STAYED and petitioner is placed on PROBATION for five years upon the following terms and conditions:

1. **Clinical Diagnostic Evaluations and Reports**: Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, petitioner shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed, board-certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with petitioner within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether petitioner has a substance abuse problem, whether petitioner is a threat to himself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to petitioner's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that petitioner is a threat to himself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether petitioner is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: petitioner's license type; petitioner's history; petitioner's documented length of sobriety (i.e., length of time that has elapsed since petitioner's last substance use); petitioner's scope and pattern of substance abuse; petitioner's treatment history, medical history and current medical condition; the nature, duration and severity of petitioner's substance abuse problem or problems; and whether petitioner is a threat to himself or the public.

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether petitioner is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on petitioner based on the recommendations made by the evaluator. Petitioner shall not be returned to practice until he has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that he has not used, consumed, ingested, or administered to herself a prohibited substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of

the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by petitioner.

Petitioner shall not engage in the practice of medicine until notified by the Board or its designee that he is fit to practice medicine safely. The period of time that petitioner is not practicing medicine shall not be counted toward completion of the term of probation. Petitioner shall undergo biological fluid testing as required in this Decision at least two (2) times per week while awaiting the notification from the Board if he is fit to practice medicine safely.

Petitioner shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified by the Board or its designee.

2. **Notice of Employer or Supervisor Information**: Within seven (7) days of the effective date of this Decision, petitioner shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Petitioner shall also provide specific, written consent for the Board, petitioner's worksite monitor, and petitioner's employers and supervisors to communicate regarding petitioner's work status, performance, and monitoring. For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when petitioner has medical staff privileges.

3. **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. Petitioner shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Petitioner shall be tested on the date of the notification as directed by the Board or its designee. The Board may order petitioner to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by petitioner.

During the first year of probation, petitioner shall be subjected to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five (5) years, petitioner shall be subject to 36 to 104 random tests per year. Only if there have been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

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 and meets all the following standards:

(a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.

(b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.

(c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.

(d) Its specimen collectors observe the collection of testing specimens.

(e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.

(f) Its testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.

(g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test petitioner on any day of the week.

(h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(i) It maintains testing sites located throughout California.

(j) It maintains an automated 24-hour toll-free telephone number and/or a secure on-line computer database that allows petitioner to check in daily for testing.

(k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if petitioner holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days 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 a biological fluid test result indicates petitioner has used, consumed, ingested, or administered to himself a prohibited substance, the Board shall order petitioner to cease practice and instruct petitioner to leave any place of work where petitioner is practicing medicine or providing medical services. The Board shall immediately notify

all of petitioner's employers, supervisors and work monitors, if any, that petitioner may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of petitioner's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriate licensed health care provider for use by petitioner and approved by the Board, alcohol, or any other substance petitioner has been instructed by the Board not to use, consume, ingest, or administer to himself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, petitioner has committed a major violation, as defined in section 1361.52(a), and the Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance petitioner's rehabilitation.

4. **Substance Abuse Support Group Meetings:** Within thirty (30) days of the effective date of this Decision, petitioner shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he shall attend for the duration of probation. Petitioner shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Petitioner shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with petitioner within the last five (5) years. Petitioner's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing petitioner's name, the group name, the date and location of the meeting, petitioner's attendance, and petitioner's level of participation in progress. The facilitator shall report any unexcused absence by petitioner from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

5. **Worksite Monitor for Substance-Abusing Licensee:** Within thirty (30) calendar days of the effective date of this Decision, petitioner shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board

or its designee, a person in a position of authority who is capable of monitoring petitioner at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with petitioner, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but petitioner's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall petitioner's worksite monitor be an employee or supervisee of petitioner.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms and conditions of petitioner's disciplinary order and agrees to monitor petitioner as set forth by the Board or its designee.

Petitioner shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with petitioner in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding petitioner's behavior, if requested by the Board or its designee; and review petitioner's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and petitioner's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written report that includes the date,

time, and location of the suspected abuse; petitioner's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) petitioner's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates petitioner had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of petitioner's work attendance; (8) any change in petitioner's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by petitioner. Petitioner shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, petitioner shall, within five (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 will be assuming that responsibility within fifteen (15) calendar days. If petitioner fails to obtain approval of a replacement monitor within sixty (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.

6. **Violation of Probation Condition for Substance-Abusing Licensees:** Failure to fully comply with any term or condition of probation is a violation of probation.

A. If petitioner commits a major violation of probation as defined by section 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue an immediate cease-practice order and order petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at petitioner's expense. The cease-practice order issued by the Board or its designee shall state that petitioner must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time petitioner must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty (30) calendar days. Petitioner may not resume the practice of medicine until notified in writing by the Board or its designee that he may do so.

(2) Increase the frequency of biological fluid testing.

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

B. If petitioner commits a minor violation of probation as defined by section 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue a cease-practice order.

(2) Order practice limitations.

(3) Order or increase supervision of petitioner.

(4) Order increase documentation.

(5) Issue a citation and fine, or a warning letter.

(6) Order petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at petitioner's expense.

(7) Take any other action as determined by the Board or its designee.

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke petitioner's probation if he has violated any term or condition 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, 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.

7. **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.

8. **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. 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 petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless 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 30 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.

9. **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. 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 petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide 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 30 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.

10. **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.

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 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.

If petitioner fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, 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 not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If petitioner did not successfully complete the clinical competence assessment program, petitioner shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

11. **Education Course:** Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, petitioner shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test petitioner's knowledge of the course. Petitioner shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

12. **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 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.

A prescribing practices course 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 course would have been approved by the Board or its designee had the course 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 course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

13. **Medical Record Keeping Course:** Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a course in medical record keeping 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 petitioner's initial enrollment. Petitioner shall successfully complete any other component of the course within one (1) year of enrollment. The medical record

keeping course shall be at petitioner's expense and shall be in addition to the CME requirements for renewal of licensure.

A medical record keeping course 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 course would have been approved by the Board or its designee had the course 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 course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

14. **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 (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 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.

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

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

16. **Supervision of Physician Assistants and Advanced Practice Nurses:** During probation, petitioner is prohibited from supervising physician assistants and advanced practice nurses.

17. **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.

18. **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.

19. **General Probation Requirements**: Petitioner shall comply with the Board's probation unit. 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).

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.

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

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 thirty (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.

20. **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.

21. **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 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.

22. **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.

23. **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, 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.

24. **License Surrender:** Following the effective date of this Decision, if petitioner ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request to surrender his license. The Board reserves the right to evaluate petitioner's request and to

exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, petitioner shall within 15 calendar days deliver petitioner's wallet and wall certificate to the Board or its designee and petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

25. **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.

DATE: November 13, 2020

Marcie Larson
Marcie Larson (Nov 13, 2020 16:19 PST)

MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings