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

In the Matter of the Accusation Against: Craig Aaron Beach, M.D. Physician's & Surgeon's Certificate No. C 149908 Petitioner.	Case No.: 800-2018-043142

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by David Balfour, Esq., attorney for Craig Aaron Beach, M.D., for the reconsideration of the decision in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on January 25, 2021.

IT IS SO ORDERED: January 25, 2021

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 First Amended Accusation Against: CRAIG AARON BEACH, M.D. Physician's & Surgeon's Certificate No. C 149908, Respondent.	Case No. 800-2018-043142 **ORDER GRANTING STAY** (Government Code Section 11521)

David M. Balfour, Esq., on behalf of respondent, Craig Aaron Beach, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of January 15, 2021, at 5:00 p.m.

Execution is stayed until January 25, 2021, at 5:00 p.m.

This stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: January 13, 2021

William Prasifka
Executive Director
Medical Board of California

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

In the Matter of the Accusation Against: Craig Aaron Beach Physician's and Surgeons License No. C 149908 Respondent.	Case No. 800-2018-043142

DECISION

The attached 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 Accusation Against:

CRAIG AARON BEACH, M.D., Respondent

CASE No. 8002018043142

OAH No. 2019120752

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by video and teleconference on October 19 and 20, 2020, because of the ongoing Covid-19 pandemic.

LeAnna E. Shields, Deputy Attorney General, Department of Justice, State of California, represented complainant, William Prasifka, Executive Director, Medical Board of California, Department of Consumer Affairs, State of California. Christine J. Lally was the Interim Executive Director when the accusation was filed.

David Balfour, Attorney at Law, Nossaman LLP, represented respondent, Craig Beach, M.D., who was present.

The matter was submitted on October 20, 2020.

PROTECTIVE ORDER SEALING CONFIDENTIAL RECORDS

Exhibits 10, K, and R, psychological reports and records, were received and contained confidential information. It is impractical to redact the information from these exhibits. To protect the privacy and the confidential personal information from inappropriate disclosure, those exhibits are ordered sealed. This sealing order governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517 may review the documents subject to this order, provided that the documents are protected from release to the public. Personal identifying information was redacted from the arrest report post-hearing as discussed with the parties.

SUMMARY

Dr. Beach was convicted of driving with a blood alcohol concentration (BAC) of 0.08 percent or more with a special enhancement of a BAC of 0.15 percent or more, a crime substantially related to the qualifications, duties and functions of a physician and surgeon. Dr. Beach used alcohol in a manner that was dangerous to himself and the public. His actions violated the Medical Practice Act. Dr. Beach successfully rebutted complainant's assertion that he is a substance abusing physician, but he appeared more focused on escaping culpability than of truly appreciating his actions. Thus, a reasonable period of probation with terms and conditions will ensure public safety.

FACTUAL FINDINGS

Licensing and Jurisdictional Background

1. The board issued Physician and Surgeon's Certificate No. C 149908 to Dr. Beach on June 14, 2017. That certificate was in full force and effect at all times herein and will expire on January 31, 2021, unless renewed. Dr. Beach is also licensed in Canada and was previously licensed in Ohio. There is no history of discipline against any of Dr. Beach's medical licenses.

2. The accusation was signed by the former Interim Executive Director, in her official capacity on November 25, 2019. Complainant alleged Dr. Beach violated Business and Professions Code sections 2227, 2234, and 2236, when he was convicted of a substantially related crime (First Cause for Discipline); violated Business and Professions Code sections 2227, 2234, and 2239, subdivision (a), for using alcohol in a manner that was dangerous to himself or others (Second Cause for Discipline); and violated Business and Professions Code sections 2227 and 2234, subdivision (a), for violating or attempting to violate the Medical Practice Act (Third Cause for Discipline).

3. Dr. Beach timely submitted a notice of defense, and this hearing followed.

Dr. Beach's Education and Employment History

4. Dr. Beach is a Canadian citizen. He received his Bachelor of Arts in Psychology, Scholar's Electives Program (Dean's Honour List), from Western University in Ontario, Canada in 1998. He received his Doctor of Medicine from the Michael G. DeGroote School of Medicine, McMaster University, in Ontario, Canada in 2003. He attended the University of Toronto Psychiatry Residency Program at St. Michael's

Hospital in Ontario, Canada, from 2003 to 2004. He obtained a Master of Science in Forensic Mental Health Science from the Institute of Psychiatry at the Maudsley Hospital, King's College, University of London, United Kingdom, from 2004 to 2005.

Dr. Beach completed his residency in psychiatry at Columbia University from 2005 to 2009. He completed a forensic psychiatry Fellowship at Case Western Reserve University in 2010 with Professor Phillip Resnick, a world-renowned forensic psychiatrist. Dr. Resnick has performed forensic evaluations for high profile cases, including evaluating Ted Kaczynski (the Unabomber) and Jeffrey Dahmer. Dr. Resnick's fellowship is extremely competitive because of the kind of work Dr. Resnick performs and Dr. Beach's selection to the program was a testament to his skills and education.

After that fellowship, Dr. Beach worked as an Assistant Clinical Professor (Adjunct) in the Department of Psychiatry and Behavioural Neurosciences at McMaster University in Ontario, Canada, from 2010 to 2016. He was an Assistant Professor (Part-time) in the Department of Psychiatry at the University of Toronto from 2011 to 2012. He served as the Chair for the Division of Forensic Psychiatry & Assistant Professor in the Department of Psychiatry at Schulich School of Medicine & Dentistry at Western University in Ontario, Canada, from 2012 to 2015. He has an OMA/CMA (this acronym was not explained) Masters Certificate in Physician Leadership Development Program from the Schulich School of Business at York University in Ontario, Canada from 2012 to 2013.

Dr. Beach's curriculum vitae documented his extensive research and employment experience. He has worked as a research assistant, research therapist, and both a psychiatrist and forensic psychiatrist for correctional facilities in Canada. He has a general and forensic psychiatry private practice. He has been a consultant for the Canadian Mental Health Association and, most notably served as a psychiatrist for the

Flexible Assertive Community Treatment (FACT) team which profoundly changed how mental health services are provided in Canada. Based on a model used in the Netherlands, Dr. Beach and his team, through extensive community and province-wide outreach in Canada, completely overhauled the Canadian mental health system by creating a team concept that worked with several sectors of the community, replacing the splintered and disconnected services previously provided. Dr. Beach testified about the FACT program and the profound changes and great improvements it made to Canadian healthcare. He is often contacted by other programs to consult on his model. Dr. Beach continues to consult with his Canadian colleagues and is seen as a leader and expert in his field. He has several publications and awards including receiving the Rappaport Fellowship from the American Academy of Psychiatry and the Law in 2008.

Owing to his expertise, Dr. Beach is in the United States on an Exceptional Ability Green Card, which is granted to foreigners who have a special expertise. In order to apply for this type of green card, Dr. Green had to demonstrate he had a unique skill set no other United States citizen possessed, that his work had more than a local application, and he had to submit letters of recommendation attesting to his expertise from individuals who knew him and from individuals who did not know him, but knew of his work. Dr. Beach was able to obtain such a green card and he and his spouse relocated from Canada to San Diego. He explained that, as much as he loved Canada, he was tired of the cold and wished to work in a warm climate.

Since 2018 Dr. Beach has been a Supervising Psychiatrist of Clinical Services for San Diego County Psychiatric Hospital, Behavioral Health Sciences, and a psychiatrist for the Conditional Release Program. Dr. Beach explained that throughout his career, much of his work has centered on performing psychiatric evaluations to determine whether individuals are safe to be released from custody and to identify the mental

health services they need. Dr. Beach testified about the changes he is making to improve the San Diego County mental health program and provide better services in a better way. County Mental Health serves an underserved population who often have limited access to mental health care, and he and his team are working to change that in San Diego County.

Dr. Beach initially was exposed to this work because, as a child, his parents worked at the local prison, where he was first employed. He became interested in performing risk assessments, treating individuals with posttraumatic stress disorder, evaluating workplace safety, and performing release from custody evaluations. Dr. Beach credibly expressed his lifelong work in the mental health field, trying to improve the lives of others. He is very passionate about his work, and it was clear that he is extremely dedicated to his profession and to helping others.

Dr. Beach's 2018 Arrest and Lab Results

5. The facts and circumstances surrounding Dr. Beach's arrest were detailed in a California Highway Patrol (CHP) report received under *Lake v. Reed* (1997) 16 Cal.4th 448, 461-462, which sets forth how arrest reports may be received. The arresting officer, James Foote, testified in this hearing consistent with his report.

On April 4, 2018, at approximately 2:15 a.m., two CHP officers came upon Dr. Beach's vehicle partially stopped past a crosswalk and partially blocking an intersection and the crosswalk. Dr. Beach appeared to be unconscious. Officer Foote approached Dr. Beach's vehicle, observed that the engine was running, the vehicle's transmission was in drive, and the doors were locked. Dr. Beach was wearing a seatbelt and music was loudly playing. Dr. Beach's head was tilted forward and he appeared to be sleeping. After repeatedly knocking on the driver side window, Dr. Beach eventually

awoke and began fumbling with the vehicle's controls as he attempted to unlock and open the driver's door. Officer Foote reached inside and placed the transmission in park. Dr. Beach appeared disoriented and continued to fumble with the vehicle's consoles. Officer Foote detected the strong odor of an alcoholic beverage emitting from the vehicle and instructed Dr. Beach to exit the vehicle.

Dr. Beach stumbled from his vehicle with a coffee mug in his hand and walked towards the CHP vehicle with an unsteady gait. He "still smelled strongly of an alcoholic beverage while standing outside." Dr. Beach stated he was driving but was unable to answer any further questions or perform field sobriety tests. Officer Foote testified that Dr. Beach was too inebriated to do so. Dr. Beach's speech was slurred and he "swayed about while attempting to stand still." Officer Foote concluded that Dr. Beach had been driving a vehicle while under the influence of an alcoholic beverage, testifying that he was "confident" in reaching that conclusion.

Dr. Beach was advised of the implied consent law and elected to submit to a blood sample. He was transported to the county jail where a phlebotomist was prepared to obtain the sample. Upon arrival, Dr. Beach stated he no longer consented to the chemical test and Officer Foote told him it would only "prolong the ordeal." Officer Foote explained that most individuals want to give a sample so they can be "booked and bail out;" refusing to do so only prolongs the length of time they are in custody, which he explained to Dr. Beach. Owing to his refusal to submit a blood sample, Dr. Beach was transported to the CHP office where he was advised of the consequences of refusing a chemical test (driver's license suspension for one year), but he continued to refuse. Officer Foote then obtained a search warrant for the seizure of Dr. Beach's blood which was granted by a superior court judge at 4:06 a.m. A

nonconsensual blood draw was conducted at 5:08 a.m. and submitted for testing. Dr. Beach was returned to the county jail and incarcerated at approximately 5:40 a.m.

6. The lab results of the blood draw indicated that Dr. Beach had a BAC of 0.252 percent, plus or minus 0.014, more than three times the legal limit.

Dr. Beach's 2019 Conviction

7. On May 1, 2018, criminal charges were filed against Dr. Beach in San Diego County Superior Court, in the matter entitled *People v. Craig Aaron Beach*, Case number CT C380692. On March 4, 2019, Dr. Beach, who was represented by counsel, pled guilty to violating Vehicle Code section 23152, subdivision (b), driving with a BAC of 0.08 percent or more, a misdemeanor, with an enhancement of violating Vehicle Code section 23578, driving with a BAC of 0.15 percent or more.

In his allocution Dr. Beach admitted he "did unlawfully drive a motor vehicle with a BAC above .08 and above a .15 BAC." He identified the agreement reached with the prosecutor: he would not have to perform any community service, would not have to attend a substance abuse meeting, could attend AA and counseling in lieu of attending a Mothers Against Drunk Driving (MADD) Impact panel, attend FCP (which presumably referred to the First Offender Program), receive five years' probation with standard terms and conditions, and have the remaining charges dismissed.

The March 4, 2019, Superior Court "Misdemeanor-DUI/Traffic Judgment Minutes" documented the conviction and noted that the court placed Dr. Beach on summary probation for five years, ordered him to violate no laws, pay a fine and fees of approximately $2,400, imposed standard alcohol conditions, ordered him to enroll and successfully complete a three month First Offender Program, a MADD Program or in lieu of MADD two Alcoholics Anonymous (AA) classes; and surrender his driver's

license. Dr. Beach was "not ordered" to report to the probation department and public service was "not ordered."

On July 2, 2019, Dr. Beach successfully completed the three-month DUI first offender program. Attendance sheets documented Dr. Beach's attendance at AA meetings.

Absent early termination, Dr. Beach will remain on criminal probation until March 2024.

Dr. Beach's Testimony Regarding the DUI Incident

8. Dr. Beach had just completed a 30-day ketogenic diet wherein he extremely limited his carbohydrate intake, did not drink any alcohol, and lost approximately 15 pounds. His diet ended on a Monday morning. On Tuesday he met a friend of a friend for dinner at a restaurant to discuss that individual's plans to return to the medical field. This individual had graduated from medical school approximately 20 years ago, his mother had become seriously ill, and rather than seeking a residency or internship the individual went home to care for his mother, never returning to the practice of medicine. The individual now wished to practice as a physician and sought Dr. Beach's input as to how to go about doing so.

The individual chose the restaurant because it was in an area close to Dr. Beach's home. Dr. Beach had never been to that restaurant before as he was new to San Diego. Dr. Beach and the individual spent at least four hours at dinner discussing the individual's future plans. Dr. Beach drank two glasses of wine with dinner, he ordered a third glass, but does not remember if he drank it. He typically does not drink that much with dinner, but did so that evening because dinner lasted for several hours.

After dinner, the individual suggested the two go to a local bar, a place Dr. Beach had never been to before. Dr. Beach remembers ordering one drink. He believes he would have ordered a vodka soda with a splash of cranberry because that is the drink the ketogenic diet recommends having when alcohol is first introduced after completing the diet. Of note, this testimony was puzzling because Dr. Beach offered no explanation for why he drank wine at dinner when he was aware of the diet's vodka soda recommendation. Dr. Beach remembers thinking that the one drink he ordered was extremely strong and feeling intoxicated after drinking it, but stated the rest of the night is "spotty." He recalls nothing else other than being awakened by the CHP officer and later waking up in jail. He does not recall how many drinks he had at the bar, any conversations he had at the bar, closing the tab, leaving the bar, walking to his car, getting in it to drive away, or any discussions with CHP. Dr. Beach was only able to piece together some of the events of that evening after receiving the police report. He later found a receipt from the bar indicating he spent $30 there, but has no idea how many drinks that constituted. Dr. Beach introduced Yelp reviews of the bar where patrons referenced the strong drinks the bar serves. Dr. Beach explained that in Canada there are "strict pour" laws, so drinks only have one shot; there are not heavy pours or strong drinks. He did not realize that his drink in the San Diego bar could contain more alcohol than what one drink in Canada contained.

When Dr. Beach awoke in jail, he had no recollection of what had occurred. He was grateful to learn that no one had been injured because of his actions. He was embarrassed and expressed remorse for his behavior. It is the first time in his life he has ever "blacked out." He sought treatment at Kaiser, his health insurance carrier, to gain insight into his actions and provided records of his treatment to his criminal defense attorney to use during negotiations with the prosecutor. Contrary to Dr.

Beach's testimony, he did not seek treatment at Kaiser until eight months after his arrest, seemingly because of the pending criminal charges.

Kaiser Records

9. Dr. Beach first contacted Kaiser Permanente's Outpatient Addiction Medicine Program on December 18, 2018. The intake note documented that Dr. Beach telephoned Kaiser and advised that he had a DUI in April and "has to show proof that he is attending program [*sic*]." Dr. Beach last drank alcohol on December 15, 2018, a glass of wine. His drinking history was a couple of drinks once or twice a week for the past 20 years. Dr. Beach was scheduled to meet with therapist Sam Newman, MFT, on December 21, 2018.

10. Mr. Newman's initial visit/intake note, dated December 21, 2018, stated in part:

> Patient is here on a green card, may have implications. Patient is possibly going to be CEO and medical director. . . . Patient can loose [*sic*] job, may not be promoted, may get evicted from country and may have license issues. Patient argues on whether he had a [problem]. Patient has trial in January. Patient requests testing. . . . Patient had Bal: 0.22 - several drinks and strength. . . . Patient keeps insisting to have not a [problem] and hence he drinks 1X per [month] and hence feels he does not drink at all.

Mr. Newman further documented: "Risk for Non-Engagement: indicated as high, yet patient has a lot to loose [*sic*]." Mr. Newman noted that Dr. Beach was "pretty stressed" and that his statement of the problem was, "I am here for myself." Dr. Beach

reported drinking three to five times a month, one or two glasses of wine or drinks, rarely beer and very rarely vodka, soda. He had never used drugs. He last had one glass of wine at Thanksgiving. (Of note the telephone intake note documented that Dr. Beach reported he last drank December 15, which was well after Thanksgiving.) Dr. Beach's longest period of sobriety was several months. Dr. Beach's insight was good and he appeared "motivated to comply." Mr. Newman's diagnosis was substance use disorder counseling. In the "Other Information" section Mr. Newman wrote:

> [P]atient has many hats that patient wears. Patient keeps denying that he drinks and has a drink once a month and labels it as not drinking. Patient is from Canada and was brought here on an [*sic*] conditional greencard [*sic*] due to his expertise. Patient . . . works for [County Mental Health], is a supervising psychiatrist and tries to become medical director. Patient may have immigration implications, can loose [*sic*] license, may be evicted from country. Patient may not get promoted and is fairly composed about it all. Patient needs to have DUI "dismissed" to walk away w/out major damage. Patient faces otherwise job, immigration and legal consequences.
>
> Patient wants to prove to not have a [problem]. Patient was told that we cannot establish any determination whether patient has a [problem] or not. Patient wants me to take lengthy drinking [history] to prove that he has no pattern of abuse. Told him he would be better of [*sic*] with a designated SAP (Substance Abuse Counselor). Referred

> patient to SAP to get certified for past behaviors. Patient denies any drug use. Patient, understandably so, is a bit pushy of trying to come across as not having a problem. Made it really clear that I can only reflect what he does in the program from here on forth.

11. A December 21, 2018, Intake Report documented the reasons for treatment were "to keep my job" and "to help resolve legal problems (DUI, court order, other)." Dr. Beach agreed that he had a lot to lose if he did not stay clean and sober, and strongly disagreed that he had a problem with alcohol that he need to work on, that he needed to change something about himself or that it would be a burden to be in treatment. Dr. Beach was married, employed, and did not live with people who had a drinking or drug problem. The Critical Alerts section of the report indicated a "risk for non-engagement." No supplemental services were recommended. Dr. Beach scored extremely low on the Addiction Severity Index and extremely high on the Therapeutic Alliance indicating he "may have valuable feedback."

12. In a December 24, 2018, note, Mr. Newman documented his telephone call with Dr. Beach wherein he wrote that after consulting with Kaiser physicians, they:

> [U]rged me to relay that we are not a forensic program and that our focus is to provide therapy for those that see merit in education and support and abstinence of [alcohol] or substances.
>
> Another concern that participation in our program may connotate a possibly [*sic*] notion of having a [problem]. Patient has stated to not have a [problem] and to not be

> drinking (yet he admitted to drink 1 x a [month] 1-2 glasses of a beverage).
>
> Finally, it was communicated to me, that if he wants a thorough [history] and timeline of his drinking, would be best established by a SAP (substance abuse professional).
>
> Patient states he is late in the game, as DUI was issued in May (?) And that he and his lawyers hope to use my letter more as a mitigation letter to describe his circumstances. I, again, drew a boundary, by saying that we can only describe what we could factually support and that we cannot report on hearsay. However, [I] assured patient, that I will do what I can to be supportive in reflecting what he has done for education and rehabilitation, since he commenced our program.
>
> Patient understood that he will only get factual confirmation of [treatment] activities established since 12/21/18. Patient thanked me for the call and will consider hiring SAP services after next court-date [*sic*].

13. On December 27, 2018, Dr. Beach attended and participated in the 90 minute "Class #1: Pleasure Unwoven: Is Addiction a Choice or a Disease?"

14. On January 3, 2019, Dr. Beach attended and participated in the 90 minute "Class #2: Pleasure Unwoven: Is Addiction a Choice or a Disease?"

15. Mr. Newman's January 9, 2019, note stated:

> Patient hopes to get a mitigation package to court in January. Patient hopes to have letter written next time we meet on 1/16/19.
>
> Patient goes to 5-7 AA meetings per week. Had to tell patient that he had a diluted test. [As noted below, Dr. Beach's January 4, 2019, urine drug screen determined that the urine was diluted.]
>
> Patient goes to East County meetings. Patient has hopes to have it dismissed.
>
> Told patient that last [urine drug screen] was diluted. Called lab and his sample will be retested.
>
> Patient denies having diluted test and did not consume to [*sic*] much water.
>
> Patient again was cautioned and to use SAP. Patient will go to first court appearance end of Jan., yet has been negotiating [with district attorney] and lawyers since 4/18.
>
> [District attorney] had requested, per patient, that patient shows evidence or effort.

In the "Subjective" portion of his note, Mr. Newman wrote that Dr. Beach was reporting "doing a lot of meetings outside of [Kaiser]." In the "Objective" section Mr. Newman wrote that Dr. Beach felt that an SAP was not needed at this time since he will present in court with "notion as to not having a [problem]." Dr. Beach reported having stress regarding transportation since he has many meetings in the community.

(Dr. Beach had to Uber everywhere after his driver's license was suspended.) Dr. Beach was upset regarding the "positive" urine drug screen, he claimed he did not dilute the sample or drink too much water. He was hoping for a dismissal of his criminal case, if not he would "need to report to licensing board." He was also "pending to become" medical director of the hospital and was pending approval given his legal proceedings. Mr. Newman wrote, "Patient wants me to report ideally not on diluted test. Will address that after confirmation will come in [*sic*]." Dr. Beach was noted to be "very motivated and engaged" in the progress towards the goals of treatment.

16. On January 10, 2019, Dr. Beach attended the class entitled "Relapse Prevention."

17. Beginning on January 16, 2019, Dr. Beach and Mr. Newman exchanged emails wherein Dr. Beach asked if Mr. Newman could "finalize a draft of the letter" that he could send to Dr. Beach and then "we could decide how/whether you will address the urines in your letter or whether I will take copies of all results and attach to your letter." In response, Mr. Newman advised: "There will not be a lot of back-and-forth. I will have my superiors view the letter and will have original here for pickup."

18. On January 17, 2019, Dr. Beach attended the 90 minute "Class #4: Community Resources for Recovery."

19. On January 22, 2019, before his session with Mr. Newman, Dr. Beach emailed him the following: "One more thing based in [*sic*] the retest of that one urines [*sic*] if you can speak to all of the urines being negative I would also like you to include in the letter. If you cannot my preference is to have all of the results printed out and then I will simply underline and submit in that fashion."

20. Later that day, after their session Mr. Newman's chart entry stated:

> Staffed patient during case conference (adult team) for the following reason and/or concern: patient is Canadian, forensic psychiatrist that had DUI in 4/18 and is seeking services here to demonstrate to not have [problems] with drinkind [*sic*]. Patient wants letter from this writer that supports him not having a [problem] with [alcohol] and is seemingly very invested in what is being communicated in a letter to be written by [me].
>
> Patient was seen for support and therapeutic input only and not for forensic substantiation of any position re his drinking and/or having [problem] vs Not. He was given multiple [times] feedback to consult and hire SAP (Substance Abuse Professional) as so much hinges on the outcome of the DUI. If it does not get dismissed, he faces immigration, legal, licensing and employment issues. Patient also continued to drink 1 [time] per month 1-2 drinks and considers that not being a [problem] and wants [me] to attest that patient has not an issue w/ drinking."

In the "Feedback/Treatment suggestions" part of the note, Mr. Newman documented that "we have multiple times recommended to hire a SAP, especially in lieu of his multiple issues that are tied into his court proceedings."

21. Mr. Newman authored a letter on January 22, 2019, at Dr. Beach's request, summarizing the services Dr. Beach received. After the initial intake session, Dr. Beach agreed to attend four educational sessions, see Mr. Newman every two weeks for individual therapy, and attend two to three group meetings at Kaiser and/or

AA. Mr. Newman wrote: "Of note, the initial intake was not a forensic evaluation, but merely a therapeutic evaluation and treatment team planning session to support you in utilizing our services." Dr. Beach committed to submitting urine drug screens to be evaluated at the Kaiser laboratory, but was informed "there is no chain of custody." He was "advised several times to possibly seek services through a SAP (Substance Abuse Professional) [*sic*] and possibly to work with a lab that is set up to provide forensically usable procedures." Mr. Newman wrote that Dr. Beach attended the following activities "so far:" December 21, 2019, a Psycho-social Intake with Mr. Newman; December 27, 2018, Education Session #1; January 3, 2019, Education Session #2; January 9, 2019, Psychotherapy Session with Mr. Newman; January 10, 2019, Relapse Prevention Group; January 17, 2019, Education Session #4. Dr. Beach had also submitted six urine screen samples and provided verification of attending 19 AA meetings. Dr. Newman's letter did not mention the January 4, 2019, diluted urine sample.

22. On January 23, 2019, Mr. Newman emailed Dr. Beach that his letter was ready for pickup and was "written per clinic policy."

23. In a January 25, 2019, email, Dr. Beach told Mr. Newman his lawyers would like a copy of all urine results included with a copy of the letter and if there was "anything abnormal about that urine after retest they would like the urines not referenced in the letter." In response thereto, Mr. Newman advised that the "urine results are included in the letter for you."

24. On January 28, 2019, after obtaining Mr. Newman's letter and reviewing it with his attorneys, Dr. Beach e-mailed Mr. Newman the following:

Thanks so much for your letter. I reviewed with my lawyers. . . . We were wondering if you would consider the following minor adjustments:

1. Just focus on what I did being therapeutic and no mention of forensic period throughout the letter. This is important as were hoping to have this case dismissed ideally at this point and mentioning possibilities of forensic steps is not what the court is looking for which is "therapeutic rehabilitation" (which is what I have done). To that end, I would ask that you completely remove the 4th paragraph (you could add the first sentence "You also committed to submit urine drug screens to be evaluated through our KP laboratory" to the end of the 3rd paragraph);

2. Consider adding one sentence as I believe we discussed "Dr. Beach and I discussed at length the employment, medical Board, and immigration consequences of a conviction in his unique case."

25. In response thereto, Mr. Newman replied: "as stated earlier, the letter was written in compliance with our department policies. I am unable to adhere to your and your lawyers [*sic*] wishes. The letter as written, is on your chart. No further alterations can be considered."

26. Dr. Beach submitted urine samples for analysis on December 26, and 28, 2018, and January 4, 9, 11, and 17, 2019. All tests were negative for drugs and alcohol.

The lab results for the January 4, 2019, urine screen documented that the urine was diluted. Dr. Beach denied diluting his urine, and as noted below, Dr. Beach's expert explained that this could be a lab error and, based upon the totality of all the evidence presented, was inconsequential. Complainant offered no evidence to refute the expert's opinion or Dr. Beach's assertion he did not dilute his sample.

27. Dr. Beach disputed Mr. Newman's entries that implied Dr. Beach was trying to compel certain outcomes, claiming those were merely how Mr. Newman perceived things and charted his perception. That claim was not persuasive. Mr. Newman had no reason to falsely document the chart or his interactions with Dr. Beach. Further, Dr. Beach's own emails to Mr. Newman supported Mr. Newman's chart entries. Even in this hearing, Dr. Beach tried to control the outcome, as more fully discussed below.

Kai MacDonald, M.D.'s Evaluation

28. Dr. Beach retained Kai MacDonald, M.D., to perform a psychiatric and substance use disorder evaluation "in the context of a psychiatric and substance abuse fitness for duty evaluation." Dr. MacDonald authored a report and testified in this hearing, consistent with his report.

29. Dr. MacDonald received his Bachelor of Science in biology from St. John's University in Minnesota in 1992, where he was valedictorian. He received his medical degree in 1997 from the University of Minnesota Medical School. From 1997 until 2002 he did a combined family medicine-psychiatry residency at University of California, San Diego (UCSD). Dr. MacDonald is board certified in psychiatry and neurology, board certified in family medicine, and board certified in addiction medicine. He is a member of the American Society of Addiction Medicine. He is on the faculty at UCSD's

Physician Assessment and Clinical Education Program (PACE) where he performs forensic psychiatric fitness for duty examinations on referred physicians. Dr. MacDonald is also Medical Director of the Lasting Recovery Outpatient Substance Abuse Treatment Center. He has served as a Qualified Medical Examiner for worker's compensation matters since 2014. He has served as an assistant clinical professor at UCSD and is a part time psychiatric clinician for students at the University of San Diego. He has received several awards and conducted numerous research projects.

30. On April 14, 2019, Dr. MacDonald performed a clinical interview of Dr. Beach, and performed a psychiatric evaluation, including a mental status exam. Dr. MacDonald took an extensive alcohol use history from Dr. Beach and administered the following psychological tests: The Affective Temperament Scale, the ASRS which is a scale to measure attention deficit traits, Alcohol Use Disorder Inventory Test, CD-RISC-10 which is a measure of resiliency, Childhood Trauma Questionnaire, Drug Abuse Screening, Experiences in Close Relationships, Epworth Sleepiness Scale, Fatigue Severity Scale, Generalized Anxiety Disorder Questionnaire, Inventory Of Interpersonal Problems, PHQ which is a screen for depression, Personality Self-Portrait Questionnaire, Quality of Life Scale, Temperament & Character Inventory, and Young Schema Questionnaire. Dr. MacDonald reviewed several records and reports, including the Kaiser alcohol and drug screen, Mr. Newman's summary, and the Kaiser urine drug screen results. Dr. MacDonald did not review the complete Kaiser records summarized above, nor did he review the CHP report.

Dr. MacDonald authored a lengthy report, in which he cited to several articles he relied on in forming his opinions, which were received in evidence. Dr. Beach stopped drinking for several months after his arrest, but then resumed drinking alcohol and currently consumes one or two drinks "every month or two." Dr. Beach

denied wanting to cut down or stop drinking, "or being unable to stop or cut back if he desired to limit himself." Dr. beach denied cravings, denied not being able to manage his work duties because of alcohol, denied that alcohol affected relationships, denied forgoing social engagements because of alcohol, and "denied continuing to use when he knows that he has a physical or psychological problem that could be caused by" alcohol. He denied needing more alcohol to "reach a desired effect" and "denied experiencing withdrawal symptoms." Dr. Beach's work with patients who have suffered the consequences of alcohol abuse has also deterred him.

Based on the information he obtained during his evaluation of Dr. Beach, his experience, and relevant literature in the field, Dr. MacDonald concluded that Dr. Beach does not have an alcohol use disorder or a psychiatric disorder which impairs his fitness for duty. Dr. Beach had a single alcohol-related legal consequence (his DUI), and "an alcohol use disorder requires a person to meet a number of the specific criteria, none of which [Dr. Beach] meets"; "this is not even a marginal or 'near threshold' case." Dr. MacDonald testified that biological fluid testing in this matter is unnecessary, serves no purpose as Dr. Beach does not have an alcohol use disorder, and drains scarce resources that are needed for those who require testing. Dr. MacDonald wrote:

> Alcohol use disorders are characterized by repetitive, multifocal alcohol-related problems and are associated with compulsive, maladaptive use of alcohol despite negative consequences. I see no evidence of such a pattern in Dr. Beach's history, labs, work performance or relationships. Dr. Beach's history is that of drinking infrequently at a social level without any prior consequences (before his DUI). More

precisely, he does not demonstrate a persistent pattern of use despite negative consequences as documented by his exemplary work performance, lack of other legal consequence, and lack of biological or laboratory evidence of ongoing alcohol misuse.

Research on first-time DUI offenders informs my opinion about Dr. Beach. Though he has been convicted of a single DUI - a grave matter in its own right - and though a single DUI does identify a population at increased risk of having a more serious alcohol use disorder (citation), a single alcohol-related driving incident does not by itself definitively indicate an alcohol use disorder. In fact, interestingly, in some epidemiological studies, a single DUI is grouped with "no DUI" in terms of risk for having an alcohol use disorder, whereas people with "more than one DUI" are the high-risk group (citation). A 15-year follow-up study indicated that co-occurrence of a psychiatric disorder, early onset of risky drinking and other substance abuse is associated with a poorer trajectory of subsequent risky drinking behavior after a DUI (citation). I note that Dr. Beach has none of these risk factors for subsequent drinking problems. As such, I find Dr. Beach to be in the very low-risk group of people who have had a single DUI.

Regarding Dr. Beach's alcohol-induced blackout: though alcohol blackouts occur more frequently in people with

> alcohol-use disorders (i.e. "alcoholics" in the common parlance), like a DUI conviction, they are not part of the diagnostic criteria for an alcohol use disorder, and do not necessarily correlate with alcohol use disorder (citations).

During his testimony, Dr. MacDonald addressed the diluted urine, explaining that "any single test needs to be taken in context." Dr. MacDonald "did not think much" of one diluted test result in the face of the other five negative ones. The diluted test could mean Dr. Beach drank too much water and the sample fell outside of that labs error range. This one lab result did not change his opinion and urine tests are not part of the criteria used to make a substance abuse disorder diagnosis.

Dr. MacDonald testified in a clear manner and answered all questions posed to him without evasion. His credentials are impeccable and his experience in this field is unparalleled. Contrary to complainant's closing argument that he was a "hired gun," Dr. MacDonald presented as a fair and impartial expert witness who offered unbiased opinions based upon the information he had been provided.

However, an expert's failure to consider all of the facts may make his opinions less persuasive. (*People v. Coddington* (2000) 23 Cal.4th 529.) An expert's opinion is only as good as the reasons supporting it. "Like a house built on sand, an expert's opinion is no better than the facts on which it is based." (*People v. Gardeley* (1996) 14 Cal.4th 605, 618.) Although Dr. MacDonald's opinion that Dr. Beach did not have an alcohol use disorder or any psychiatric condition that make him unsafe to practice medicine was unrefuted, his summary of the facts, as reported to him by Dr. Beach, was inconsistent with the evidence, making some of his conclusions unpersuasive. Dr. MacDonald had not reviewed the CHP report, and his summary of the incident, that Dr. Beach was "found parked on [the] side of [the] road," was incorrect. Dr. Beach was

discovered in the middle of the road, blocking an intersection, with his vehicle in drive. Dr. Beach also told Dr. MacDonald that he "tried to perform a field sobriety test," but the CHP report notes that Dr. Beach refused to perform any and Officer Foote testified that he did not attempt to administer them because of Dr. Beach's intoxicated condition. Later during the interview, Dr. Beach again related to Dr. MacDonald that he was "passed out on the side of the road," which was not true. Dr. MacDonald testified he "focused lots" during his evaluation on "the incident" in order "to understand all the details and nuances." Dr. Beach providing an incorrect account was troubling.

Dr. MacDonald also did not review the complete Kaiser records so could not know of Dr. Beach's repeated attempts to have Mr. Newman write his letter a certain way or that Dr. Beach was participating in the Kaiser program in the hopes of having his criminal case dismissed, and not because he was "doing his due diligence with the alcohol program at Kaiser," or "went in with an open mind," as Dr. MacDonald reported. These inaccurate entries in Dr. MacDonald's report, which were based on what Dr. Beach related, were consistent with Dr. Beach's portrayal at this hearing. He downplayed the events of that evening and focused on the consequences that may befall him. He presented as one who thought he should not be disciplined because of the damage it will do to his reputation.

Other entries in Dr. MacDonald's report were also consistent with Dr. Beach's presentation at hearing. Dr. MacDonald wrote that an additional consequence of the DUI was the loss of Dr. Beach's driver's license for one year which Dr. Beach reported "'added another layer' to his [medical] board situation." Dr. MacDonald wrote that Dr. Beach "wanted to keep the loss of his driver's license discrete for a while. Dr. Beach said the Uber rides alone to work cost him $15,000." Dr. Beach told Dr. MacDonald that he must complete a three month DUI course, although typically the consequence

for refusing to give a breath blood sample is a nine month course but "[t]hese alterations were apparently recognition of the unique circumstances of his case." Dr. MacDonald wrote:

> [Dr. Beach] ended up telling his employer at [County Mental Health] when he needed to have his hospital privileges renewed and he had to answer "yes" to a question on their new form. He is on the [Medical Executive Committee] and a member of the senior leadership counsel [*sic*]. He was embarrassed to tell them about his situation, but he told them proactively, which appeared to be helpful. He stated that once one tells the [California Medical Board], everything becomes public. Dr. Beach noted that things have been kept relatively low profile. He said the consequences arising from the DUI have been significant, and the situation has been very stressful.
>
> Dr. Beach described that he has been very proactive in engaging in treatment and feels he has taken full responsibility for what happened. He feels some extenuating circumstances exist in his treatment. He added that he is relieved that no one was injured from driving drunk.

Contrary to Dr. MacDonald's notation, Dr. Beach only "proactively" notified his employer when he had to renew his privileges. As with his presentation at this hearing, Dr. Beach seemed more concerned about the consequences of his actions. Dr. Beach attempted with Mr. Newman and with Dr. MacDonald to influence their conclusions.

Dr. MacDonald reported that Dr. Beach said his BAC was between 0.22 and 0.24. Complainant argued that Dr. Beach was not truthful because his BAC was 0.25. Dr. MacDonald explained that the actual number is not relevant because anything above 0.10 is considered high, and BAC is not even one of the criteria used to diagnose substance use disorder. Dr. Beach explained that he never received a copy of the report and only learned of his BAC from his attorney who told him 0.22 or 0.24. Complainant's argument was not persuasive. Dr. MacDonald's opinion was unrefuted, Dr. Beach's explanation was credible, the difference between 0.22, 0.24, and 0.25 is minimal, and did not demonstrate Dr. Beach lied to Dr. MacDonald about his BAC.

Dr. Beach's Documents and Character References

31. Dr. Beach's December 5, 2018, performance evaluation demonstrated that he received primarily Level A, and a few Level B ratings, the highest ratings. It was noted that he created a new physician/staffing model, that under his leadership there had been a great improvement in patient care and more physician accountability, he led by example, was praised for his management style, was organized, and had mastered supervising a medical staff of over 50 individuals. Dr. Beach took leadership responsibility with colleagues and helped manage day-to-day issues. Overall, he was rated at Level A with the following observation noted:

> Dr. Beach is an extraordinary physician, psychiatrist, and leader. He is unique not only in his breadth of core competencies, but in his intellectual curiosity, dedication to his patients, and commitment to evidence-based medicine, quality assurance and the public good. It is rare to find such a dedicated and skilled professional, and with more experience, he will only solidify his mastery of core

leadership elements. In fact, in many ways Dr. Beach has already outgrown his current role as Supervising Psychiatrist and is functioning as Medical Director for the hospital.

32. Dr. Beach's Green Card petition and supporting letters of recommendation attested to his extensive psychiatric background, excellent reputation, outstanding qualifications, and significant contributions to the field of psychiatry. Letters of support by physicians who did not know Dr. Beach, but were very familiar with his work, were written by Charles L. Scott, M.D., Chief, Division of Psychiatry and the Law, at the University of California, Davis Medical Center; Debra A. Pinals, M.D., Associate Professor of Psychiatry, University of Massachusetts Medical School; and James L. Knoll, IV, M.D., Professor of Psychiatry, Director of Forensic Psychiatry, SUNY Upstate Medical University. Letters of support by physicians who had worked with Dr. Beach were written by Philip J. Resnick, M.D., psychiatry professor, Case Western Reserve University who attested to the excellent work Dr. Beach did while at Case Western, as well as since that time; Loys J. Ligate, BSc., MSc., M.D., Grand Valley Institute for Women-Corrections Canada, Canadian Mental Health Association who described Dr. Beach's invaluable service to the program; and Anna Tersigni Phelan, Chief Privacy Officer & Risk, HIM Manger, Canadian Mental Health Association, who described Dr. Beach's work improving mental health in Canada and the difficulty it will be to replace him when he leaves Canada.

33. Kathleen (Kate) Jordan, Co-Founder, Tangelo Media, authored a letter of support, dated August 5, 2020, addressed to the board. Ms. Jordan has known Dr. Beach over 10 years and was "completely shocked" to learn of his DUI because she has "never known Dr. Beach to have any problem with addiction to alcohol or any other behavior." She and Dr. Beach have been collaborating on a project to increase

awareness, outreach, and accessibility for mental health, building a platform on social media as a way to educate people and reduce the stigma surrounding mental health. Ms. Jordan wrote how Dr. Beach is "leading on the front lines of a psychiatric hospital in San Diego," and asks the board to "consider the importance of Dr. Beach's credibility and the impact it has on his vital work in mental health and public image, not just in his hospital and forensic positions, but also as a global voice."

34. Stephanie Robinson, MACP, RSW, Manager Adult Intensive Services, wrote a letter dated August 5, 2020, addressed to the board. Ms. Robinson has known Dr. Beach since December 2015 and "worked in close collaboration with him through development, implementation and co-leadership of an innovative community psychiatric treatment model of care for patients with serious and persistent mental illness." (This is the Canadian program that changed how mental health care is provided.) She described Dr. Beach as a "driving force for raising standards of care both in policy and practice and system reform regionally, provincially, nationally and his expertise is sought after internationally for training and consultation." Dr. Beach is "a skilled forensic psychiatrist and fierce leader." She wrote: "His tireless advocacy for quality improvement combined with his passion for mental healthcare and his unique ability to bring people together to address their differences has effectively moved patients' recovery forward, produced high-achieving teams as well as move groups and systems forward and common goals and understanding." She described his many key accomplishments. Ms. Robinson became aware of the DUI when Dr. Beach came to Canada to provide training and required a driver to get to the different venues. Dr. Beach confided that he was not driving because of a DUI and she was "utterly shocked." She explained:

> This is the last possible explanation I could have imagined. Dr. Beach is such an inspirational leader with his knowledge and reputation for impeccably high standards for himself and others. Dr. Beach is honest and honorable and he explained to me the extenuating circumstances of the diet he had been on immediately preceding the DUI and its impact. This incident is completely at odds and impossible to reconcile with my knowledge of Dr. Beach professionally.

Over the years Ms. Robinson and Dr. Beach have traveled extensively and she has "never known Dr. Beach to have a problem with alcohol, I have not known him to have more than a glass of wine at dinner." Ms. Robinson wrote further,

> I know that there is nothing Dr. Beach values and cherishes more than his credibility and his public image is now literally becoming global. Given this and the highly specialized and close-knit field of forensic psychiatry in which Dr. Beach works, I know that any lasting public record of this unfortunate one-off incident would have lasting devastating consequences to Dr. Beach.

35. Dr. Beach submitted the continuing certification requirements for his board certification in support of his testimony that discipline may negatively affect his board recertification.

36. Links to Dr. Beach's social network programs documented his community outreach consistent with his and Ms. Jordan's testimony.

Character Witness Testimony

37. Both Ms. Jordan and Ms. Robinson testified consistent with their letters. Ms. Jordan described the extensive community outreach, consisting of thousands of volunteer hours, she and Dr. Beach have performed to research, document, and create podcasts on various mental health topics. She and Dr. Beach have been nominated for a Shorty Award in the mental health category, which is an award given "for the best of social media." Having spent so much time with Dr. Beach, she was "shocked" to learn of his conviction because she has "never seen anything" that would indicate he had any issues with alcohol or addiction. She has traveled extensively with him, enjoyed numerous dinners and late evenings with him, and has never known him to drink.

38. Ms. Robinson described the groundbreaking work of Dr. Beach and his team that drastically changed how mental health care is provided in Canada. Dr. Beach is seen as an expert and leader in the field and she and others in Canada frequently consult with him. She described the extensive training Dr. Beach provided, and continues to provide, and his "stellar" reputation. She, too, was shocked by this event.

Parties' Closing Arguments

39. Complainant asserted that he met his burden of proof and that the terms and conditions set forth in the board's Disciplinary Guidelines and the Uniform Standards for Substance Abusing Physicians should be imposed. Dr. Beach has resumed drinking alcohol and complainant stressed that his BAC when he was arrested was 0.25. Complainant argued that the letters attached to his green card petition were written before the DUI making them nonpersuasive. Dr. Beach waited eight months before seeking treatment at Kaiser and two years before being evaluated by Dr. MacDonald, all in attempts to get more lenient criminal and disciplinary terms.

Complainant argued that Dr. MacDonald was little more than a "hired gun," an expert who gives opinions based upon which side hired the expert. Given Dr. MacDonald's credentials, experience, and presentation at this hearing, that argument was without merit. Moreover, Dr. MacDonald works at PACE, the program the board relies on to evaluate physicians for possible substance abuse. Dr. MacDonald has frequently been an expert on behalf of the board when he concludes a referred physician is unsafe to practice. In other cases, Dr. MacDonald has been an expert for the referred physician when he concludes the physician is not impaired. The fact that Dr. MacDonald has rendered both opinions does not automatically make him a "hired gun." Rather it demonstrates that he is a fair, impartial, unbiased expert. Dr. MacDonald was clearly not a "hired gun." Moreover, finding that Dr. MacDonald is a "hired gun" would undermine those matters where he found the physician to be impaired and the board relied on his opinions when seeking discipline.

Complainant also argued that Dr. Beach did not call the individual he was with in April 2018 or Mr. Newman, both of whom could have supported Dr. Beach's claims. That argument was also not persuasive because complainant had the burden of proof on the causes for discipline alleged, not Dr. Beach. Dr. Beach had the burden of establishing he was not a substance abuser, a burden that he met, as found below.

42. Dr. Beach argued that he did not contest any of the facts, was open, honest, and established that he does not have an alcohol use disorder. He holds himself to the highest standards, regrets this incident, and it will never recur. Dr. Beach asserted he is an extremely gifted forensic psychiatrist who has developed a specialty in the mental health profession. He is looked to as a leader and expert in the field and his work has changed the trajectory of mental health care. The purpose of discipline is to protect the public, and the public does not need to be protected from Dr. Beach

because he will never again drink and drive, has devoted his life to caring for others, and the consequences of imposing discipline would have a cascading effect on his work, his reputation, his board certification, and his immigration status. These consequences would harm the public because Dr. Beach would be unable to serve those patients who need mental health treatment. Dr. Beach argued that probation, especially an imposition of urine testing, would affect his ability to travel to Canada, which he frequently does to care for his elderly, ill mother and to provide trainings. Dr. Beach asked that if any discipline is imposed, it be a public reprimand.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. The purpose of a disciplinary action is not to punish, but to protect the public, and the inquiry must be limited to the effect of the physician actions upon the quality of his service to his patients. (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1416.) It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

The Burden and Standard of Proof

2. Complainant bears the burden of establishing that the charges in the accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 582.)

3. The standard of proof in an administrative action seeking to suspend or revoke a physician and surgeon's certificate is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

4. Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.) The requirement to prove by clear and convincing evidence is a "heavy burden, far in excess of the preponderance sufficient in most civil litigation. [Citation.]" (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.) "The burden of proof by clear and convincing evidence 'requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind.' [Citation.]" (*Ibid.*)

5. In a disciplinary proceeding, the burden is on respondent to produce positive evidence of rehabilitation. (*Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831, 842-843.)

Applicable Code Sections

6. Business and Professions Code section 2227 authorizes the board to discipline a licensee.

7. Business and Professions Code section 2229 states: "Protection of the public shall be the highest priority" for the board.

8. Business and Professions Code section 2234, states in part:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

Of note, complainant did not charge Dr. Beach with committing unprofessional conduct. Instead complainant alleged he violated the Medical Practice Act.

9. Business and Professions Code section 2236 states:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

10. Business and Professions Code section 2239, subdivision (a), states:

The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct.

The record of the conviction is conclusive evidence of such unprofessional conduct.

Applicable Regulations

11. California Code of Regulations, title 16, section 1360, provides that a crime or act is substantially related to the qualifications, functions, or duties of a physician and surgeon if to a substantial degree it evidences present or potential unfitness to perform the functions of a physician and surgeon in a manner consistent with the public health, safety, or welfare.

Evaluation of Alcohol Abuse Allegation

12. Complainant did not establish by clear and convincing evidence that Dr. Beach is an alcohol abusing physician under California Code of Regulations, title 16, section 1361.5. Dr. MacDonald credibly testified that Dr. Beach does not have even a "threshold" alcohol abuse disorder based on his assessment. Dr. MacDonald's opinion was well-supported by the results of psychological assessments he administered to Dr. Beach, the mental health assessment he performed, and the documents and literature he reviewed. Complainant did not offer any expert testimony to refute Dr. MacDonald's opinions. Accordingly, the board's Uniform Standards for Substance-Abusing Licensees are not applicable in this proceeding.

Evaluation of the Causes for Discipline Alleged

13. Dr. Beach violated Business and Professions Code sections 2234 and 2236, when he was convicted of a substantially related crime on March 4, 2019. Dr. Beach violated Vehicle Code section 11532, subdivision (b), driving with a blood alcohol concentration of 0.08 percent or more with an enhancement of having a blood

alcohol concentration of 0.15 percent or more, a violation of Vehicle Code section 23578. Physicians are expected to exercise good judgement and his conviction demonstrated a lack of judgment and an inability to perform the functions of a physician and surgeon in a manner consistent with the public health, safety, or welfare.

14. Dr. Beach violated Business and Professions Code sections 2234 and 2239, subdivision (a), when he used alcohol in a manner that was dangerous to himself or others. He was found passed out, in the middle of an intersection, with his vehicle still in drive. It took several minutes for CHP to rouse him awake. He was so intoxicated he could not perform field sobriety tests and his recollection of the night is "spotty."

15. Dr. Beach violated Business and Professions Code section 2234, subdivision (a), because he suffered a substantially related conviction and used alcohol in a dangerous manner. Each of those acts, alone, violated the Medical Practice Act.

The Board's Disciplinary Guidelines

16. With causes for discipline having been found, the degree of discipline to impose must now be determined. In this regard, the board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition 2016) states they are intended to be used in the physician disciplinary process but "are not binding standards." Further,

> The Board expects that, absent mitigating or other appropriate circumstances such as early acceptance of responsibility, demonstrated willingness to undertake Board-ordered rehabilitation, the age of the case, and evidentiary problems, Administrative Law Judges hearing cases on behalf of the Board and proposed settlements

submitted to the Board will follow the guidelines, including those imposing suspensions. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure.

17. California Code of Regulations, title 16, section 1360.1, sets forth the factors to be considered in determining discipline. As stated:

> When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:
>
> (a) The nature and severity of the act(s) or offense(s).
>
> (b) The total criminal record.
>
> (c) The time that has elapsed since commission of the act(s) or offense(s).
>
> (d) 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.
>
> (e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

Those factors were considered in this decision.

Rehabilitation

18. 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 towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

19. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period of time that she is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.)

20. The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070.)

GOOD BEHAVIOR WHILE ON CRIMINAL PROBATION

21. Since persons under the direct supervision of judicial or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Compliance with the law while one is on court ordered probation "does not necessarily prove anything but good sense." *Windham v. Board of Medical*

Quality Assurance (1980) 104 Cal.App.3d 461, 473. When a person is on criminal probation or parole, rehabilitation efforts are accorded less weight "[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion..." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

Dr. Beach is presently on criminal probation, thereby little weight is given to his current good behavior.

Evaluation of Discipline

22. Without question, Dr. Beach deeply regrets driving drunk and his conviction. However, his focus seemed more on avoiding the consequences of his actions as opposed to demonstrating true remorse for the danger he posed to the public that evening. He testified about the negative effect his conviction and any discipline would have on his work as an expert, his career, his immigration status, and his reputation. While all of that may be true, just as with his criminal matter, negative consequences that may flow from imposing discipline cannot be the determining factor of whether discipline should be imposed. The board's "highest priority" is protecting the public and there is cause for concern when a physician drives drunk.

Although complainant repeatedly focused on Dr. Beach's extremely high BAC, that also cannot be the determining factor. It is what a physician does afterwards that must be considered. Dr. Beach sought counseling eight months after his arrest, "late to the game," in an attempt to reduce his criminal penalty. Although Mr. Newman repeatedly suggested that Dr. Beach be evaluated by a substance abuse professional, Dr. Beach did not seek such an evaluation until after complainant filed the accusation. Dr. Beach's primary focus appeared to be on reducing any consequences he may face because of "one mistake" he made in April 2018 and not really addressing his actions

that night. He expressed little remorse for the great danger he placed the public in that evening and, instead, chiefly centered his testimony on the assertion that this was an isolated incident, his remarkable career and accomplishments, and the negative fallout that may occur if discipline is imposed. All told, Dr. Beach did not appear to comprehend the gravity of his conduct that evening, just the gravity of the consequences.

Dr. Beach has had an exemplary career and has made significant contributions to the psychiatric practice of medicine. He is recognized as a leader and innovator in his field. He has brought his expertise to the United States where he is serving an underrepresented population of patients who desperately need mental health care. As he did in Canada, he is revamping in San Diego County how mental health care is provided and he is frequently called upon to consult in his field. By all accounts, the incident in April 2018 appears to be an isolated one with little chance of recurrence. Those who know Dr. Beach well were shocked to learn of this event. Dr. MacDonald's opinions that Dr. Beach does not have an alcohol use disorder or any psychiatric condition that impairs his ability to safely practice medicine were well supported and unrefuted.

Dr. Beach established that he is not a substance abuser, but his failure to convey a true appreciation for the seriousness of his conduct was troubling, as was his choice to resume drinking after his DUI. On that April 2018 evening, he knew he had just finished a 30-day ketogenic diet, and was aware that the diet recommends slowly reintroducing alcohol by starting with vodka, but instead he chose to drink wine at dinner. After consuming at least two and possibly three glasses of wine, he chose to operate a motor vehicle and drive to a bar he had never before visited. At the bar, he chose to order a drink and realized while drinking it that he felt intoxicated. While the

rest of the night is a blur to him, he made several choices to drink before becoming drunk. He also chose to operate his vehicle after drinking wine at dinner. Dr. Beach focused on the "spotty" parts of the night, but did not address the clear portions of the evening when he made decisions to drive after drinking wine and to drive to a bar where he continued to drink.

After giving due consideration to the board's guidelines, the case law concerning rehabilitation, and the evidence submitted in this matter, it is determined that a departure from the board's recommended five-year period of discipline is warranted. A three-year period of probation with specific terms and conditions will ensure public protection. Dr. Beach's request for a public reprimand is denied.

With this noted, Dr. Beach will be required to take and complete a professionalism course because of his conduct. He will also be ordered to undergo psychotherapy to ensure he fully appreciates his actions, as opposed to worrying about the consequences. The Kaiser records documenting Dr. Beach's attempts to control the outcome and his inaccurate recounting to Dr. MacDonald that his car was parked on the side of the road, demonstrated a lack of insight to his actions.

Despite Dr. MacDonald's testimony that urine testing was unnecessary and would waste valuable resources, an abstention from using alcohol and biological fluid testing will be ordered. Dr. Beach had an extremely high BAC, has resumed drinking, had a diluted urine test, and gave inconsistent responses to Kaiser regarding when he resumed drinking. The Kaiser urine tests did not have a chain of custody, so urine collection was not supervised, making those tests not very reliable. Further, Dr. MacDonald's opinion that the diluted results may have been outside the lab normal ranges was not persuasive because the other five lab results were from the same

Kaiser lab and did not have diluted results. If the labs used had been different, Dr. MacDonald's opinion may have carried more weight.

Dr. Beach did not seek treatment until eight months after his arrest, and then did so only to improve his chances in his criminal matter. While attending AA meetings, he resumed drinking. Although Dr. Beach claims he does not have a problem, imposing terms and conditions of alcohol abstention and biological fluid testing will ensure that he does not.

In addition to a departure from the term of probation, a further departure is warranted. No public purpose would be served to require him to attend support groups, or have a worksite monitor. Dr. MacDonald credibly testified, as found earlier, that Dr. Beach does not have an even "near threshold" alcohol abuse disorder; requiring him to attend support groups or have a worksite monitor would amount to impermissible punishment, especially since psychotherapy, alcohol abstention, and biological fluid testing are being ordered, Dr. Beach's work evaluations were exemplary, and his employer is aware of this incident. The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

There is also no basis to impose the board's standard term and condition that Dr. Beach be prohibited from supervising physician assistants or advanced practice nurses while on probation. There were no allegations of a failure to supervise and no basis to order that term. Doing so would be unduly punitive. The events giving rise to discipline did not occur during the course of Dr. Beach's employment; he drove drunk one evening long after work ended. Although not established at this hearing, his work as a supervisor for County Mental Health does require he supervise others, some of

whom may be physician assistants or advanced practice nurses. Imposing this term could result in those persons being terminated from employment or causing extreme disruption for the county. Currently our nation is in the throes of a deadly pandemic. Medical providers are desperately needed and severe economic hardships are facing millions of people. Putting physician assistants or advanced practice nurses out of work would create hardships for them, likely cause undue patient harm as less mental health patients could receive treatment, and is unwarranted because complainant did not allege a failure to supervise.

The following order will adequately ensure public protection.

ORDER

Certificate No. C 149908 issued to respondent, Craig Aaron Beach, M.D., is revoked. However, the revocation is stayed, and respondent is placed on probation for three years upon the following terms and conditions.

1. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after respondent'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

respondent'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.

2. Psychotherapy

Within 60 calendar days of the effective date of this Decision, respondent 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, respondent 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. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist.

If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is mentally fit to resume the practice of medicine without restrictions.

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

3. Alcohol - Abstain from Use

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

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

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

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

4. Biological Fluid Testing

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

If respondent fails to cooperate in a random biological fluid testing program within the specified time frame, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until the final decision on an accusation and/or a

petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

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

5. Notification

Within seven (7) days of the effective date of this Decision, the respondent 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 respondent, at any other facility where respondent 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 respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

6. Obey All Laws

Respondent 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

Respondent 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.

Respondent 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

Respondent shall comply with the Board's probation unit.

ADDRESS CHANGES

Respondent shall, at all times, keep the Board informed of respondent'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

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

LICENSE RENEWAL

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

TRAVEL OR RESIDENCE OUTSIDE CALIFORNIA

Respondent 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 respondent should leave the State of California to reside or to practice respondent 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

Respondent shall be available in person upon request for interviews either at respondent'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

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

Respondent'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 respondent residing outside of California, will relieve respondent 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.

11. Completion of Probation

Respondent 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, respondent'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 respondent violates probation in any respect, the Board, after giving respondent 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 respondent 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 respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his or her license. The

Board reserves the right to evaluate respondent'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, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

14. Probation Monitoring Costs

Respondent 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 9, 2020

Mary Agnes Matyszewski (Nov 9, 2020 13:46 PST)

MARY AGNES MATYSZEWSKI

Administrative Law Judge

Office of Administrative Hearings

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Nov 25 2019
BY D. Richards ANALYST

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

In the Matter of the Accusation Against:	MBC Case No. 8002018043142
CRAIG AARON BEACH, M.D. 3853 Rosecrans Street San Diego, CA 92110 Physician's and Surgeon's Certificate No. C 149908, Respondent.	**A C C U S A T I O N**

PARTIES

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

2. On or about June 14, 2017, the Board issued Physician's and Surgeon's Certificate No. C 149908 to Craig Aaron Beach, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2021, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

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

5. Section 2234 of the Code, states, in pertinent part:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
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> ...

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6. Section 2236 of the Code states, in pertinent part:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

...

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

7. Section 2239 of the Code states:

(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Medical Board may order discipline of the licensee in accordance with Section 2227 or the Medical Board may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

8. California Code of Regulations, title 16, section 1360, states:

For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or

welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime Substantially Related to the Qualifications, Functions, or Duties of a Physician and Surgeon)

9. Respondent has subjected his Physician's and Surgeon's Certificate No. C 149908 to disciplinary action under sections 2227 and 2234, as defined by section 2236, of the Code, in that he has been convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon. The circumstances are as follows:

10. On or about April 4, 2018, at approximately 2:15 a.m., officers with the California Highway Patrol contacted Respondent in his vehicle which was blocking a traffic signal controlled intersection. Officers discovered Respondent seated in the driver's seat asleep. After repeatedly knocking on the window, Respondent eventually woke up and began fumbling with the vehicle controls. Respondent rolled down his window, allowing an officer to reach inside and place the vehicle into park.

11. Upon exiting the vehicle, the officers noticed Respondent appeared disoriented, emitted a strong odor of an alcoholic beverage, had slurred speech, and swayed while standing. Respondent declined to answer questions or perform field sobriety tests. Officers placed Respondent under arrest for driving under the influence of alcohol.

12. Upon arrest, Respondent initially elected to submit a blood sample. Respondent then refused to provide a blood sample or submit to a breath test. After obtaining a warrant, Respondent's blood was drawn at approximately 5:08 a.m. Respondent's blood sample revealed a blood alcohol concentration level of 0.25%.

13. On or about May 1, 2018, a criminal complaint was filed against Respondent in the matter entitled, *The People of the State of California v. Craig Aaron Beach*, Superior Court of California, County of San Diego, East County Division, Case No. C380692. Count one of the criminal complaint charged Respondent with driving while under the influence of an alcoholic

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beverage, in violation of Vehicle Code section 23152, subdivision (a), a misdemeanor. Count two of the criminal complaint charged Respondent with driving with a blood alcohol concentration of 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. As to both counts, the criminal complaint also alleged an enhancement, that Respondent had a blood alcohol concentration of 0.15 percent or more, pursuant to Vehicle Code section 23578.

14. On or about March 4, 2019, Respondent signed a change of plea form wherein Respondent pled guilty to driving with a blood alcohol concentration of 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision (b), and admitted the enhancement of having a blood alcohol concentration of 0.15 percent or more, pursuant to Vehicle Code section 23578. Respondent also signed a DUI Addendum admitting his blood alcohol concentration was 0.19 percent.

15. On or about March 4, 2019, Respondent was sentenced on his guilty plea to five years' summary probation, with terms and conditions imposed, including, but not limited to, standard alcohol conditions, completion of a three-month first conviction program, and MADD program.

SECOND CAUSE FOR DISCIPLINE

(Use of Alcohol to an Extent, or in a Manner, as to be Dangerous or Injurious to Himself, Others, or the Public)

16. Respondent has further subjected his Physician's and Surgeon's Certificate No. C 149908 to disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a), of the Code, in that he has used, or administered to himself, alcohol to the extent, or in such a manner, as to be dangerous or injurious to himself, others, or the public, as more particularly alleged in paragraphs 10 through 15, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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THIRD CAUSE FOR DISCIPLINE

(Violation of a Provision or Provisions of the Medical Practice Act)

17. Respondent has further subjected his Physician's and Surgeon's Certificate No. C 149908 to disciplinary action under section 2227 and 2234, as defined by section 2234, subdivision (a), of the Code, in that he has violated a provision or provisions of the Medical Practice Act, as more particularly alleged in paragraphs 9 through 16, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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. Revoking or suspending Physician's and Surgeon's Certificate No. C 149908, issued to Respondent Craig Aaron Beach, M.D.;
2. Revoking, suspending or denying approval of Respondent Craig Aaron Beach, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Respondent Craig Aaron Beach, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: November 25, 2019

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

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