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

In the Matter of the Statement of Issues Against: **Sher Ali Khan** Applicant.	File No. 800-2019-060510

DECISION AND ORDER

The attached Proposed Decision is hereby accepted and 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 **December 23, 2020**, although the probation will not commence until the applicant completes any remaining requirements for licensure and the license is issued.

ORDERED: December 18, 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 Statement of Issues Against:

SHER ALI KHAN, M.D.,

Applicant.

Case No. 800-2019-060510

OAH No. 2020060400

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter by videoconference on July 8, 2020.

Deputy Attorney General Greg W. Chambers represented complainant William J. Prasifka, Executive Director of the Medical Board of California.

Applicant Sher Ali Khan, M.D., represented himself.

The matter was submitted for decision on July 8, 2020.

On July 9, 2020, applicant asked to reopen the record for additional documentary evidence. Complainant opposed this request. Because applicant has not shown good cause to reopen the record, the request is denied. The evidence in this

matter comprises only the testimony and documents (exhibits C1 through C8 and A1 through A38) admitted into evidence during the hearing.

FACTUAL FINDINGS

1. Applicant Sher Ali Khan applied in May 2019 for a California physician's and surgeon's certificate.

2. In October 2019, acting in her official capacity as Executive Director of the Board, Kimberly Kirchmeyer notified applicant that she would recommend that the Board issue him a probationary California physician's and surgeon's certificate, but not an unconditional certificate. Applicant declined to seek a probationary certificate.

3. Acting in her official capacity, Board Interim Executive Director Christine J. Lally filed a statement of issues against applicant in March 2020. The statement of issues alleges that applicant should not receive a physician's and surgeon's certificate, because he demonstrated unprofessional conduct during a residency program. After Lally filed the statement of issues, complainant William J. Prasifka became the Board's Executive Director.

Medical Education and Postgraduate Residency

4. Applicant studied medicine in Pakistan. He received his medical degree in November 2012.

5. Between 2013 and 2016, applicant completed medical and surgical internships and conducted clinical research, both in Pakistan and in the United States.

6. In mid-2016, applicant began an internal medicine residency at Weiss Memorial Hospital in Chicago.

7. During his first residency year, applicant received some evaluations rating him as "competent" to "exemplary" in various aspects of his practice. Other supervising physicians rated him as "borderline" in various skills, however, and a few noted "critical deficiency" in some skills. Several supervising physicians stated that despite being conscientious and professional, and despite having what seemed to be adequate medical knowledge, applicant struggled with attention and detail, and with managing multiple patients at once.

8. In July 2016, applicant sought mental health care. Samir Gupta, M.D., diagnosed applicant with attention deficit hyperactivity disorder (ADHD), and recommended modifications to certain testing protocols as an accommodation for this disability. Later, in December 2016, clinical neuropsychologist Christina Blodgett Dycus, Ph.D., diagnosed applicant in addition with obsessive-compulsive disorder and bipolar disorder II. He began receiving treatment with psychotropic medications and psychotherapy. He continued to receive such treatment at the time of the hearing, and testified credibly that it is beneficial for him.

9. In mid-2017, Weiss Memorial Hospital's Clinical Competency Committee determined that applicant should undergo three months of academic remediation before advancing into his second residency year. Applicant began his second residency year in September 2017.

10. During his second residency year, applicant continued to receive mixed evaluations from his supervising physicians. Several noted improvement, but although some again rated him as "competent" to "exemplary," others found his work

"borderline" or to show "critical deficiency." Several supervising physicians again noted applicant's challenges with prioritizing information, attending to detail, and "time management and efficiency."

11. In September 2018, Weiss Memorial Hospital's Clinical Competency Committee determined that applicant should undergo four more months of academic remediation before advancing into his third residency year.

12. Applicant took and passed the United States Medical Licensing Examination, Step 3, on October 26, 2018.

13. In January 2019, the Weiss Memorial Hospital Clinical Competency Committee declined to advance applicant to the third residency year. A "Resident Milestone Summary" for applicant at the end of his residency describes his overall performance as "satisfactory." Nevertheless, no such "Resident Milestone Summary" from any point in applicant's residency reports that applicant is "Ready for Unsupervised Practice."

14. Applicant believes that some physicians who supervised him during his Weiss Memorial Hospital residency, and the residency Program Director, were biased against him because of the mental health issues described above in Finding 8. He complains in addition that they refused to accommodate his disability adequately, including toward the end of his second residency year by refusing to assign him a "co-senior" resident as a partner during an intensive care rotation. Applicant acknowledges that he does not perform at his best in a busy hospital setting, but feels confident that he can provide safe, independent care in an outpatient medical practice.

Post-Residency Professional Experience and Plans

15. After his residency at Weiss Memorial Hospital ended, applicant moved to Arizona. He began studying at the University of Arizona College of Public Health, and has completed some course work toward a master's degree.

16. In May 2019, the Family Health Care Network (an organization operating outpatient primary care medical clinics in Porterville) offered applicant a position as a general practice physician. This offer caused applicant to apply for a California physician's and surgeon's certificate, as stated in Finding 1. He had intended to start work in this position in early 2020, but was not able to do so because he did not receive an unconditional certificate.

17. Applicant made plans to begin a residency in preventive medicine at the University of New Mexico in July 2020. He was not able to begin that residency as scheduled because governmental responses to the COVID-19 pandemic have interfered with his ability to secure an appropriate visa.

18. Applicant holds License No. 35.137430 from the State Medical Board of Ohio, authorizing him to practice medicine in Ohio. He has not practiced in that state, however.

References

19. Shehzad Ali, Program Director for the Weiss Memorial Hospital internal medicine residency program, provided several reference letters for applicant after applicant left the residency program. These letters state Dr. Ali's opinion that applicant is well qualified for practice as a physician in an outpatient clinic, or for a preventive medicine residency.

20. Applicant provided other reference letters praising his medical skills from several physicians who supervised him during his residency (Paul Abbo, M.D.; Maribe Bangayan, M.D.; May Hashimi, M.D.; Youshay Humayun, M.D.; and Suzanne Pham, M.D.) These authors prepared these letters to recommend applicant for further residency (either in internal medicine or in preventive care), not to recommend applicant to the Board.

21. Finally, applicant provided reference letters from a medical student he supervised, from nurses, and from a patient, all praising applicant's professionalism and courtesy.

Expert Opinion

22. Complainant asked Jim Nuovo, M.D., to review applicant's qualifications for licensure, and relied on Dr. Nuovo's expert opinion in denying applicant's application. Dr. Nuovo also testified at the hearing to explain his opinion.

23. Dr. Nuovo practices medicine in California and is board certified in family medicine. He has taught and practiced family medicine at the University of California, Davis, since 1992, and has trained and evaluated many medical residents during his career.

24. To develop his opinion regarding applicant's ability to practice medicine safely and competently, Dr. Nuovo reviewed the application materials applicant had submitted to the Board. He also reviewed records the Board received from Weiss Memorial Hospital regarding applicant's internal medicine residency (summarized in Findings 6, 7, and 9 through 13).

25. Dr. Nuovo acknowledges that applicant's written evaluations from his internal medicine residency generally express confidence in applicant's "work ethic and professionalism," and show that applicant improved his medical knowledge, his communication ability, and his diagnostic skill during his residency. Based on all applicant's evaluations, however, and on his overall review of Weiss Memorial Hospital's documentation about applicant, Dr. Nuovo believes that applicant has not "demonstrated the ability to practice competently and without direct supervision." Particularly in light of the matters stated in Findings 13, 14, and 20, this opinion is persuasive.

LEGAL CONCLUSIONS

1. The Board may deny an application for a physician's and surgeon's certificate, or may issue a probationary license, if the applicant has committed acts that would have constituted unprofessional conduct for a licensed physician. (Bus. & Prof. Code, §§ 475, subd. (a)(4), 480, subd. (a)(3), 2221, 2234.) Unprofessional conduct includes incompetence (*id.*, § 2234, subd. (d)), which exists when an applicant's training and experience have not yet prepared the applicant to practice medicine safely and independently.

2. In light of all the matters stated in Findings 6 through 14, the matters stated in Findings 22 through 25 constitute cause for the Board to deny a physician's and surgeon's certificate to applicant.

3. The Board may place newly certified physicians and surgeons on probation. (Bus. & Prof. Code, § 2221.) The matters stated in Findings 4, 5, 15, and 19 through 21 show that applicant has significant medical training and skill, and that he

either has or with further supervision may develop the ability to practice medicine independently and safely. For this reason, a probationary certificate is appropriate for applicant.

4. Because of the matters stated in Findings 8 and 14, a probation condition requiring applicant to receive regular mental health care is appropriate to ensure that he remains able to practice medicine safely and effectively.

ORDER

Upon completion of all application requirements and payment of all fees, the Board shall issue a physician's and surgeon's certificate to applicant Sher Ali Khan. The certificate immediately shall be revoked; but the revocation shall be stayed, and applicant shall be placed on probation for three years on the following conditions.

1. Psychotherapy

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

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall

furnish a written evaluation report to the Board or its designee. Applicant shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

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

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

2. Practice Monitor

Within 30 calendar days of the effective date of this decision, applicant shall submit to the Board or its designee for prior approval as a practice monitor the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with applicant, 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 applicant's field of practice, and must agree to serve as applicant's monitor. Applicant shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the decision and statement of issues, and a proposed monitoring plan. Within 15 calendar days of receipt of the decision, statement of issues, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the decision and statement of issues, 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, applicant's practice shall be monitored by the approved monitor. Applicant 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 applicant fails to obtain approval of a monitor within 60 calendar days of the effective date of this decision, applicant shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Applicant 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 applicant's performance, indicating whether applicant's practices are within the standards of practice of medicine, and whether applicant is practicing medicine safely. It shall be the sole responsibility of applicant to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

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

In lieu of a monitor, applicant 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. Applicant shall participate in the professional enhancement program at applicant's expense during the term of probation.

3. Solo Practice Prohibition

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

If applicant 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, applicant shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so

notified. Applicant shall not resume practice until an appropriate practice setting is established.

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

4. Notification

Within seven days of the effective date of this decision, applicant shall provide a true copy of this decision and the statement of issues to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to applicant, at any other facility where applicant 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 applicant. Applicant 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.

5. Supervision of Physician Assistants and Advanced Practice Nurses

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

6. Obey All Laws

Applicant 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.

7. Quarterly Declarations

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

8. General Probation Requirements

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

Address Changes: Applicant shall, at all times, keep the Board informed of applicant's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

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

License Renewal: Applicant shall maintain a current and renewed California physician's and surgeon's certificate.

Travel or Residence Outside California: Applicant shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California that lasts, or is contemplated to last, more than 30 calendar days. In the event applicant should leave the State of California to reside or to practice, applicant shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

9. Interview With the Board or its Designee

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

10. Non-Practice While on Probation

Applicant 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 applicant's return to practice. Non-practice is defined as any period of time applicant 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 applicant resides in California and is considered to be in non-practice, applicant 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 applicant 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 applicant's period of non-practice while on probation exceeds 18 calendar months, applicant 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.

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

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

Periods of non-practice while applicant resides outside of California will relieve applicant 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; and Quarterly Declarations.

11. Completion of Probation

Applicant 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, applicant's certificate shall be fully restored.

12. Violation of Probation

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

13. License Surrender

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

14. Probation Monitoring Costs

Applicant 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: July 29, 2020

DocuSigned by:
Juliet E. Cox
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JULIET E. COX
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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: **Sher Ali Khan** **638 E. 2nd Street** **Tucson, AZ 85705-7873** Applicant.	Case No. 800-2019-060510 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about May 1, 2019, the Medical Board of California, Department of Consumer Affairs received an application for a physician and surgeon's certificate from Sher Ali Khan (Applicant). On or about May 7, 2019, Applicant certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on October 14, 2019.

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JURISDICTION

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

4. Section 475, subdivision (a) (4), of the Code states that "[n]otwithstanding any other provisions of this code, the provisions of this division [Business and Professions Code sections 475 through 499] shall govern the denial of licenses on the grounds of . . . [c]ommission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license."

5. Section 480, subdivision (a) (3) (A), of the Code states that "[a] board may deny a license regulated by this code on the grounds that the applicant has one of the following . . . [d]one any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of a license."

6. Section 2221, subdivision (a), of the Business and Professions Code provides that the Medical Board of California "may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license; or, the board in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions . . . ."

7. Section 2234 of the Code requires the Board to take action against any licensee charged with unprofessional conduct.

FACTS

8. In June 2016, after completing medical school, Applicant began training in the Internal Medicine Residency Program at Weiss Memorial Hospital, in Chicago, Illinois.

9. Due to performance deficiencies, Applicant required three months of academic remediation during the first year of his residence training. Additionally, due to performance deficiencies, Applicant required four months of academic remediation during the second year of his residence training.

10. Applicant's contract was not renewed for the final (third) year of residency training and he left the program, credited with two years of residency training.

CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

11. Applicant's application for a physician and surgeon's certificate is subject to denial under Business and Professions Code sections 2221, subdivision (a) (license may be denied for unprofessional conduct) and 2234 (general unprofessional conduct) for unprofessional conduct as demonstrated by Applicant's deficiencies in his residency program, as described above.

PRAYER

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

1. Denying the application of Sher Ali Khan for a physician and surgeon's certificate;

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

DATED: MAR 24 2020

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