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

In the Matter of the Petition for Reinstatement By: James Kieffer McDonnel, M.D. Physician's and Surgeon's Certificate No. G 63465 Respondent	Case No.: 800-2020-068642

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 August 12, 2021.

IT IS SO ORDERED: July 13, 2021.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, M.D., Chair
Panel B

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

In the Matter of the Petition for

Reinstatement by:

JAMES KIEFFER McDONNEL, M.D.,

Physician's and Surgeon's Certificate No. G 63465

Petitioner.

Agency Case No. 800-2020-068642

OAH No. 2021040038

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on May 10, 2021, by videoconference.

Petitioner James Kieffer McDonnel, M.D., was present for the hearing, representing himself.

Deputy Attorney General Brenda P. Reyes represented the Department of Justice, Office of the Attorney General.

The matter was submitted for decision on May 10, 2021.

FACTUAL FINDINGS

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 63465 to petitioner James Kieffer McDonnel, M.D., on July 25, 1988. After disciplinary proceedings described more fully below in Findings 8 through 10, the Board revoked this certificate effective September 23, 2016.

2. In June 2020, petitioner signed his petition asking the Board to reinstate his certificate.

Professional History

3. Petitioner graduated from medical school in 1983. After working in primary care for several years to fulfill his obligation to the National Health Service Corps, petitioner completed a residency in emergency medicine in 1991. He became board-certified in emergency medicine in December 1992 and maintained this certification until 2016.

4. Petitioner practiced in California as an emergency physician between 1991 and 2016, in San Luis Obispo, Arroyo Grande, Bakersfield, and Tehachapi.

5. Petitioner obtained an Indiana medical license in 2015, and practiced briefly as an urgent care physician in Indiana during that same year.

6. Between 2016 and 2020, petitioner did not practice medicine, except on one day in March 2017 in Indiana. In December 2020, he began a position as a program physician with WIN Recovery, an Indianapolis-area outpatient clinic treating opioid use disorder.

7. Petitioner requested reinstatement of his California license while he was unemployed and preparing to return to medical practice. Now that he has begun working at WIN Recovery, however, he has no immediate plans to return to California.

Disciplinary History

8. On March 20, 2015, after a report to the effect that petitioner might be unable to practice medicine safely because of alcohol abuse, the Board issued an order directing petitioner to appear for a physical and mental health examination. Petitioner did not appear for this examination.

9. Acting in her official capacity, former Board executive director Kimberly Kirchmeyer filed an accusation against petitioner in June 2015, seeking disciplinary action against petitioner because of his failure to appear for the examination. After a hearing, the Board issued an order effective January 8, 2016, placing petitioner on probation. The probation conditions included requirements that petitioner appear for a clinical diagnostic evaluation, that he notify his employer about his probation, that he abstain from alcohol, and that he undergo random biological fluid testing to confirm abstinence.

10. Petitioner did not appear for the clinical diagnostic evaluation, did not notify his employer about his probation, and did not register for biological fluid testing. Because of these failures, the Board revoked petitioner's probation and his California physician's and surgeon's certificate effective September 23, 2016.

11. On March 23, 2017, the Medical Licensing Board of Indiana suspended petitioner's authority to practice medicine in Indiana, because of the California revocation action described above in Finding 10 and the incident described below in Finding 15. This suspension continued until mid-2018.

12. Effective July 18, 2018, the Medical Licensing Board of Indiana restored petitioner's authority to practice medicine in Indiana, but placed his Indiana license on probation. This order states that the probation term begins when petitioner resumes "active practice as a physician," and must continue for at least two full years of active practice. During this time, petitioner must participate in the Indiana State Medical Association Physician Assistance Program, described more fully below in Finding 21. In addition, petitioner must have a worksite monitor who reports quarterly to the Medical Licensing Board of Indiana about petitioner's medical practice. Although the order is not explicit, petitioner reasonably understands that his Indiana probation will continue until the Medical Licensing Board of Indiana issues a further order releasing him from probation in Indiana.

Alcohol Use Disorder and Rehabilitation

13. Petitioner first sought treatment for alcohol use disorder in 2010. He entered into a monitoring agreement with his employer, and abstained from alcohol for several years. He resigned his position with this employer in November 2013, and stopped participating in the monitoring program.

14. When the Board revoked petitioner's California physician's and surgeon's certificate, he had moved to Indiana. He again was abusing alcohol, although the evidence did not establish precisely when petitioner had resumed using alcohol.

15. In November 2016, while intoxicated by alcohol, petitioner caused a disturbance at a campground by walking alone into an adjacent open field and firing a shotgun repeatedly into the air. Law enforcement officers responded, and eventually took petitioner into custody. He spent about two weeks in a psychiatric hospital, followed by a night in jail before being released on bail.

16. On June 1, 2017, petitioner was convicted of a misdemeanor resulting from the incident described in Finding 15. He served 270 days on home detention as his sentence for this crime.

17. Petitioner last drank alcohol on December 2, 2016. A few days later, he began a residential substance use disorder treatment program. He participated in this program and lived in the facility, Progress House in Indianapolis, for more than one year, except for a period of several weeks during spring 2017 when he lived at and participated in an intensive treatment program at the Positive Sobriety Institute in Chicago.

18. The Progress House program emphasized peer support activities. Residents attended Alcoholics Anonymous (AA) meetings in the community, and also held regular resident group meetings. They lived together in a mutually supportive sober living environment. Between approximately April and December 2017, petitioner worked in an administrative role at the facility, primarily assisting new residents entering the treatment program.

19. The Positive Sobriety Institute program included group and individual psychotherapy with mental health professionals as well as AA meetings. In addition, petitioner received two psychological evaluations, one in May 2017 and another in October 2017, assessing his cognitive functioning through structured testing and a diagnostic interview. Petitioner testified credibly that the May 2017 evaluation revealed some cognitive impairment. A report from the October 2017 evaluation was in evidence, however, stating the conclusion that after ten months of sobriety, mental health treatment, and peer support, petitioner had "normal cognitive functioning" that would not impair safe medical practice.

20. Petitioner committed himself to AA in early December 2016. He attended seven to nine meetings per week between December 2016 and early 2018, and continues now to attend usually four meetings per week. In addition to these four meetings, petitioner also attends one AA meeting specifically for physicians each week. He has had the same AA sponsor since December 2016 and has served as a sponsor for two other people. Petitioner views AA as the key to his recovery and intends to continue participating in AA for the rest of his life.

21. In December 2017, petitioner agreed to a five-year "Continuing Care Contract" with the Indiana State Medical Association Physician Assistance Program. The contract calls for petitioner to submit to "random toxicology screens," to undergo daily breath testing to confirm abstinence from alcohol, and to attend both lay and physicians' 12-step meetings. According to Fred Frick, M.D., the program's Medical Consultant, petitioner has followed these requirements since agreeing to them.

22. To prepare himself to return to medical practice, petitioner took more than 200 hours of continuing medical education in 2019 and 2020. He has re-certified in basic and advanced life support techniques and in trauma intervention, and intends to apply when eligible to restore his board certification in emergency medicine.

References

23. Petitioner's AA sponsor, Bill Kindle, testified to support petitioner's reinstatement. Kindle himself has been sober for 28 years, and before retiring directed an employee assistance program at a major manufacturing company. Kindle confirmed that petitioner is dedicated to self-improvement and to abstinence from alcohol. He supports petitioner's return to medical practice without reservation.

24. Scott Burns is the program director at WIN Recovery. He participated in the decision to hire petitioner, and interacts with him most weekdays while both are in the clinic. Burns considers petitioner to be an outstanding clinician who combines medical expertise with compassion and a non-judgmental communication style. He also has received no negative reports about petitioner from other employees or from WIN Recovery patients.

25. Three fellow members of petitioner's physicians' AA group (Christopher S. Jones, M.D.; David A. Bussard; and Richard R. Tanner, M.D.) provided reference letters supporting his reinstatement to licensure in California. All describe petitioner as a strong contributor to the group, and all believe that petitioner's recovery is stable enough to permit him again to be a dependable, safe physician.

LEGAL CONCLUSIONS

1. The matters stated in Findings 2 and 10 establish petitioner's eligibility to apply for reinstatement of his physician's and surgeon's certificate. (Bus. & Prof. Code, § 2307, subd. (b)(1).) Petitioner bears the burden of proving, using clear and convincing evidence, that he has recovered his ability to practice medicine safely and merits reinstatement.

2. In evaluating the petition, the Board may "consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability." (Bus. & Prof. Code, § 2307, subd. (e).)

3. The matters stated in Findings 8 through 25 establish that petitioner has made a strong recovery from an alcohol use disorder that impaired him personally and professionally before 2016. Reinstatement of his California physician's and surgeon's certificate, on probationary terms similar to those that govern his medical practice in Indiana, will allow petitioner to continue his rehabilitation and will not threaten public safety.

ORDER

The petition by James Kieffer McDonnel, M.D., for reinstatement to licensure is granted. Physician's and Surgeon's Certificate No. G 63465 is reinstated, but immediately revoked. The revocation is stayed, however, and petitioner is placed on probation for three years, on the following conditions.

1. Notice of Employer or Supervisor Information

Within seven days of the effective date of this decision, petitioner shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Petitioner shall also provide specific, written consent for the Board and petitioner's employers and supervisors to communicate regarding petitioner's work status, performance, and monitoring.

For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when petitioner has medical staff privileges.

2. Controlled Substances: Abstain From Use

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

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

If petitioner has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a proposed decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay.

Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

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

3. Alcohol: Abstain From Use

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

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

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

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

4. Biological Fluid Testing

Petitioner shall immediately submit to biological fluid testing, at petitioner's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Petitioner shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Petitioner shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a petitioner to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the petitioner.

During the first year of probation, petitioner shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, petitioner shall be subject to 36 to 104 random tests per year. Only if there have been no positive biological fluid tests in the previous three consecutive

years of probation, may testing be reduced to one 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 after the effective date of this order, petitioner shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

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

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

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

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

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

(f) Its testing locations shall submit a specimen to a laboratory within one 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 business days of

receipt of the specimen. The Board will be notified of non negative results within one business day and will be notified of negative test results within seven business days.

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

(h) Its testing locations are able to test scientifically 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 system and/or a secure on line computer database that allows the petitioner to check in daily for testing.

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

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

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

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

The contract shall require that the laboratory directly notify the Board or its designee of non negative results within one business day and negative test results within seven business days of the results becoming available. Petitioner shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and petitioner.

If a biological fluid test result indicates petitioner has used, consumed, ingested, or administered to himself a prohibited substance, the Board shall order petitioner to cease practice and instruct petitioner to leave any place of work where petitioner is practicing medicine or providing medical services. The Board shall immediately notify all of petitioner's employers, supervisors and work monitors, if any, that petitioner may not practice medicine or provide medical services while the cease practice order is in effect.

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

After the issuance of a cease practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the

licensee, his treating physician(s), other health care provider, or group facilitator, as applicable.

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

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

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, petitioner has committed a major violation, as defined in California Code of Regulations, title 16, section 1361.52, subdivision (a); and the Board shall impose any or all of the consequences set forth in California Code of Regulations, title 16, section 1361.52, subdivision (b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance petitioner's rehabilitation.

5. Substance Abuse Support Group Meetings

Within 30 days of the effective date of this decision, petitioner shall submit to the Board or its designee, for prior approval, the name of a substance abuse support group that he shall attend for the duration of probation. Petitioner shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Petitioner shall pay all substance abuse support group meeting costs.

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

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

6. Worksite Monitor

Within 30 calendar days of the effective date of this decision, petitioner shall submit to the Board or its designee, for prior approval as a worksite monitor, the name and qualifications of one or more licensed physicians and surgeons (or other licensed health care professional if no physician and surgeon is available), or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring petitioner at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with petitioner, or any other relationship that reasonably could be expected to compromise the monitor's ability to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but petitioner's employer to

serve as the worksite monitor, this requirement may be waived by the Board or its designee; however, under no circumstances shall petitioner's worksite monitor be petitioner's employee or supervisee.

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

Petitioner shall pay any and all worksite monitoring costs.

The worksite monitor shall (1) have face-to-face contact with petitioner in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; (2) interview other staff in the office regarding petitioner's behavior, if requested by the Board or its designee; and (3) review petitioner's work attendance.

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

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee that shall include the following: (1) petitioner's name and certificate number; (2) the worksite monitor's name and signature; (3) the

worksite monitor's license number, if applicable; (4) the location or locations of the worksite; (5) the dates petitioner had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of petitioner's work attendance; (8) any change in petitioner's behavior and/or personal habits; and (9) any indicators that lead to suspicion of substance abuse by petitioner. Petitioner shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board or its designee authorizing the Board or its designee and the worksite monitor to exchange information.

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

7. Notification

Within seven days of the effective date of this decision, petitioner shall provide a true copy of this decision and the accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner, at any other facility where petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice

insurance coverage to petitioner. Petitioner shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

8. Supervision of Physician Assistants and Advanced Practice Nurses

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

9. Obey All Laws

Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

10. Quarterly Declarations

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

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

11. General Probation Requirements

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

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

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

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

Travel or Residence Outside California: Petitioner shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty calendar days.

In the event petitioner should leave the State of California to reside or to practice petitioner shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

12. Interview with the Board or its Designee

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

13. Non-Practice While on Probation

Petitioner shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If petitioner resides in California and is considered to be in non-practice, petitioner shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve petitioner from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event petitioner's period of non-practice while on probation exceeds 18 calendar months, petitioner shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

Periods of non-practice for a petitioner residing outside of California will relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

14. Completion of Probation

Petitioner shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, petitioner's certificate shall be fully restored.

15. Violation of Probation

Failure to comply fully with any term or condition of probation is a violation of probation.

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

(1) Issue an immediate cease practice order and order petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of title 16 of the California Code of Regulations, at petitioner's expense. The cease practice order issued by the Board or its designee shall state that petitioner must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time petitioner must test negative while undergoing continuous biological fluid testing

following issuance of a cease practice order, a month is defined as 30 calendar days. Petitioner may not resume the practice of medicine until notified in writing by the Board or its designee that he may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer petitioner for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

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

(1) Issue a cease practice order;

(2) Order practice limitations;

(3) Order or increase supervision of petitioner;

(4) Order increased documentation;

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

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

(7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this decision shall be considered a limitation on the Board's authority to revoke petitioner's probation if he has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If petitioner violates probation in any respect, the Board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation, or petition to revoke probation, or an interim suspension order is filed against petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

16. License Surrender

Following the effective date of this decision, if petitioner ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request to surrender his license. The Board reserves the right to evaluate petitioner's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, petitioner shall within 15 calendar days deliver petitioner's wallet and wall certificate to the Board or its designee and petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

17. Probation Monitoring Costs

Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an

annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATE: 05/25/2021

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings