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

In the Matter of the Accusation Against: William Robert Jahnke, II, M.D. Physician's and Surgeon's Certificate No. G 34870 Respondent.	Case No. 800-2016-028900

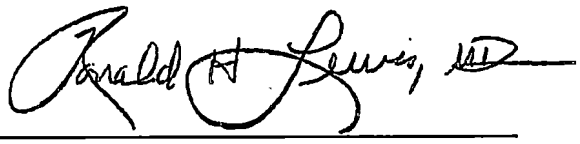
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 25, 2021.

IT IS SO ORDERED: January 26, 2021.

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:

WILLIAM ROBERT JAHNKE, II, M.D., Respondent

Case No. 800-2016-028900

OAH No. 2019100125

PROPOSED DECISION

Marcie Larson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically and by video on November 9, 2020, in Sacramento, California.

Ryan McEwan, Deputy Attorney General, represented complainant William Prasifka, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

Jonathan Turner, Attorney at Law, represented respondent William Robert Jahnke, II, M.D., who appeared by video.

Evidence was received, the record was closed, and the matter was submitted for decision on November 9, 2020.

FACTUAL FINDINGS

Background and Procedural History

1. On July 8, 1977, the Medical Board of California (Board) issued respondent Physician's and Surgeon's Certificate Number G 34870 (certificate). Respondent's certificate will expire on November 30, 2021, unless renewed or revoked.

2. On September 11, 2019, Kimberly Kirchmeyer, former Executive Director for the Board, signed and thereafter filed an Accusation against respondent alleging that his certificate was subject to discipline because he was convicted of a crime substantially related to the qualifications, functions, and duties of a physician and surgeon, used alcohol in a manner dangerous to himself and others, and committed general unprofessional conduct.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Respondent's Criminal Conviction

4. On or about November 28, 2016, in District Court, County of Ramsey, State of Minnesota, respondent was convicted, on his guilty plea, of third degree driving while intoxicated (DWI), operating a motor vehicle with an alcohol concentration of 0.08 percent or more, a violation of Minnesota Statue section 169A.20.1(5), a misdemeanor. Respondent was sentenced to serve 365 days in jail with credit for one day served. Respondent's jail sentence was stayed. He was placed on two years of supervised probation. He was ordered to attend a Mothers Against Drunk

Driving (MADD) Impact Panel. He was also ordered to undergo a chemical dependency evaluation. Respondent was also ordered to pay a fine and complete 100 hours of community service. Respondent complied with the terms of his sentence.

5. The circumstances underlying respondent' conviction occurred on April 10, 2016, at approximately 1:30 a.m. An officer from the Minnesota State Patrol was driving on the interstate when he observed a vehicle, later determined to be driven by respondent, drift across a lane, without signaling a lane change. The officer observed the vehicle drift across a lane two more times before he initiated a traffic stop. After respondent stopped his vehicle, the officer approached the passenger side of respondent's vehicle. Respondent identified himself and provided the officer his driver's license. While speaking to respondent, the officer smelled the order of an alcoholic beverage and noticed respondent's speech was slurred. The officer also observed that respondent had bloodshot and watery eyes. The officer asked respondent how much he had to drink. Respondent replied "'I didn't have much." Respondent then stated he did not know how much alcohol he consumed.

Respondent was directed to perform a series of Standardized Field Sobriety Tests (FTS), which he failed to satisfactorily complete. Respondent also submitted to a preliminary alcohol screening test, which indicated his blood alcohol content (BAC) was over 0.08 percent. Respondent was placed under arrest and transported to jail. Once respondent was transported to jail, he submitted to a breathalyzer test which registered a 0.13 BAC.

Respondent's Evidence

6. Respondent is 70 years old. In 1976, he graduated from medical school. In 1977, he obtained his certificate. He completed an internship and residency at the

University of Southern California (USC). After completing his residency, respondent left California and completed a fellowship related to treating kidney disease at the University of Minnesota. After completing his fellowship, respondent worked in private practice in St. Paul, Minnesota, with one other physician. Respondent treated patients with kidney disease. He worked in private practice until 2010. He left the practice due to disagreements with other physicians in the practice.

In 2012, respondent began working as a locum hospitalist in a long-term acute care facility. In 2018, he stopped performing locums work and has not practiced medicine since that date. He has looked for other positions but has been reluctant to look for work while the Accusation was pending against his certificate. No discipline was taken against his Minnesota medical license.

7. Respondent regrets drinking alcohol and driving his vehicle. He explained that during the evening before his arrest for DWI, he went to the gym and grocery store. He decided to visit a restaurant that was serving a particular type of wine he enjoyed. He arrived at the restaurant alone at approximately 9:00 p.m. He had not eaten much food that day. He ordered a "flight" of wine which included three partial glasses of wine that equaled one full glass. He also had approximately three more glasses of wine over approximately four hours. He ate bread but did not order a meal. When respondent left the restaurant, he did not feel intoxicated.

8. Respondent acknowledged that he had a careless driving conviction in 2013, also involving driving while under the influence of alcohol. He drove his vehicle after consuming two glasses of wine. He was stopped by an officer after another driver called 911 and reported that he suspected respondent was under the influence. Respondent pled guilty to careless driving, and was placed on probation for one year, required to pay a fine, and complete a one-day DWI program.

9. Respondent stopped drinking alcohol approximately one year ago, however he has no sobriety date. He stopped drinking alcohol because he lives on a fixed income and wine is expensive. He also decided that alcohol does not support a healthy lifestyle. Additionally, he helps to support his family, including five grown children. Respondent spends his time exercising and taking university classes.

10. As part of respondent's 2016 criminal sentence, he underwent a chemical dependency evaluation and a "Chemical Health Assessment Report" was issued by Roslyn Paterson, employed with Additional Testing, Inc. Respondent reported to Ms. Paterson that he began drinking alcohol when he was 16 years old. As an adult, he preferred to drink wine. He estimated before his 2016 arrest he consumed four drinks over four hours ten times per month. At the time of his evaluation he weighed 150 pounds. Respondent reported that he "drank less often" since his arrest. At hearing, respondent testified that the amount of alcohol he consumed prior to his arrest as documented by Ms. Paterson was not accurate, appeared excessive, and was not typical of the amount of alcohol he drank.

11. Respondent submitted several letters of support from family members. The authors described respondent as a compassionate and honest person who cares about his profession and the well-being of his family. The authors have not observed respondent have an issue involving alcohol consumption.

12. Respondent contends that his past alcohol consumption had no effect on his ability to safely practice medicine and that discipline of his certificate beyond a public reprimand is not warranted. Respondent does not intend to drink alcohol and drive. Respondent would like to keep his certificate because he is considering returning to California to practice medicine in the future.

Analysis

13. The evidence established that on November 28, 2016, respondent was convicted of DWI, with BAC of 0.08 percent or more. He drank at least four glasses of wine and operated a vehicle. He was observed by an officer repeatedly drifting his vehicle in and out of lanes on the freeway. Respondent's conduct that led to his conviction demonstrates extremely poor judgment and disregard of the safety of himself and others. Respondent provided no reasonable explanation for why he decided to drink such a large of amount of alcohol and drive his vehicle. As a doctor, respondent should be aware of the dangerous effects of excessive consumption of alcohol. Additionally, respondent had already suffered one conviction involving drinking alcohol and driving, so he was aware of the dangers and consequences of engaging in such behavior. He should have learned from his past conduct.

14. Respondent also failed to demonstrate any insight into his alcohol use. He did not explain any efforts he has undertaken to identify the underlying cause of his decision to engage in such reckless and dangerous behavior. In addition, he has not eliminated alcohol from his life. Respondent does not have a sobriety date. He has not attended counseling or any type of support group. At this time, he has failed to demonstrate meaningful rehabilitation.

15. Given the above, respondent's license should be placed on probation for three years, with probationary terms set forth in the Board's Disciplinary Guidelines for a substance-abusing licensee. While the minimum recommended probationary term is five years, respondent has no history of discipline with the Board or his Minnesota license. Additionally, the terms of probation will allow sufficient time for respondent to obtain assistance in identifying the underlying cause of his conduct to begin engaging in meaningful and lasting rehabilitation and to ensure that the public is protected.

LEGAL CONCLUSIONS

Burden of Proof

1. Complainant has the burden of proving each of the grounds for discipline alleged in the Accusation and must do so by clear and convincing evidence. (See, *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (See, *In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

Applicable Law

2. Business and Professions Code section 2227 provides in pertinent part that a licensee who has been found "guilty" of violations of the Medical Practices Act, shall:

> (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.

3. Business and Professions Code, section 2234, requires the Board to "take action against any licensee who is charged with unprofessional conduct." Unprofessional conduct includes, but is not limited to: "Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter." (Bus & Prof. Code, § 2234, subd. (a).)

4. Business and Professions Code section 2236, provides in pertinent part:

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.

[¶] . . . [¶]

(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.

5. Business and Professions Code section 2239, provides in pertinent part:

(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 Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing 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.

6. California Code of Regulations, title 16, section 1360 states, in part:

> For the purposes of denial, suspension or revocation of a license, certificate or permit [...] 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.

Cause for Discipline

7. Cause exists to discipline respondent's certificate under Business and Professions Code sections 2227 and 2234, as defined by section 2239, by reason of the matters set forth in Factual Findings 4 and 5. Respondent used alcoholic beverages to the extent, or in such manner as to be dangerous or injurious to himself and to the public.

8. Cause exists to discipline respondent's certificate under Business and Professions Code, sections 2227 and 2234 as defined by section 2236, and California Code of Regulations, title 16, section 1360, by reason of the matters set forth in Factual Findings 4 and 5. Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a physician and surgeon when he was convicted of driving while intoxicated.

9. Cause exists to discipline respondent's certificate under Business and Professions Code, section 2227, and 2234, by reason of the matters set forth in Factual Findings 4 and 5 and Legal Conclusions 7 and 8. Respondent's conduct breached the rules and ethical codes of the medical profession and he engaged in conduct that is unbecoming of a member in good standing of the medical profession when he used alcohol to an extent or in a manner that was dangerous or injurious to himself or to the public and being convicted of the same.

10. The matters set forth in Factual Findings were considered in making the following Order. It would not be contrary to the public interest to place respondent's certificate on probation for three years under terms and conditions in the Board's Disciplinary Guidelines, as set forth below.

ORDER

Physician's and Surgeon's Certificate No. G 34870 issued to William Robert Jahnke, II, 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. **Notice of Employer or Supervisor Information**: Within seven (7) days of the effective date of this Decision, respondent shall provide to the Board the names,

physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, respondent's worksite monitor, and respondent's employers and supervisors to communicate regarding respondent's work status, performance, and monitoring. For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when respondent has medical staff privileges.

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

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

Prior to practicing medicine, 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 and meets all the following standards:

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

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

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

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

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

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

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

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

(i) It maintains testing sites located throughout California.

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

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

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

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

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

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. 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 a biological fluid test result indicates respondent has used, consumed, ingested, or administered to himself a prohibited substance, the Board shall order respondent to cease practice and instruct respondent to leave any place of work where respondent is practicing medicine or providing medical services. The Board shall immediately notify all of respondent's employers, supervisors and work monitors, if any, that respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

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

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

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

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriate licensed health care provider for use by respondent and approved by the Board, alcohol, or any other

substance respondent has been instructed by the Board not to use, consume, ingest, or administer to himself.

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

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

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

The facilitator shall provide a signed document to the Board or its designee showing respondent's name, the group name, the date and location of the meeting,

respondent's attendance, and respondent's level of participation in progress. The facilitator shall report any unexcused absence by respondent from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

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

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

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

Respondent shall pay all worksite monitoring costs.

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

The worksite monitor shall verbally report any suspected substance abuse to the Board and respondent's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

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

If the worksite monitor resigns or is no longer available, respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor will be assuming that responsibility within fifteen (15) calendar days. If respondent fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

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

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

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

(2) Increase the frequency of biological fluid testing.

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

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

(1) Issue a cease-practice order.

(2) Order practice limitations.

(3) Order or increase supervision of respondent.

(4) Order increased documentation.

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

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

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

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

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

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

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. 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 respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide respondent with a hearing within 30 days of the request, unless 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 30 days of submission of the matter. Within 15 days of receipt by the Board of the

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

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

7. **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. 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 respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide 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 30 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown

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

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

8. **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 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.

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

9. **Notification:** Within seven (7) days of the effective date of this Decision, 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.

10. **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.

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

12. **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.

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

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.

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

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.

14. **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.

15. **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 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.

16. **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.

17. **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, 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.

18. **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 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.

19. **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: December 8, 2020

Marcie Larson
Marcie Larson (Dec 8, 2020 13:55 PST)

MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Dec. 11 2019
BY ANALYST

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

In the Matter of the Accusation Against: **William Robert Jahnke, II., M.D.** **162 Galtier Place** **Shoreview, MN 55126** **Physician's and Surgeon's Certificate No. G 34870,** Respondent.	Case No. 800-2016-028900 **A C C U S A T I O N**

PARTIES

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

2. On or about July 8, 1977, the Medical Board issued Physician's and Surgeon's Certificate No. G 34870 to William Robert Jahnke, II., 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 November 30, 2019, unless renewed.

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 provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code, states:

"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.

". . ."

6. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical conduct of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

7. Section 2236 of the Code 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 [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

". . .

"(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."

8. 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."[1]

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

"For the purposes of denial, suspension or revocation of a license, certificate or

[1] There is a nexus between a physician's use of alcoholic beverages and his or her fitness to practice medicine, established by the Legislature in section 2239, "in all cases where a licensed physician used alcoholic beverages to the extent or in such a manner as to pose a danger to himself or others." (*Watson v. Superior Court* (*Medical Board*) (2009) 176 Cal.App.4th 1407, 1411.)

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

(Use of Alcohol in a Dangerous or Injurious Manner)

10. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2239, of the Code, and California Code of Regulations, title 16, section 1360, in that he used alcoholic beverages, to the extent, or in such a manner, as to be dangerous or injurious to himself, or to any other person or to the public, as more particularly alleged as follows:

11. On or about April 10, 2016, at approximately 1:08 a.m., a Minnesota State Patrol (MSP) Officer stopped Respondent as he was driving a vehicle in St. Paul, Ramsey County, Minnesota. The MSP Officer made the stop because he observed Respondent's vehicle—a gold Toyota Camry—suddenly drift from the center right lane over the left skip stripe and into the center left lane. Respondent did not use his turn signal and did not appear to be changing lanes as his vehicle slowly drifted back into the center right lane. Twice more, the MSP Officer observed Respondent's vehicle drift to the left, cross over the left skip stripe into the center left lane, then return to the center right lane. The MSP Officer then had Respondent pull over. Respondent came to a stop slowly.

12. The MSP Officer approached Respondent's vehicle and observed Respondent in the driver's seat. The MSP Officer informed Respondent that he observed Respondent veer out of his lane several times. When asked why he was driving that way, Respondent answered that he did not know he was driving in that manner.

13. During the conversation, the MSP Officer noticed several indications that Respondent may have been under the influence of alcohol. The MSP Officer could smell alcohol on Respondent's breath. Respondent's eyes appeared bloodshot and watery. In addition, Respondent slurred his words during their interaction.

14. When the MSP Officer asked Respondent how much he had to drink, Respondent replied, after pausing for a moment, that he "didn't have much." The MSP Officer asked Respondent if he knew how much he had in total, and Respondent replied that he did not know.

15. The MSP Officer instructed Respondent to step out of his vehicle to perform Field Sobriety Tests. Respondent made no motion to exit the vehicle but instead reiterated that he did not believe he had been speeding or driving poorly. The MSP Officer asked Respondent a second time to exit the vehicle. Respondent did so, leaving his car door open and sticking out into the traffic lane. The MSP Officer instructed Respondent to close the door so that it did not obstruct the traffic lane. After closing the door, Respondent followed the MSP Officer to the squad car with an unsteady gait.

16. When the MSP Officer asked Respondent what he had been drinking, Respondent replied, "Wine." The MSP Officer again asked how much he had to drink, and Respondent again replied that he did not know. The MSP Officer then attempted to perform the Horizontal Gaze Nystagmus Test, but Respondent was unable to see the officer's finger in the dark. When the MSP Officer shined a light on his finger, Respondent still could not see the officer's finger because the light hurt his eyes. The MSP Officer decided not to administer the Walk and Turn Test or the One Leg Stand Test due to Respondent's age and physical condition. Instead, the MSP Officer administered a preliminary breath test (PBT) using a portable device. Respondent's PBT sample indicated a blood alcohol concentration (BAC) of .144%. The MSP Officer then arrested Respondent and transported him to the nearby MSP Office where Respondent provided a breath sample. Respondent's BAC was determined to be .13% at 2:07 a.m.

17. On or about May 6, 2016, in *State of Minnesota v. William Robert Jahnke II*, County of Ramsey District Court Case No. 62-CR-16-3354, Respondent was charged with the following: (1) 3rd Degree Driving While Impaired (under the influence of alcohol), a violation of Minnesota

Statute section 169A.20.1(1); and (2) 3rd Degree Driving While Impaired (where the alcohol concentration is 0.08% or more), a violation of Minnesota Statute section 169A.20.1(5). An aggravating factor under Minnesota Statute section 169A.03, subdivision 3, was further alleged under both counts—specifically, that Respondent had committed a qualifying prior impaired driving incident within ten years.

18. On or about November 28, 2016, Respondent pleaded guilty to Count Two, driving while impaired where the alcohol concentration is over 0.08%, in violation of Minnesota Statute section 169A.20.1(5). The court sentenced Respondent to: serve two (2) years' probation; perform 100 hours of community service; pay fines and fees totaling $186.00; attend a MADD Impact Panel; complete a chemical dependency evaluation/treatment and follow recommendations of the evaluation; obey all laws; comply with an Ignition Interlock Program; and refrain from driver license violations and driving without insurance.

19. On or about February 15, 2019, a Board Investigator interviewed Respondent. During the interview, Respondent stated that he believed he had four glasses of wine in roughly four hours before he began driving home the night that he was arrested.

SECOND CAUSE FOR DISCIPLINE

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

20. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2236, of the Code, and California Code of Regulations, title 16, section 1360, in that he has been convicted of a crime, to wit: violation of Minnesota Statute section 169A.20.1(5) (3rd Degree Driving While Impaired where the alcohol concentration is over 0.08%), which is substantially related to the qualifications, functions or duties of a physician and surgeon, as more particularly alleged in paragraphs 11 to 19, above, which are hereby incorporated by reference as if fully set forth herein.

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THIRD CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

21. Respondent is further subject to disciplinary action under Code sections 2227 and 2234, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 11 through 19, above, which are hereby incorporated by reference as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

22. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about June 20, 2013, in a prior criminal proceeding entitled *State of Minnesota v. William Robert Jahnke II*, County of Hennepin District Court Case No. 27-CR-13-19715, Respondent was charged with the following: driving while impaired with an alcohol concentration of 0.08% or more, a violation of Minnesota Statute section 169A.20.1(5); and Careless Driving, a violation of Minnesota Statute section 169.13, subdivision 2. An MSP Officer made the arrest after Respondent failed multiple Field Sobriety Tests and the PBT sample indicated a 0.11% BAC. Shortly after the arrest, at the Hennepin County Jail, Respondent provided a breath test sample registering a .10% BAC.

23. On or about September 24, 2013, as part of the same criminal proceedings described in paragraph 22, Respondent pleaded guilty to Careless Driving. The court sentenced Respondent to: serve 1-year probation; pay monetary fines and fees in the amount of $578.00; complete the Hennepin County DWI Program; and refrain from committing any alcohol or drug-related driving offense, careless or reckless driving, driving without insurance, or committing a driver's license violation. The record of the criminal proceeding is incorporated 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. G 34870, issued to William Robert Jahnke, II., M.D.;

2. Revoking, suspending or denying approval of William Robert Jahnke, II., M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering William Robert Jahnke, II., 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: September 11, 2019

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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