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

In the Matter of the First Amended Accusation Against: Hesham Saleh Ibrahim, PTCN Polysomnographic Technician License No. PTCN 695 Respondent.	Case No. 800-2017-030602

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 September 17, 2021.

IT IS SO ORDERED August 18, 2021.

MEDICAL BOARD OF CALIFORNIA

Laurie Rose Lubiano, J.D., Vice Chair
Panel A

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

In the Matter of the First Amended Accusation Against:

HESHAM SALEH IBRAHIM, PTCN, Polysomnographic Technician License Number PTCN 695,

Respondent

Agency Case No. 800-2017-030602

OAH No. 2021010294

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on June 21, 2021, by video conference.

Brian D. Bill, Deputy Attorney General, represented Complainant. There was no appearance by Respondent despite proper notice.

Prior to presenting evidence, Complainant moved to amend the First Amended Accusation, by deleting some material. That motion was granted, and the First Amended Accusation (FAA) was modified as follows:

At page 13 of the FAA, line 7, "2014 and" was stricken.

At page 14 of the FAA, subparagraphs 43 B and C, lines 8 through 12 were stricken.

The ALJ struck through the identified language in the FAA found in exhibit 1.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on June 21, 2021. After submission of the case, the ALJ found Respondent's federal tax id number in exhibit 17 and redacted it.

INTRODUCTION AND STATEMENT OF THE CASE

Complainant accused Respondent, a polysomnographic technician, of obtaining controlled substances by fraud, by creating false identities and using forged driver's licenses to purchase such drugs through more than one pharmacy. Respondent was later convicted of one count of obtaining oxycodone by fraud. Further, in the course of its investigation, the Board learned that Respondent had suffered criminal convictions in 2015 but failed to disclose them, as required, when he renewed his license in 2016. One criminal conviction was for receiving stolen property, a misdemeanor, while the other conviction was for providing false information to an insurance company, a felony. However, the misdemeanor conviction was dismissed in 2015 pursuant to Penal Code section 1385 and therefore, was not a conviction that was required to be disclosed.

Respondent's scheme to obtain controlled substances by fraud was undertaken in a deliberate and methodical manner. His failure to disclose the prior criminal conviction for fraudulent conduct, a conviction that resulted from a dishonest act, was

itself an act of dishonesty, essentially defrauding the Board. There being no mitigating evidence or evidence of rehabilitation, Respondent's license must be revoked.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. This case was initiated by Christine J. Lalley, then the Interim Executive Director of the Medical Board of California (Board), when she filed an Accusation against Respondent. Complainant William Prasifka, the current Executive Director of the Board, filed and maintained the FAA. Ms. Lalley and Mr. Prasifka each acted in their official capacities in taking such steps.

2. On January 20, 2015, the Board issued Polysomnographic Technician License number PTCN 695 to Respondent Hesham Saleh Ibrahim. That license expired in June 2018 and has not been renewed.

3. After the Accusation was filed and served on Respondent, he filed a Notice of Defense, denying the allegations, and seeking a hearing. The address he listed on his Notice of Defense was the same as his address of record, which is shown in exhibit 22. Any new allegations contained in the FAA are deemed controverted as a matter of law. (Gov. Code, § 11507.)

4. On January 19, 2021, Complainant's counsel caused a Notice of Hearing to be served upon Respondent at his address of record with the Board, the same address as listed in Respondent's Notice of Defense. Such notice was timely and identified June 21-23, 2021 as the hearing dates for this proceeding. Despite that legal notice, Respondent did not appear at the hearing.

5. Notwithstanding the fact that Respondent's license is expired, jurisdiction was established to proceed in this matter. (See Legal Conclusion 1.)

Respondent Obtained Controlled Substances by Fraud

RESPONDENT'S ARREST

6. (A) Respondent's fraudulent activities came to light on the morning of February 17, 2017. Shortly after 9:00 a.m. on that day, Respondent was pulled over by a Los Angeles County Sheriff Deputy while Respondent was driving in Palmdale, California. Respondent told the deputy that he did not have his driver's license with him. Respondent admitted to the deputy that he was on probation with search terms. He was searched and the following items were found on his person:

One box containing approximately 324 pills;

A bottle containing 273 pills;

A bottle containing 120 pills;

Another bottle containing another 120 pills; and,

Three forged California driver licenses, which were with Respondent's legitimate driver's license; i.e., the one he told the deputy he didn't have with him.

(B) A search of Respondent's vehicle yielded another bottle, containing 18 pills.

(C) The bulk of the pill bottles had no label at all: one had remnants of a label which had been scratched off. The pills in the various containers, however, had identifying numbers and letters stamped into them.

7. The pills, in order of the containers listed in Factual Finding 6, were identified by their markings as follows:

324 oxycodone hydrochloride pills, 30 mg.;

273 oxycodone hydrochloride pills, 20 mg.;

120 acetaminophen/hydrocodone bitartrate pills, 325/10 mg.;

120 acetaminophen/hydrocodone hydrochloride pills, 325/10 mg.; and,

18 sildenafil citrate (Cialis) pills, 20 mg.

8. The forged driver's licenses were in the following names: Sammy S. Shelpayeh, Miah S. Rumiah, and Esham S. Ebraheem. The number on the license in the name of Rumiah was connected to a Rolondo Garcia, and the number on the Shelpayah license was connected to a woman in Burbank, with the same last name. The number on the false license in the name of Ebreem did not trace back to anyone.

9. Respondent told the deputy, after having been read his rights, that the pills were all "Norcos," that he used for his chronic pain; he insisted he had a prescription for all the drugs. He said he bought the forged driver's licenses in Los Angeles and claimed to use them to check into hotels for assignations with women. The arresting deputy, at Respondent's request, allowed Respondent's wife to bring a copy of the purported prescription to the scene of the traffic stop. The deputy noted that the prescription was for 180 oxycodone pills, 30 mg. The prescription had been written before the date of the traffic stop, but the fill date was restricted; it could not be filled before March 7, 2017. Thus, it could not be the source of any of the pills in Respondent's possession.

10. Respondent was arrested on a number of charges, including forgery and illegal transport of controlled substances.

THE BOARD'S INVESTIGATION

11. The Board was notified of the arrest, and it began an investigation which was initially conducted by Chris Jensen. Shelby McGarry, another investigator, took over from Jensen. McGarry methodically took steps that established Respondent used each of the phony personas he created with the three forged driver's licenses to obtain controlled substances. Respondent generally used each phony license at a different care provider, and he used the licenses at different pharmacies. In this way he tended to prevent physicians and pharmacists from seeing him under two or more different names.[1] He was also, at this time, obtaining controlled substances such as oxycodone in his true name.

12. Investigator McGarry reviewed data from the California Substance Utilization Review & Evaluation System, known as CURES, to find prescriptions for the three identities that Respondent had created. McGarry followed up on the CURES information, by contacting the prescribers and the pharmacies where each of Respondent's alter egos had obtained treatment, prescriptions, and drugs. McGarry obtained copies of prescriptions in the phony names, and McGarry showed a series of photos to care providers and pharmacy personnel. In each case those persons picked Respondent's photo out of a photo array, identifying him by whatever identity he had

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[1] There was one exception to this practice, in that the record shows that Adolfo Salcedo prescribed to Respondent in two of his false names.

used at that particular location. The evidence establishes, clearly and convincingly, that Respondent used fraud and deceit to obtain controlled substances.

PRESCRIPTIONS FOR RESPONDENT'S ALTER EGO ESHAM EBRAHEEM

13. A CURES report indicated that "Esham Ebraheem" was prescribed either oxycodone HCL or hydrocodone bitartrate-acetaminaphen by several prescribers during the period from October 2016 through June 2018.[2] The total prescriptions amounted to 25; the bulk of the prescriptions (21) were for 120 pills, 30 mg. It appears all of the prescribers listed on the CURES report worked for Advanced Pain Management in Lancaster, California. (Compare ex. 6, trial binder [tb] pp. 113 and 114 with ex. 7, tb pp. 131-143.) Respondent utilized three pharmacies: first Walgreens, then Quartz Hill Pharmacy, and lastly Hi-Desert Medical Pharmacy. By their names, the last two pharmacies appear to be located in the area where Respondent lived. (The false driver's license had a Lancaster, California address, and Respondent lived in Lancaster.)

14. McGarry made a photo array to show to potential witnesses. The array consisted of six photos. One was Respondent's photo from the DMV data base, the other five photos, were all of men, taken from a data base.

15. McGarry showed the photo array to a pharmacist at Hi Desert Medical Pharmacy, as well as a physician's assistant, and another person who had prescribed

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[2] The CURES report shows that Respondent obtained more prescriptions and filled them for months after the forged license was confiscated. This was also the case with the other two false identifies. Whether Respondent obtained other forged licenses, or simply had his alter ego identity established with the prescribers and pharmacies, is not revealed in the record.

controlled substances to Respondent as Esham Ebraheem. All identified Respondent's photograph as a photo of Esham Ebraheem.

PRESCRIPTIONS FOR RESPONDENT'S ALTER EGO MIAH RUMIAH

16. McGarry obtained a CURES report for "Miah Rumiah," which indicated that 21 prescriptions for drugs such as oxycodone HCL or oxycodone HCL-acetaminophen were issued to Miah Rumiah between December 2016 and April 2018. The bulk of the prescriptions, 17, were for 120 pills. The prescriptions were written by several prescribers over a period of time, and filled at three pharmacies during that time period: Valencia Pharmacy at Henry Mayo; Holy Cross Pharmacy; and, on two occasions at Burbank Compounding Pharmacy. The last two pharmacies are located in the San Fernando Valley, approximately 45 to 60 miles from Respondent's home in Lancaster.

17. McGarry printed more copies of the photo array she had used for the investigation of Esham Ebraheem. She showed the photo array to two employees of Holy Cross Pharmacy. Each one of them identified Respondent as the person they knew as Miah Rumiah.

PRESCRIPTIONS FOR RESPONDENT'S ALTER EGO SAMMY SHELPAYEH

18. McGarry obtained a CURES report for "Sammy Shelpayeh," which indicated that between September 2016 and December 2018, he obtained and filled 29 prescriptions for controlled substances. Twenty-eight of the prescriptions were for oxycodone HCL, and one was for acetaminophen hydrocodone bitartrate. Eleven of the prescriptions were for 150 pills, and another 14 were for 120 pills, all at 30 mg. All of

the prescriptions were written by the same doctor, and 26 were filled at the same Sav-On Pharmacy, located in Lancaster.[3]

19. McGarry took a copy of the photo array to the office of the prescribing doctor, who identified Respondent in the photo array as Shelpayah. Two people who worked at the Sav-On pharmacy were shown the photo array: each identified Respondent as Shelpayah.

Respondent's 2020 Criminal Conviction

20. Respondent was charged in the Superior Court, County of Los Angeles, with three counts of violating Health and Safety Code section 11173, subdivision (a), obtaining, or obtaining a prescription for, controlled substances by fraud. On December 16, 2020, Respondent pled nolo contendere to one count of violating Health and Safety Code section 11173, subdivision (a), By his plea he was convicted of a felony. The other two counts were dismissed as part of Respondent's plea bargain.

21. The matter was put over for sentencing. On February 1, 2021, the court suspended imposition of sentence, and placed Respondent on two years of formal probation. He was ordered to serve two days in jail but given credit for two days served. He was ordered to pay various fines, fees, and assessments, of $382. Numerous probation conditions were imposed on Respondent.

22. Respondent's conviction was for a crime substantially related to the duties, qualifications, and functions of a polysomnographic technician.

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[3] This is shown on the CURES report as Sav-On number 6322, the address of which is set out in exhibit 14, tb page 224.

Respondent's 2015 Criminal Convictions

RESPONDENT'S CRIMINAL CONVICTION FOR RECEIVING STOLEN PROPERTY

23. On December 10, 2014, a criminal case was filed against Respondent in the Superior Court of California, County of Los Angeles, charging him with a violation of Penal Code section 496, subdivision (a), receiving stolen property.

24. On January 12, 2015, Respondent pled guilty to the one count of receiving stolen property and was thereby convicted of a misdemeanor. The court placed Respondent on deferred entry of judgment for one year and imposed various conditions upon Respondent. He was ordered to pay various fees, assessments and charges totaling $170. Although not shown at the docket entry for January 12, 2015, Respondent was apparently obligated to perform community service, in that a later docket entry (July 13, 2015) indicated that Respondent sought and obtained extra time to pay the fines and fees and to perform 20 days of community service.

25, On August 26, 2015, the court terminated the deferred entry of judgement and Respondent was deemed convicted of violating Penal Code section 496, subdivision (a). However, on September 29, 2015, the case was dismissed in the interests of justice pursuant to Penal Code section 1385. As discussed in the Legal Conclusions this negated the conviction.

26. The record does not disclose the facts and circumstances of the matter.

RESPONDENT'S CRIMINAL CONVICTION FOR FRAUDULENT CLAIMS

27. On September 8, 2015, in the Superior Court of California, County of Los Angeles, Respondent pled nolo contendere to one count of violating Penal Code section 550, subdivision (b)(2), knowingly making multiple claims for the same loss or injury, with intent to defraud. Respondent was thereby convicted of a felony. Thereafter, on September 17, 2015, the court suspended sentence and placed Respondent on formal probation for three years. He was ordered to pay restitution of $850, and to perform 30 days of community labor, which was later changed to 50 days of community service, due to a medical issue. Numerous other probation terms were imposed as well.

28. On November 22, 2017, the court granted a motion to terminate probation. On January 30, 2018, the court ordered that the complaint would be deemed amended to allege count 1—to which Respondent had pled nolo contendere—as a misdemeanor, and the court deemed the offense to be a misdemeanor pursuant to Penal Code section 17, subdivision (b). The court then set aside that conviction pursuant to Penal Code section 1203.4.

29. Respondent's conviction was for a crime a substantially related to the duties, qualifications, and functions of a polysomnographic technician.

30. The record does not disclose the details of the crime. However, it should be noted that the court order of restitution was for Respondent to pay an individual $350, and an insurer $500.

The Failure to Disclose Prior Criminal Convictions on Respondent's 2016 License Renewal Application

31. On June 9, 2016, Respondent submitted an application to the Board to renew his license. In signing the application, he declared under penalty of perjury that the information included in the renewal application was "true, complete and accurate." (Ex. 17, tb p. 320.)

32. In the renewal application, Respondent stated he did not have any criminal convictions to disclose. That was false in light of his conviction for violating Penal Code section 550, subdivision (b)(2), described in Factual Findings 26 through 28; that conviction was not set aside until November 2017.

33. Respondent made a false statement, under penalty of perjury, to the Board in his 2016 license renewal application.

Costs

34 The Board has incurred costs of investigation and enforcement totaling $27,375.63. Those costs are reasonable on their face.

LEGAL CONCLUSIONS

1. (A) Jurisdiction to proceed in this matter pursuant to Business and Professions Code sections 118, 490, 2227, 2228, 3576, as well as Government Code sections 11440.20, subdivision (a), and 11520, subdivision (a), was established, based on Factual Findings 1 through 5.

(B) Business and Professions Code, section 118, subdivision (b), provides that an agency such as the Board may discipline a license even if it has expired.

Government Code section 11440.20, subdivision (a), provides that service of a notice at a person's last known address is adequate service; if a person must maintain an address of record with an agency, that address is deemed to be their last known address. Government Code section 11520, subdivision (a), allows an agency to proceed with a prove-up if the respondent fails to appear.

2. Cause has been established to discipline Respondent's license pursuant to Business and Professions Code section 3576, subdivision (a)(2), for acts of dishonesty and fraud, based on Factual Findings 6 through 22.[4]

3. Cause has been established to discipline Respondent's license pursuant to Business and Professions Code sections 3576, subdivision (a)(4) and 3578.3, subdivision (b), because Respondent possessed or obtained large quantities of controlled substances to treat his pain, or, it is fairly inferred, obtained them for illegal distribution. This Conclusion is based on Factual Findings 6 through 22.

4. (A) Respondent's criminal conviction for receiving stolen property ceased to exist after it was dismissed pursuant to Penal Code section 1385. As stated by the Court of Appeal, "dismissal under section 1385 of the charge underlying a prior conviction operates, as a matter of law, to erase the prior conviction as if the defendant had never suffered the conviction in the initial instance." (*People v. Barro* (2001) 93 Cal.App.4th 62, 66.) In such circumstances the defendant stands as if he or she had never been prosecuted for the charged offense. (*People v. Superior Court (Flores)* (1989) 214 Cal.App.3d 127, 136, citing *People v. Simpson* (1944) 66 Cal.App.2d

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[4] This Legal Conclusion encompasses the allegations of both the First and Second Causes for discipline, which are substantially the same.

319, 329. See also *People v. Espinoza* (2014) 232 Cal.App.4th Supp. 1, 7.) This Conclusion is based on Factual Finding 25.)

(B) Therefore, Respondent's license cannot be disciplined because he was convicted of receiving stolen property, nor did he have to disclose it on his license renewal application, as the dismissal occurred before that application was submitted. (Factual Findings 25, 31.)

5. Respondent's license can be disciplined for his other two criminal convictions, which are substantially related to the duties, qualifications, and functions of a polysomnographic technician, pursuant to Business and Professions Code sections 480, 493, subdivisions (a) and (b), and 3576, subdivision (a)(3), based on Factual Findings 20 through 22, and 27 through 30.

6. Respondent's license is subject to discipline pursuant to Business and Professions Code sections 490, subdivision (a), and 3576, subdivision (a)(3), because he failed to disclose his 2015 criminal conviction for making false claims, based on Factual Findings 2 through 33.

7. The Board is entitled to recover its costs of investigation and enforcement pursuant to Business and Professions Code section 125.3, based on Legal Conclusions 1 through 3, and 5 and 6. The reasonable amount of costs is $27,375.63, based on Factual Finding 34. Those costs shall be payable in installments if Respondent seeks reinstatement of his license.

8. As noted at the outset, there is no evidence in mitigation, and there is no evidence of rehabilitation. Through fraud, Respondent was obtaining approximately 350 pills per month, each pill a dangerous controlled substance, and known to have "street value." Respondent was driving far and wide to obtain the drugs, taking care to

keep his alter egos separated from prescribers and pharmacies. He continued that scheme even after his arrest, which apparently did not deter his criminal conduct. The purpose of proceedings such as these is to protect the public, and not to punish an errant licensee. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Plainly, a medical professional must be honest, or his or her charts, reports and billings may be called into question. And, to the extent that Respondent was using the illicitly obtained drugs for himself, such implies a serious addiction and a studied disregard for the laws that control dangerous drugs. Either or both scenarios require revocation of Respondent's license.

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ORDER

Polysomnographic Technician License number PTCN 695, issued to Respondent Heshem Saleh Ibrahim, is hereby revoked.

Respondent shall pay costs of $27,375.63 to the Board if and when he seeks reinstatement of his license. He may pay the costs in installments, as scheduled by the Board.

DATE: 07/10/2021

Joseph Montoya

JOSEPH D. MONTOYA
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the First Amended Accusation Against: **HESHAM SALEH IBRAHIM, PTCN** **38728 Berrycreek Court** **Palmdale, CA 93551-4667** **Polysomnographic Technician License No. PTCN 695,** Respondent.	Case No. 800-2017-030602 **FIRST AMENDED ACCUSATION**

PARTIES

1. William Prasifka (Complainant) brings this First Amended Accusation solely in his official capacity as the Executive Director of the Medical Board of California (Board).

2. On January 20, 2015, the Board issued Polysomnographic Technician License Number PTCN 695 to Hesham Saleh Ibrahim (Respondent). That Polysomnographic Technician License expired on June 30, 2018, and has not been renewed.

JURISDICTION

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

otherwise indicated.

4. Section 2001.1 of the Code states:

Protection of the public shall be the highest priority for the Medical Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

5. Section 118 of the Code states:

...

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."

6. Section 3575 of the Code states:

(a) For the purposes of this chapter, the following definitions shall apply:

(1) "Board" means the Medical Board of California.

...

7. 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.

8. Section 2228 of the Code states:

The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

(d) Providing the option of alternative community service in cases other than violations relating to quality of care.

STATUTORY PROVISIONS

9. 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. An 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 made suspending the imposition of sentence, irrespective of a subsequent order under 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.

10. Section 493 of the Code states:

(a) Notwithstanding any other 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.

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

(B) The number of years elapsed since the date of the offense.

(C) The nature and duties of the profession.

(2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.

(c) As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

(d) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(e) This section shall become operative on July 1, 2020.

11. Section 3576 of the Code states:

(a) A registration under this chapter may be denied, suspended, revoked, placed on probation, or otherwise subjected to discipline for any of the following by the holder:

...

(2) An act of dishonesty or fraud.

(3) Committing any act or being convicted of a crime constituting grounds for denial of licensure or registration under Section 480.

(4) Violating or attempting to violate this chapter or any regulation adopted under this chapter.

(b) Proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all powers granted therein.

12. California Penal Code, section 496, subdivision (a) states:

(a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, if the value of the property does not exceed nine hundred fifty dollars ($950), the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year, if such person has no prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

...

13. California Penal Code, section 550, subdivision (b)(2) states:

...

(b) It is unlawful to do, or to knowingly assist or conspire with any person to do any of the following:

...

(2) Prepare or make any written or oral statement, intended to be presented to any insurer or any insurance claimant in connection with, or in support of or opposition to, any claim or payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

...

14. California Health and Safety Code, section 11173 states:

(a) No person shall obtain or attempt to obtain controlled substances, or procure

or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

COST RECOVERY PROVISIONS

15. California Business and Professions Code, section 125.3 states:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

(k) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licensee. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435.

DEFINITIONS

16. Oxycodone is a semisynthetic opioid analgesic indicated as an immediate release medication for moderate to severe pain and as an extended release product for chronic moderate to severe pain requiring continuous opioid analgesics for an extended period. Oxycodone is a controlled substance.

17. Morphine Sulfate is an opioid agonist indicated for the relief of moderate to severe acute and chronic pain. Morphine Sulfate is a controlled substance.

18. Hydrocodone/Acetaminophen is a combination medication indicated to relieve moderate to severe pain. The medication contains an opioid (narcotic) pain reliever (hydrocodone) and a non-opioid pain reliever (acetaminophen). Hydrocodone/acetaminophen is a controlled substance.

19. Tramadol is an opioid analgesic indicated to relieve moderate to moderately severe pain. Tramadol is a controlled substance.

FACTUAL ALLEGATIONS

February 17, 2017 Arrest

20. On February 17, 2017, a Los Angeles County Sheriff's Deputy conducted a traffic stop of a vehicle driven by Respondent.

21. Respondent informed the deputy that he was subject to a Fourth Amendment search and seizure waiver, pursuant to the terms and conditions of probation.

22. The deputy searched Respondent's person and vehicle. During the search, the deputy discovered several unlabeled and/or damaged-labeled bottles of pills. The following items were

seized as evidence:

A. A "blue box" containing 324 pills, in three different varieties that were later determined to be oxycodone hydrochloride (30 mg).

B. A plastic bottle containing 273 round, gray pills that were later determined to be oxycodone hydrochloride (20 mg).

C. A plastic bottle containing 120 oval, white pills that were later determined to be acetaminophen/hydrocodone bitartrate (325/10 mg).

D. A plastic bottle containing 120 oval, white pills that were later determined to be acetaminophen/oxycodone hydrochloride (325/10 mg).

23. The deputy also discovered three forged California Driver's Licenses (CDL), along with Respondent's own state-issued CDL. The three forged CDLs were seized as evidence.

24. The deputy formed the opinion that the three CDLs were forged based upon the unusually smooth texture of the coating, the inaccurate color scheme, the faint state seal, and Respondent's picture appeared on each CDL, but with different identifying information.

25. The forged CDLs contained the following information:

A. CDL No. C6840022, issued to "Esham S. Ebraheem," DOB: 05-05-60.

B CDL No. A9162672, issued to "Miah S. Rumiah," DOB: 12-24-52.

C. CDL No. E1220439, issued to "Sammy S. Shelpayeh," DOB: 05-06-62.

26. The deputy conducted a search of the California Department of Motor Vehicles (DMV) database to determine if the CDL numbers contained on the three forged licenses were legitimately issued to other persons. The following was discovered:

A. CDL No. C6840022, ("Esham S. Ebraheem") did not appear in the DMV database. There was no information related to the name "Esham S. Ebraheem" in the DMV database.

B. CDL No. A9162672, ("Miah S. Rumiah") was legitimately issued to Victim No. 1. There was no information related to the name "Miah S. Rumiah," in the DMV database.

C. CDL No. E1220439, ("Sammy S. Shelpayeh") was legitimately issued to Victim No. 2. There was no information related to the name "Sammy S. Shelpayeh," in the DMV

database.

27. After waiving his *Miranda* rights, Respondent stated:

A. All of the pills recovered were "Norcos" for his personal use as he suffers from chronic pain. He had a prescription for the pills in his possession.

B. He possessed the three forged CDLs for the purpose of checking into hotels without providing his true identifying information. He purchased the forged CDLs in "downtown Los Angeles."

28. Respondent's wife arrived at the traffic stop location and produced a prescription for 180 tablets of oxycodone (30mg), written by Physician. No. 1 on February 12, 2017. The prescription, however, could not be filled until March 7, 2017.

29. The deputy formed the opinion that Respondent was illegally transporting a controlled substance based upon the large quantity of narcotic pills discovered during the search and because the prescription provided by Respondent's wife could not be filled for several weeks after the date of arrest. The deputy also formed the opinion that Respondent possessed the three forged CDLs with the intent to use the items to commit other forgeries. As a result, the deputy arrested Respondent for violating California Health and Safety Code, section 11352, subdivision (a), illegal transportation of a controlled substance; and California Penal Code, section 470b, possession of a forged CDL.

Obtaining Controlled Substances Using False Identities

30. The Board was made aware of the above arrest on February 17, 2017. During the subsequent investigation, Board investigators obtained multiple Controlled Substance Utilization Review and Evaluation Systems (CURES) reports for Respondent and the names contained on the three forged CDLs found in Respondent's possession.

A. Respondent's CURES Reports. A CURES report for the period June 1, 2015, through December 19, 2018, documents 66 prescriptions for controlled substances, written by 15 different providers to the Respondent and filled at nine different pharmacies. The prescriptions included 40 for oxycodone, 13 for hydrocodone combination, 10 for morphine sulfate, and three for oxycodone combination.

B. CURES Reports for "Esham S. Ebraheem."

i. A CURES report for the period September 4, 2017, through September 4, 2018, documents 10 prescriptions for oxycodone, written by four different providers.

ii. A cumulative CURES report for the period June 1, 2015, through December 19, 2018, documents 25 filled prescriptions; 23 of the prescriptions were for oxycodone, one hydrocodone combination, and one oxycodone combination. The prescriptions were written by five different providers and filled at three different pharmacies. Specifically, "Esham S. Ebraheem" filled the following prescriptions:

1. January 9, 2018, a prescription written on January 9, 2018, for 120 tablets of 30 mg oxycodone at the High Desert Pharmacy.
2. February 14, 2018, a prescription written on February 14, 2018, for 120 tablets of 30 mg oxycodone at the High Desert Pharmacy.

iii. A CURES report for the period December 3, 2018, through January 3, 2019, documents one prescription for oxycodone. Specifically, "Esham S. Ebraheem" filled the following prescription:

1. December 20, 2018, a prescription written on December 19, 2018, for 60 tablets of 30 mg oxycodone at the High Desert Pharmacy.

iv. Prescriptions were filled by "Esham S. Ebraheem" after the forged CDL was seized during the February 17, 2017 traffic stop and subsequently destroyed by the Los Angeles Sheriff's Department.

C. CURES Report for "Miah S. Rumiah."

i. A CURES report for the period September 4, 2017, through September 4, 2018, documents 12 prescriptions, all for oxycodone and prescribed by five different providers.

ii. A cumulative CURES report for the period June 1, 2015, through December 19, 2018, documents 21 filled prescriptions; 14 for oxycodone, five for oxycodone combination, one for a codeine combination, and one for tramadol. The prescriptions were written by six different providers and filled at four different pharmacies.

iii. A CURES report for the period December 2, 2018, through January 2,

2019, documents one prescription for oxycodone.

iv. Prescriptions were filled by "Miah Rumiah" after the forged CDL was seized during the February 17, 2017 traffic stop and subsequently destroyed by the Los Angeles Sheriff's Department.

D. CURES Report for "Sammy S. Shelpayeh."

i. A CURES report for the period September 4, 2017, through September 4, 2018, documents 12 filled prescriptions, 11 for oxycodone, and one for acetaminophen hydrocodone. All were prescribed by one provider.

ii. A cumulative CURES report for the period June 1, 2015, through December 19, 2018, documents 28 filled prescriptions; 27 of the prescriptions were for oxycodone, and one for hydrocodone combination. The prescriptions were all written by one provider and filled at two different pharmacies.

iii. A third CURES report for the period November 28, 2018, through December 28, 2018, documents one prescription for oxycodone.

iv. Prescriptions were filled by "Sammy Shelpayeh" after the forged CDL was seized during the February 17, 2017 traffic stop and subsequently destroyed by the Los Angeles Sheriff's Department.

31. Based upon the above CURES reports, Board investigators obtained original prescriptions, patient profile reports, and surveillance pictures of Respondent obtaining prescription opioids from various identified pharmacies. The individual identified as "Miah Rumiah" in pharmacy surveillance footage had the same gait and appearance as Respondent. The individual identified as "Sammy Shelpayeh" in pharmacy surveillance footage had the same gait and appearance as Respondent.

32. During the subsequent investigation, Board Investigators created a photographic line-up containing a picture of Respondent and five other individuals with similar facial features and physical characteristics. Board Investigators interviewed multiple pharmacists and pharmacy staff who had filled prescriptions written for Respondent or for one of the three false names. The interviewees identified Respondent as "Esham Ebraheem," or "Miah Rumiah," or "Sammy

Shelpayeh."

33. Board Investigators interviewed multiple providers identified in the above CURES reports. Board investigators asked the interviewees to identify the Respondent or one of the three false names used by Respondent. The interviewees identified Respondent as "Esham Ebraheem," or "Miah Rumiah," or "Sammy Shelpayeh."

34. During the subsequent investigation, Board Investigators learned that "Miah Rumiah" attempted to fill a prescription at one of the cooperating pharmacies. However, pharmacy staff refused to fill the prescription. Additionally, pharmacy staff obtained a copy of "Miah Rumiah's" CDL when Respondent attempted to fill the prescription. Pharmacy staff provided a copy of the CDL to Board Investigators. The CDL was identical to the one seized during Respondent's arrest on February 17, 2017.

35. Upon completion of their investigation, Board Investigators submitted their report and supporting evidence to the Los Angeles District Attorney's Office for consideration of filing a criminal matter.

2021 Criminal Conviction Based Upon Board Investigation

36. Respondent was criminally charged on March 9, 2020, in a case entitled, *People of the State of California v. Hesham Saleh Ibrahim, aka Esham S. Ebraheem, aka Sammy S. Shelpayeh, aka Miah S. Rumiah,* Los Angeles Superior Court Case No. MA078211. The complaint alleged three felony counts of obtaining a prescription for oxycodone by fraud, in violation of California Health and Safety Code section 11173, subdivision (a). Specifically, counts one through three allege that Respondent fraudulently obtained oxycodone prescriptions by fraud on December 20, 2018, February 14, 2018, and January 9, 2018. Although the criminal complaint does not state which aka(s) are alleged, the dates of incidents for the three counts correspond with the dates Respondent filled prescriptions as "Esham S. Ebraheem," as detailed in paragraph 31(B), above.

37. On September 3, 2020, Respondent was arraigned on the complaint and entered pleas of not guilty.

38. On or about December 16, 2020, Respondent entered a no contest plea to count one.

39. On or about February 1, 2021, Respondent was sentenced to serve two days in Los Angeles County Jail, with credit for two days served, two years of formal probation, a waiver of his Fourth Amendment rights, and various fines and fees. Additionally, Respondent was ordered to obey all laws and court orders, to cooperate with his probation officer regarding attending and completing an outpatient drug rehabilitation program, to not use fraudulent documents to obtain prescriptions, and to not possess narcotics or dangerous drugs without a valid prescription.

2014 and 2015 Criminal Convictions

40. On July 30, 2015, a matter entitled *The People of the State of California v. Hesham Saleh Ibrahim*, Case No. MA066571, was filed in Los Angeles Superior Court. In that case, Respondent was charged with one count of providing false information to an insurance company, a felony, in violation of California Penal Code section 550, subdivision (b)(2); along with five misdemeanor charges. On September 8, 2015, Respondent entered a plea of no contest to the felony charge and the remaining misdemeanor counts were dismissed. Respondent was sentenced to formal probation for a period of three years on various terms and conditions.

41. On December 10, 2014, a matter entitled *The People of the State of California v. Hesham Saleh Ibrahim*, Case No. 4AV07113, was filed in Los Angeles Superior Court. In that case, Respondent was charged with one count of receiving stolen property, a misdemeanor, in violation of California Penal Code section 496, subdivision (a). On January 12, 2015, Respondent entered a plea of guilty to the sole charge. Respondent was granted a deferred entry of judgment for a period of one year, ordered to obey all laws, complete 20 days of community service, and to pay various fines and fees. On August 26, 2015, the Court terminated the diversion unsuccessfully, reinstated criminal proceedings, and deemed Respondent convicted of the charge. The matter was ultimately dismissed in furtherance of justice, pursuant to California Penal Code section 1385 as a term of the plea agreement in Case No. MA066571.

42. On June 21, 2016, Respondent submitted a license renewal application. All applicants are required to identify any and all convictions sustained during the prior renewal period. Respondent failed to disclose the above convictions.

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FIRST CAUSE FOR DISCIPLINE

(Committing Acts of Dishonesty and/or Fraud)

43. Respondent is subject to disciplinary action under section 3576, subdivisions (a)(2) and (a)(3), in that

A. He obtained prescription narcotics using a false identity. The facts and circumstances alleged in Paragraphs 20 through 39 above, are incorporated by reference as if set forth in full herein.

B. He knowingly provided false information to an insurance company. The facts and circumstances alleged in Paragraph 41, are incorporated by reference as if set forth in full herein.

C. He knowingly possessed stolen property. The facts and circumstances alleged in Paragraph 42, are incorporated by reference as if set forth in full herein.

SECOND CAUSE FOR DISCIPLINE

(Multiple Criminal Convictions)

44. Respondent is subject to disciplinary action under section 3576, subdivisions (a)(2) and (3); section 490, subdivisions (a) and (c); section 493, subdivisions (a) and (b); California Penal Code, section 550; and California Health and Safety Code, section 11173, subdivision (a); in that Respondent sustained multiple criminal convictions, and that those convictions are substantially related to the qualifications, functions or duties of his profession. The circumstances are as follows:

A. On December 16, 2020, Respondent entered a no contest plea to one count of obtaining a prescription for oxycodone by fraud, in violation of California Health and Safety Code section 11173, subdivision (a).

B. On September 8, 2015, in Los Angeles Superior Court Case No. 4AV07113, Respondent entered a plea of no contest to one count of providing false information to an insurance company, a felony, in violation of California Penal Code section 550, subdivision (b)(2);

C. On January 12, 2015, in Los Angeles Superior Court Case No. 4AV07113,

Respondent entered a plea of guilty to one count of receiving stolen property, a misdemeanor, in violation of California Penal Code section 496, subdivision (a).

45. The facts and circumstances alleged in Paragraphs 36 through 42, above, are incorporated by reference as if set forth in full herein.

THIRD CAUSE FOR DISCIPLINE

(Failing to Disclose Criminal Convictions on a License Renewal Application)

46. Respondent is subject to disciplinary action under section 3576, subdivision (a)(3); and section 490, subdivision (a); in that he failed to disclose criminal convictions when he renewed his license. The circumstances are as follows:

47. The facts and circumstances alleged in Paragraphs 40 through 42 above, are incorporated by reference as if set forth in full herein.

PRAYER

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

1. Revoking or suspending Polysomnographic Technician License Number PTCN 695, issued to Respondent;

2. Ordering Respondent to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: JUN 14 2021

WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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