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

In the Matter of the Accusation Against: Mona Shrikrishna Kulkarni, M.D. Physician's & Surgeon's Certificate No A111656 Respondent	Case No. 800-2017-037273

DECISION

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C), to correct a clerical error that does not affect the factual or legal basis of the Proposed Decision. The Proposed Decision is amended as follows:

1. Page 2, Paragraph 1, Line 2: the certificate expiration date is corrected to read November 30, 2021.

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 March 19, 2021.

IT IS SO ORDERED February 18, 2021.

MEDICAL BOARD OF CALIFORNIA

By: Ronald H. Lewis, MD

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:

MONA SHRIKRISHNA KULKARNI, M.D.

Physician's and Surgeon's Certificate No. A 111656,

Respondent.

Agency Case No. 800-2017-037273

OAH No. 2020060239

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter remotely by video and teleconference on December 10, 2020.

Brian Roberts, Deputy Attorney General, appeared on behalf of complainant William Prasifka, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs, State of California.

John Bishop, Attorney at Law, appeared on behalf of respondent Mona Shrikrishna Kulkarni, M.D., who was present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 10, 2020.

SUMMARY

Complainant alleged respondent was criminally convicted for driving under the influence of alcohol and causing an injury, a misdemeanor, in September 2017. Complainant brought three causes for discipline against respondent: conviction of a substantially related crime, use of alcoholic beverages in a dangerous manner, and unprofessional conduct. Respondent admitted the conviction and introduced evidence of mitigation and rehabilitation. Based on the evidentiary record, a public reprimand shall issue against respondent.

FACTUAL FINDINGS

Jurisdiction

1. The Board issued Physician's and Surgeon's Certificate No. A 111656 to respondent on March 24, 2010. That certificate expired on November 30, 2019.

2. Kimberly Kirchmeyer brought the Accusation against respondent in her official capacity as Executive Director of the Board. Upon his appointment as the successor Executive Director of the Board, William Prasifka became the real party-in-interest as complainant in this proceeding. Respondent filed a Notice of Defense. This hearing ensued.

Respondent's Criminal Conviction

3. On March 22, 2018, in the case of *People v. Kulkarni* (Super. Ct. Santa Barbara County, 2017, No. 17CR13003), respondent pled nolo contendere to and was convicted of violating Vehicle Code section 23153, subdivision (a) (driving under the influence of alcohol and causing injury), a misdemeanor. The court suspended imposition of sentence and placed respondent on three years' supervised probation on terms and conditions, including that she refrain from drinking alcoholic beverages and not drive with any measurable amount of alcohol in her blood, complete 50 hours of community service, enroll in and complete a three-month First Offender Alcohol Program, attend 50 Alcoholics Anonymous (AA) meetings, have her driver's license suspended for one year, pay restitution as determined by the probation department, and pay a fine of $1,690.

4. The facts and circumstances underlying the conviction are that, on September 17, 2017, during lunch, respondent drank mimosas (champagne and orange juice) at a restaurant with her boyfriend and a friend of his. Respondent had already had at least one mimosa at breakfast and was taking a prescription pain medication, gabapentin, as well as Zoloft, an antidepressant (which she discontinued in 2019), neither of which should be taken with alcohol. After lunch, respondent and her boyfriend went home. The two then left, with respondent driving, to visit the boyfriend's friend at his home, a place respondent had never visited. Following her boyfriend's directions, respondent made an unsafe left turn, crossed onto the wrong side of the road, and collided with an oncoming vehicle, injuring the driver. Sheriff's deputies arrived and found respondent showing signs of intoxication. A blood sample collected afterward from respondent showed a blood alcohol concentration (BAC) of 0.18 percent.

5. Respondent complied with all terms of probation, which was scheduled to terminate on March 22, 2021. On September 2, 2020, the court granted respondent's motion to terminate probation early and dismiss the charges against her under Penal Code sections 1203.3 and 1203.4.

Mitigation and Rehabilitation

6. Respondent expressed deep regret for the harm she caused the victim of the accident, and for making the poor choice to drive after drinking alcohol, especially considering she was also taking prescription medications that interact with alcohol.

7. Respondent's memory of her interaction with the arresting deputy is vague due to her intoxication at the time; she accepts the deputy sheriff's account of her slurred speech and her statement to him that the other car was on the wrong side of the road.

8. Respondent testified that she has returned to the intersection where her accident occurred. She testified that following her left turn, she had to immediately bear right to follow the curving road. To avoid a parked car she encountered immediately after the turn, she swerved left into the oncoming lane and collided with a car, injuring the driver of that car.

9. Respondent, an anesthesiologist, completed a fellowship at Cedars-Sinai Medical Center in adult cardiothoracic and vascular surgery and worked at Keck Medical Center for almost 3 years. She then practiced in Santa Barbara for two years as a partner at the Anesthesia Medical Group of Santa Barbara, working on the cardiac anesthesia team.

10. Respondent has not practiced medicine since November 2016, when she had elective surgery complicated by compartment syndrome, involving restricted blood flow in her lower extremities. Compartment syndrome, respondent testified, is emergent and must be treated within six hours; she was not treated for 40 hours. She was hospitalized for 10 days and received blood transfusions in the hospital's intensive care unit. She was then transferred to Cottage Hospital, underwent nine operations, and again transferred to a rehabilitation hospital. She had to relearn how to ambulate.

11. The surgery and complications still affected respondent at the time of the DUI incident one year later, as she still walked with braces and needed to take prescription medication for nerve pain. Respondent has not been able to return to clinical practice. She continues to wear metal braces, which are painful, and is not as mobile as she used to be.

12. Respondent had no alcohol for about 10 months after being released from the rehabilitation hospital. She was taking prescription gabapentin for pain. By the time of the DUI incident, her doctor had begun weaning her off the gabapentin and told her it would be alright for her to imbibe alcohol in moderation.

13. Respondent complied with all terms of her criminal probation. She performed 50 hours of community service working at the Girls' and Boys' Club. She attended more than 90 AA meetings, when the probation order required that she attend only 50. She began attending AA meetings after her arrest, before her conviction, because she wanted to evaluate her behavior and identify whether she had alcohol use disorder. She completed the 15-week Zona Seca alcohol program. She could not complete her payment of restitution for the other car driver's medical bills until June 2020; two months later, the court terminated probation and dismissed the charges.

14. Respondent testified that her decision to drink and drive was irresponsible and demonstrated poor judgment. She thinks about the incident frequently. She was no longer working due to her medical condition and had never been on pain medications before. Her physician had told her it would be alright to drink alcohol if she were cautious. Over the course of the summer leading to the DUI incident, though still tapering off gabapentin, respondent had drunk alcohol on social occasions without noticing any ill effect. She understood gabapentin interacts with alcohol but did not observe anything significant. She has concluded that she did not appropriately evaluate the transition, beginning to drink alcohol on occasion while still taking medication, albeit in decreasing doses. It was "absolutely not" a good idea, she testified, to drink and drive.

15. The automobile accident is the only one respondent has ever been involved in. She expressed her gratitude that both the driver and passenger in the other car, and her boyfriend, did not suffer permanent injury, but is abashed at having caused any injury at all, and at the risk she created to public safety. She decided not to drink alcohol after the accident, and would not drink while on gabapentin, realizing the need to transition more slowly. Respondent no longer takes gabapentin. She might try drinking socially with friends in the future, after the pandemic, but it does not provide enjoyment for her currently.

16. Respondent testified she will not repeat her error of drinking and driving. She knows her professional specialty has a high incidence of substance abuse. She was on the substance abuse team when she practiced and takes it very seriously. She did not transition well to a change of lifestyle as she recovered from her hospitalization, and readily acknowledged that she did not uphold her obligation to keep the public safe.

17. If respondent retains her license, she intends to retrain in another specialty because she cannot physically perform cardiac anesthesia or take call. She is applying for a residency program in diagnostic radiology. The programs are highly competitive, and there is a different funding structure for a second residency.

18. Respondent has performed community volunteer work since June 2019 with the Crisis Text Line as a crisis counselor at nights and on weekends, taking texts on computer and helping guide people through crises. She would also like to resume her medical missions abroad, as she did annually while practicing. She performed anesthesiology services in Haiti in 2010 after the earthquake there, and in Guatemala for cleft palate surgery. She will no longer be able to offer natural disaster relief because of her physical limitations but could perform ultrasound in other countries if she can complete a radiology residency.

19. Richard S. Sandor, M.D., board certified in psychiatry by the American Board of Psychiatry and Neurology and licensed in California since 1973, testified. Dr. Sandor treats patients with substance use disorders. He worked as Medical Director at various hospitals and clinics through the 1980s and was the Medical Director of the Chemical Dependence Program at St. John's Hospital in Santa Monica from 1992 to 1994, remaining a consultant with that center until 2007. He has been in private practice since 1988, attending patients at a psychiatric treatment program and at an addiction outpatient program for patients with substance abuse problems. Respondent's attorney asked Dr. Sandor to evaluate respondent. Dr. Sandor performed a psychiatric and addiction medicine evaluation of respondent to determine whether she suffers from a psychiatric or substance use (i.e., addiction) disorder. Dr. Sandor has performed about 100 such evaluations of medical professionals, on behalf of the Board and of the physicians.

20. Dr. Sandor met respondent via telehealth on October 22, 2020, for a 60-minute remote evaluation to determine whether respondent "has substance use disorder and is therefore unsafe to practice medicine." (Ex. F.) He reviewed the Accusation, Controlled Substance Utilization Review and Evaluation System (CURES) reports (showing respondent had not been prescribed any controlled substances during the previous 12 months), a letter from Ruben Weininger, M.D., respondent's treating psychiatrist, character reference letters, sheriff's department documents relating to the DUI incident, and other documents.

21. Dr. Sandor and respondent discussed the events leading to her criminal conviction. Dr. Sandor's primary concern was to determine whether respondent exhibited a pattern related to alcohol use. A single incident, such as the 2017 DUI, does not represent a pattern. According to the Diagnostic and Statistics Manual of Mental Disorders, 5th edition (DSM-5), a diagnosis of alcohol use disorder is based on a pattern of substance use. Diagnosing that disorder essentially predicts further incidents involving alcohol until the patient is in recovery.

22. The DSM-5 lists criteria that are indications for the diagnosis. Some are subjective (e.g., difficulties with controlling the use of alcohol reflected in drinking more or longer than intended, lengthy recovery time after use, craving, restricting activities, devoting more time to the substance), some are objective. A person with alcohol use disorder develops tolerance to the substance and will suffer withdrawal syndrome when discontinuing its use. But to diagnose the disorder requires finding a pattern of use over time. One criterion met in this case is that respondent used alcohol in a hazardous situation, i.e., before driving. But respondent has only one DUI; based on her history, and on collateral information Dr. Sandor reviewed, no other problems with alcohol were evident. Respondent's minimizing her estimate of alcohol intake

when talking to the arresting sheriff's deputy is not a source of concern to Dr. Sandor. She was intoxicated and should not have been driving; intoxicated people often do not accurately remember how much they drank.

23. Dr. Sandor testified he had sufficient corroboration of what respondent told him during the evaluation, consisting of the documents he reviewed. Doctors who have substance use disorder develop problems with staff they work with; they do not receive character reference letters from other doctors praising them and the way they practice. Though respondent may have carefully selected the sources of the letters, the physicians who wrote them must be presumed to follow professional ethics guidelines.

24. Dr. Sandor diagnosed respondent with depressive disorder, unspecified, resolved. "Unspecified" refers to the finding that respondent did not have a major depressive disorder; the depression was due to a devastating post-surgical compartment syndrome suffered by respondent in 2016. The depression is resolved and will not affect her ability to safely provide medical care.

25. Dr. Sandor wrote in his report, "I find no evidence to suggest that [respondent] has a substance use disorder. Her DUI appears to have been a one time error of judgment for which she is appropriately remorseful, and for which she has made restitution." (Ex. F.) The DSM-5 identifies 11 criteria, two of which must be present in a 12-month period. "A one time DUI does not constitute such a pattern, and there is no evidence that [respondent] has experienced any of the other problems listed in the DSM V criteria for substance use disorder. Therefore, there is no diagnosis of such a problem. This question of diagnosis is important, because it is the only reasonable grounds on which to base a prediction of future behavior. Without it, there are not grounds for supposing that [respondent] represents a greater danger to the

public in her practice of medicine than any one else – except those who do have a diagnosable substance use disorder." (Ex. F.)

26. Respondent has no disorder, Dr. Sandor opined, that would render her unsafe to practice medicine. He testified that, in addition to applying his years of expertise to assessing respondent's self-reporting and the various diagnostic criteria in the DSM-5, respondent has been under the care of a psychiatrist since her injury. That psychiatrist, Dr. Weininger, has observed respondent and assessed her for alcohol use problems for four years and has concluded she does not have an alcohol use disorder. Working with a patient for over four years is a significant enough time to discover a pattern of alcohol use. Dr. Sandor also noted that people who have such a disorder generally become unreliable in their work and personal life; they do not receive the types of glowing character references from colleagues such as Drs. Sharma and Ritter that respondent has offered in evidence.

27. Complainant's counsel argued the letters are a small sample size and might not be representative, and Dr. Sandor should have interviewed numerous collateral sources of information about respondent, including her friends, family, and employers, before concluding she does not have substance use disorder. Dr. Sandor explained that he formed his own impressions, based on his experience, that he reviewed a large amount of material, including sheriff's reports, court documents, and the reference letters. He noted that respondent did not fail to comply with the terms of her criminal probation, which might have indicated a continuing problem. She did comply, went to AA meetings, paid fines and restitution, and obtained from the court an early termination of probation. She took her criminal penalties seriously.

28. If respondent had an alcoholic drink while on criminal probation, Dr. Sandor would not change his opinion without knowing more about the circumstances, her reasons, and whether she violated probation repeatedly.

29. Respondent told an investigator on October 31, 2018, that "I think I had a glass of wine last month." (Ex. 6, p. 69.) Respondent testified that she believes she misspoke, that she meant to say "last year," not "last month." Respondent testified she last drank wine in September 2017, at a wine tasting with a friend. She had an allergic reaction to the wine, developed hives and tachycardia, and did not drink wine again. Respondent testified she could not have drunk alcohol while on supervised probation; she was subject to random testing and had to verify monthly that she was abstaining from alcohol.

30. In view of all the evidence, respondent's testimony on this point is credible. Dr. Sandor persuasively noted that, if respondent wanted to avoid being found in violation of probation, she would not have disclosed drinking wine while on probation to the investigator. Complainant did not offer evidence that would cause Dr. Sandor to draw conclusions different from those he reported.

31. Reuben A. Weininger, M.D., who is board certified in psychiatry by the American Board of Psychiatry and Neurology and has been in private practice in Santa Barbara for 30 years, testified he treated respondent from September 2016 through 2018. Respondent first consulted Dr. Weininger after suffering post-surgical compartment syndrome. Respondent disclosed to Dr. Weininger her criminal conviction and the consequences of her decision to drink and drive. Dr. Weininger has worked with respondent to address possible substance abuse or dependence. They discussed in depth her alcohol use throughout her residency and her work as an anesthesiologist, and leading up to the automobile accident. Dr. Weininger also

discussed respondent's alcohol use with her parents, both of whom are physicians. In a letter dated November 8, 2018, he concluded,

> I have seen no evidence that she has any problems with substance abuse or dependence, neither now or in the past. Her DUI last year was a one time mistake in my view, occurring in the midst of her chronic pain and physical limitations. [¶] [Respondent] has made good progress in her psychological recovery, and I anticipate that within a reasonable time frame she will be able to return to medical practice, even if limited by her difficulty standing for long periods administering anesthesia." (Ex. D.)

32. Dr. Weininger testified that the DUI accident added another layer of post-traumatic stress to that respondent already suffered as a result of her containment syndrome. That respondent was capable of causing harm was terrible to her, causing her guilt and shame. She engaged, however, in no pattern of alcohol misuse, which was verified by her family and in her work with Dr. Weininger. "Alcohol," he testified, "was not how she sought to cope." Neither did respondent display any pattern of denial, emotional guardedness, lack of openness, or unwillingness to take responsibility. Dr. Weininger testified it would waste respondent's time and the treatment provider's time to require her to undergo substance use disorder treatment. She has made very significant strides in addressing her stress, adjusting her career expectations, planning how to proceed, and resolving conflict with her family about her choice to have the surgery that led to her injury.

33. Dr. Weininger found that respondent does not suffer from alcohol use disorder, based on DSM-5 criteria and his clinical experience of 30 years working with

people who misuse alcohol. When he screens for substance abuse disorder, he assesses frequency of use, quantity used, whether the patient can stop use without withdrawal, life consequences, coping mechanisms for general stressors, and other indications of a pattern. When the DUI occurred, Dr. Weininger and respondent discussed it consistently, "it was a source of misery in her life." He asked her about continuous, repetitive drinking; she said she had stopped drinking. Dr. Weininger saw no evidence of drinking in respondent's behavior; she was always clear-headed, and he had no reason to doubt her. His opinion is based on a very close psychotherapeutic relationship. He did not contact respondent's parents because of their intrusive behavior in respondent's life, and due to confidentiality. Nor did Dr. Weininger talk to respondent's friends and employers, explaining that it is not the practice for a psychiatrist to call people outside the therapeutic relationship. If Dr. Weininger learned that respondent said she had two sips of wine at her mother's birthday party a couple of months ago, it would not surprise him. A person without a substance abuse problem who has had a DUI conviction may drink alcohol again. But that person is not likely to misuse it again, either.

34. Respondent called two character witnesses, one a colleague and the other a friend, to testify on her behalf.

35. Rohit Sharma, M.D., Associate Trauma Director at Cottage Health and a trauma critical care surgeon in Santa Barbara for the past five years, testified and wrote a character reference letter for respondent. Dr. Sharma worked with respondent for about one and one-half years, when she worked at Cottage Health as an anesthesiologist. Dr. Sharma wrote and testified that he has the highest respect for respondent's clinical skills and that she is compassionate as well, to all her patients and on the medical missions she volunteers for every year. Respondent told Dr. Sharma of

her criminal conviction; she was remorseful, heartbroken, despondent, and dejected. Dr. Sharma believes respondent will never again decide to drink and drive and that she has never worked under the influence of alcohol. He never observed behavior in respondent consistent with substance abuse, and he would put his life in respondent's hands.

36. Robert Herr runs startup technology companies in Santa Barbara; he considers respondent, who is an investor in his companies, a close advisor and friend for the past five years. He testified and wrote a character reference letter for respondent. Respondent told Mr. Herr of the DUI the day after it happened. She was extremely remorseful and felt awful. Mr. Herr testified respondent is usually cheerful and outgoing; after the accident, she was sad, distraught, ashamed, and down on herself. He invited her to attend a private dinner party at my house; she did not drink any of the wine he served. Respondent is a very responsible person. Mr. Herr trusts her with his infant daughter, and he trusts her personal advice. He has visited respondent's St. Louis family home and gotten to know her well. He would trust her with his care and that of his friends and family. Regarding the DUI, Mr. Herr believes an otherwise responsible person can make an unfortunate mistake like that, a lapse in judgment. That does not change his overall opinion of her.

37. Several colleagues and friends also submitted character reference letters on respondent's behalf.

38. Complainant argued that the opinions of Drs. Sandor and Weininger should be disregarded because they were not based on an independent forensic investigation, including interviews of family, friends, and employers. In fact, the doctors performed mental health evaluations of respondent and formed opinions based on accepted standards for diagnosing substance use disorder and other relevant mental

health disorders, and on their years of experience as mental health professionals. Together they have about 30 years' experience in their fields, and their professional opinion carries significant weight. The DSM-5, on which both doctors relied, incorporates and relies on a subjective component for making appropriate diagnoses based on the expertise of the provider and sources of information the provider believes appropriate, in addition to certain objective criteria. And the doctors' diagnoses are uncontradicted by this record. Complainant argued that respondent's BAC of 0.18 percent is enough to show alcohol abuse. That conclusion is undisputed, but respondent's alcohol abuse on that one occasion does not establish alcohol use disorder.

39. Complainant's position regarding what is necessary to make a proper diagnosis is untenable and reflects a gross misunderstanding of the role of a mental health provider in diagnosing and treating mental health conditions and of rules governing medical confidentiality. Ironically, the probationary conditions complainant seeks would include requiring respondent to undergo the very sort of subjective assessments and treatment complainant denigrates.

40. This matter concerns respondent's exercise of terrible judgment on a single occasion in September 2017, where, by drinking and driving, she made a decision that put people at risk and actually caused injury to another. Bad judgment, however, is not equivalent to alcohol use disorder. It would be unfair and illogical to subject respondent to biological testing, a measure designed to address substance use disorder, when complainant has not established that respondent suffers from substance use disorder.

41. Complainant argues that respondent's unwillingness to admit to the arresting deputies that she was inebriated or that she had drunk enough mimosas to

result in her high BAC, and her testimony about whether she had a drink while on probation, demonstrates that she is evasive and not trustworthy. Appropriate license discipline in this matter cannot be determined by statements respondent made while inebriated. Respondent has not been evasive in this proceeding; she has admitted to drinking and driving and expressed appropriate regret not only at hearing but to her friends and colleagues. Evidence that she may have had an alcoholic drink while on probation was doubtful and not determinative; of greater weight was the court's determination that probation should terminate early and that the conviction should be expunged.

LEGAL CONCLUSIONS

Burden of Proof

1. The rigorous educational, training, and testing requirements for obtaining a physician's license justify imposing on complainant a burden of proof of clear and convincing evidence. (Evid. Code, § 115; see *Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911.)

Applicable Authority

2. The Board's highest priority is to protect the public. (Bus. & Prof. Code, § 2229.) The Board may act against a licensee for unprofessional conduct. (Bus. & Prof. Code, § 2234.) Unprofessional conduct includes a criminal conviction for an offense substantially related to the qualifications, functions, or duties of a physician and surgeon (Bus. & Prof. Code, §§ 490, subd. (a), 2236, subd. (a)); and the use of alcohol to an extent or in such a manner as to be dangerous or injurious to the licensee or to

any other person or to the public (Bus. & Prof. Code, § 2239, subd. (a).) 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 of a person holding a certificate to perform licensed activities in a manner consistent with public health, safety, and welfare. (Cal. Code Regs., tit. 16, § 1360.)

3. 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 "other action taken in relation to discipline" as the Board deems proper. (Bus. & Prof. Code, § 2227.) Among those other actions listed is public reprimand of the licensee. (Bus. & Prof. Code, § 2227, subd. (a)(4).)

Cause for Discipline

4. Cause exists to suspend or revoke respondent's license under Business and Professions Code sections 2236, subdivision (a), and 490, and California Code of Regulations, title 16, section 1360, in that clear and convincing evidence established that respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon, as set forth in Factual Findings 3 through 5.

5. Cause exists to suspend or revoke respondent's license under Business and Professions Code section 2239 in that clear and convincing evidence established that respondent used alcoholic beverages to an extent, or in such a manner as to be dangerous and injurious to herself or other persons, as set forth in Factual Findings 3 through 5.

6. Cause exists to suspend or revoke respondent's license under Business and Professions Code section 2234 for unprofessional conduct, in that clear and convincing evidence established that respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon, and used alcoholic beverages to an extent, or in such a manner as to be dangerous and injurious to herself or other persons, as set forth in Factual Findings 3 through 5.

Appropriate Discipline

7. Though cause for discipline is established, placing respondent on probation would be unnecessarily punitive and would not serve the ends of public safety protection. As a means of protecting the public, a reprimand informing the public that respondent was criminally convicted of driving while intoxicated and injuring someone will suffice.

8. A public reprimand is sufficient to protect the public in light of complainant's failure to show that respondent's misconduct in 2017 was part of a pattern or would be likely to be repeated. The mental health professional witnesses who testified on respondent's behalf concluded that respondent does not suffer from substance use disorder. Since the incident, respondent has taken significant steps to remediate her instance of poor judgment. The probation conditions set forth in the Board's disciplinary guidelines are unnecessary under the circumstances presented. Imposing probation, including such terms as psychotherapy and random biological sample testing, would be inappropriate when respondent has no substance use disorder; probation would merely be punitive. The purpose of a disciplinary action such as this one is to protect the public, and not to punish the licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

9. In view of all the evidence, including evidence of respondent's reputation in the medical community and her testimony about and other evidence of rehabilitation, the safety of the public will be protected if respondent is issued a public reprimand, under Business and Professions Code section 2227, subdivision (a)(4).

ORDER

Respondent Mona Shrikrishna Kulkarni, M.D., Physician's and Surgeon's Certificate number A 111656, is hereby publicly reprimanded under Business and Professions Code section 2227, subdivision (a)(4), for the conduct identified in the Factual Findings 1 through 3.

DATE: Jan 14, 2021

Howard W. Cohen (Jan 14, 2021 08:21 PST)

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
BRIAN ROBERTS
Deputy Attorney General
California Department of Justice
State Bar No. 282868
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6614
Facsimile: (213) 897-2810
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO MAY 6 2019
BY: ANALYST

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

In the Matter of the Accusation Against: **Mona Shrikrishna Kulkarni, M.D.** **2630 State Street, Apt. 10** **Santa Barbara, CA 93105** **Physician's and Surgeon's Certificate No. A 111656,** Respondent.	Case No. 800-2017-037273 **A C C U S A T I O N**

Complainant alleges:

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 March 24, 2010, the Medical Board issued Physician's and Surgeon's Certificate Number A 111656 to Mona Shrikrishna Kulkarni, 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 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:

"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.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

6. 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.

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board 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[1] 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

///

[1] California Business and Professions Code Section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal. Bus. & Prof. Code §§§§ 2000, et seq.) means the "Medical Board of California" and references to the "Division of Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

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."[2]

8. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is

///

[2] 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.)

made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos* v. *Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law."

9. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

10. 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."

FACTUAL SUMMARY

11. On March 22, 2018, in the case entitled *The People of the State of California v. Mona Kulkarni*, case number 17CR13003, in the Superior Court of California, County of Santa Barbara, Respondent, upon her plea of nolo contendere, was convicted of driving a vehicle while having a blood alcohol content of approximately 0.18 percent and causing injury, in violation of Vehicle Code Section 23153(a), a misdemeanor.[3] The remaining criminal charge was dismissed as part of Respondent's plea agreement with the Santa Barbara District Attorney's Office. Respondent was placed on three years of supervised probation with the following terms and conditions:

A. Pay a fine of $1690.00.

B. Pay restitution as determined by the probation department.

C. Complete 50 hours of mandatory community work service.

D. Participate in and successfully complete a three-month state licensed alcohol or drug counseling program for first offenders.

E. Suspension of driving privileges for one year.

F. Obey all laws.

G. Do not drive with any measurable amount of alcohol in your blood.

H. Complete standardized chemical test if arrested for driving under the influence of alcohol or drugs, or upon the request of a peace officer.

I. Do not drink or possess any alcoholic beverages and stay out of places where they are the chief item of sale.

///

[3] Vehicle Code section 23153, subdivision (a) provides: "It is unlawful for a person, while under the influence of any alcoholic beverage to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver."

J. Do not possess or use any drugs or narcotics unless prescribed by a licensed physician, and then only in the amounts prescribed.

K. Complete 50 Alcoholics Anonymous meetings.

12. The circumstances leading to the above-referenced conviction are as follows:

A. On or about September 17, 2017 at approximately at 5:03 p.m., deputy sheriffs with the Santa Barbara County Sheriff were dispatched to a traffic collision that had recently occurred. Upon arrival, deputies observed that both vehicles involved in the collision were at point-of-rest.

B. Deputies contacted Respondent as she sat against the side of her vehicle. Respondent's vehicle had major collision damage. Respondent appeared to be using the vehicle to hold herself up. Standing next to Respondent was a male associate of Respondent, who was a passenger in Respondent's vehicle at the time of the collision. Both Respondent and the passenger confirmed that Respondent was the driver of the vehicle during the collision. Both denied being injured as the result of the collision.

C. While speaking with Respondent, deputies noted that Respondent had a droopy appearance to her face and eyes, that her speech was distinctly thick and slurred, and that her balance was unsteady. Deputies also noted the smell of alcohol on Respondent's breath.

D. When questioned about her alcohol consumption, Respondent denied consuming any alcohol. Respondent later claimed to have consumed a single Mimosa drink after being confronted with conflicting evidence provided by the passenger in her vehicle.

E. Standardized Field Sobriety Tests were administered and Respondent displayed pronounced psycho-physical impairment.

F. Deputies interviewed the driver of the other vehicle involved in the collision and she told deputies that Respondent was traveling at an excessive rate of speed, made an erratic turn, and collided into her vehicle. As a result of the collision, the victim driver's airbag deployed and the victim driver complained of pain injuries to her shoulders and lower back.

G. Deputies also spoke with an unrelated, third party witness who confirmed that Respondent's vehicle was traveling at an excessive rate of speed.

H. Respondent declined to give a breath sample but consented to a blood draw. A blood sample was collected from Respondent and later analysis provided that Respondent's blood alcohol concentration was 0.18 percent by weight.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

13. By reason of the facts set forth in paragraphs 11 and 12, Respondent Mona Shrikrishna Kulkarni, M.D. is subject to disciplinary action under Section 2236, subdivision (a), and Section 490 of the Code, as well as California Code of Regulations, title 16, Section 1360, in that Respondent has been convicted of crimes substantially related to the qualifications, function or duties of a physician and surgeon.

14. Respondent's acts and/or omissions as set forth in paragraphs 11 and 12, whether proven individually, jointly, or in any combination thereof, constitute convictions of crimes substantially related to the qualifications, function or duties of a physician and surgeon pursuant to Section 2236, subdivision (a), and Section 490 of the Code, as well as California Code of Regulations, title 16, Section 1360.

SECOND CAUSE FOR DISCIPLINE

(Use of Alcoholic Beverages in a Dangerous Manner)

15. By reason of the facts set forth in paragraphs 11 and 12, Respondent Mona Shrikrishna Kulkarni, M.D. is subject to disciplinary action under Section 2239 of the Code, in that Respondent used alcoholic beverages to the extent, or in such a manner, as to be dangerous and injurious to herself, or to any other person or to the public.

16. Respondent's acts and/or omissions as set forth in paragraphs 11 and 12, whether proven individually, jointly, or in any combination thereof, constitute the use of alcoholic beverages to the extent, or in such a manner, as to be dangerous and injurious to herself, or to any other person or to the public.

///

///

///

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

17. By reason of the facts set forth in paragraphs 11 and 12, Respondent Mona Shrikrishna Kulkarni, M.D. is subject to disciplinary action under Section 2234, subdivision (a) of the Code, in that Respondent has been convicted of crimes substantially related to the qualifications, functions, or duties of a physician and surgeon; used alcoholic beverages to the extent, or in such a manner, as to be dangerous and injurious to herself, or to any other person or to the public.

18. Respondent's acts and/or omissions as set forth in paragraphs 11 and 12, whether proven individually, jointly, or in any combination thereof, constitute convictions of crimes substantially related to the qualifications, functions, or duties of a physician and surgeon; use alcoholic beverages to the extent, or in such a manner, as to be dangerous and injurious to herself, or to any other person or to the public.

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 Number A 111656, issued to Mona Shrikrishna Kulkarni, M.D.;

2. Revoking, suspending or denying approval of Mona Shrikrishna Kulkarni, M.D.'s authority to supervise physician assistants, pursuant to Section 3527 of the Code, and advanced practice nurses;

3. Ordering Mona Shrikrishna Kulkarni, 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:
May 6, 2019

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

LA2019500498
53372259.docx