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

In the Matter of the Petition for Reinstatement By: **Karen Eileen Rose** **Physician's & Surgeon's Certificate No. C 52911** **Petitioner**	**Case No.:800-2019-053208**

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the Petition for Reconsideration, filed by Michael A. Firestone, MBA, J.D., and the time for action having expired at 5:00 p.m. on October 4, 2021, the petition is deemed denied by operation of law.

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

In the Matter of the Petition for Reinstatement By: **Karen Eileen Rose** **Physician's & Surgeon's Certificate No. C 52911** **Respondent.**	**Case No. 800-2019-053208** **ORDER GRANTING STAY** **(Government Code Section 11521)**

Brenda P. Reyes, Deputy Attorney General, has filed a Request for Stay of execution of the Decision in this matter, currently stayed until September 24, 2021, at 5:00 p.m.

Execution is now stayed until October 4, 2021, at 5:00 p.m.

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

DATED: September 22, 2021

William Prasifka
Executive Director
Medical Board of California

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

In the Matter of the Petition for Reinstatement of: Karen Eileen Rose Physician's & Surgeon's Certificate No. C 52911 Petitioner.	Case No. 800-2019-053208 **ORDER GRANTING STAY** (Government Code Section 11521)

Marvin H. Firestone, M.D., J.D., Attorney at Law, on behalf of respondent, Karen Eileen Rose, has filed a Request for Stay of execution of the Decision in this matter with an effective date of August 26, 2021 at 5:00 p.m.

Execution is stayed until September 24, 2021, at 5:00 p.m.

This stay is granted solely for the purpose of allowing the Respondent to file a Petition for Reconsideration.

DATED: August 13, 2021.

Reji Varghese
Deputy Director

For: William Prasifka
Executive Director
Medical Board of California

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

In the Matter of the Petition for Reinstatement By: Karen Eileen Rose Physician's and Surgeon's Certificate No. C 52911 Petitioner.	Case No. 800-2019-053208

DECISION

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

1. The Agency Case No. is corrected to read "800-2019-053208."

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 26, 2021.

IT IS SO ORDERED: July 27, 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 of:

KAREN EILEEN ROSE, Petitioner.

Agency Case No. 800-2019-056208

OAH No. 2021020920

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on May 27, 2021, by videoconference.

Attorney Marvin Firestone, M.D., represented petitioner Karen Eileen Rose, who was present.

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

The matter was submitted for decision on May 27, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. C 52911 to petitioner Karen Eileen Rose, M.D., on July 4, 2007. Petitioner surrendered her license pursuant to a stipulated surrender agreement, effective April 19, 2013. The agreement authorizes petitioner to seek reinstatement no sooner than three years after the effective date of her surrender.

2. On February 21, 2019, petitioner submitted a petition for reinstatement.

Professional Background

3. Petitioner graduated from medical school at Wayne State University in 1995. She completed a residency in family medicine in 2000, and was board-certified by the American Board of Family Medicine. From 2000 to 2008 she practiced in Michigan in family medicine and urgent care. She also trained residents and medical students during this time.

Petitioner and her husband, also a family medicine physician, moved to California in 2008. They both worked as family medicine physicians at Kaiser Permanente in Santa Rosa until 2012, when they were fired for the events which resulted in both surrendering their certificates.

Misconduct Leading to License Surrender

4. Discipline against petitioner was premised on her admitted acts of unprofessional conduct, gross negligence, sexual misconduct, and violation of ethical principles. While working at Kaiser in Santa Rosa, petitioner developed a friendship

with a patient, J.L. The patient became the patient of petitioner's husband after petitioner suffered an unexpected medical event in 2011 and was on medical leave. During petitioner's medical leave, she began having daily contact with J.L. In November 2011, petitioner and her husband invited J.L. to their home for dinner. All consumed several bottles of sparkling wine. The three became inebriated and engaged in sexual activity.

History of Alcohol and Drug Abuse and Rehabilitation Evidence

5. After the Board began disciplinary proceedings against her in 2012, petitioner sought an evaluation by a psychiatrist, who diagnosed alcohol abuse and recommended AA (Alcoholics Anonymous) and therapy. Petitioner attended 50 therapy sessions with a psychologist, which she found helpful. These sessions stopped when petitioner moved out of the area and she did not seek further therapy. She explained at hearing that she did not have health insurance and the cost of therapy was prohibitive. Petitioner attended some AA meetings, but did not accept that she had a problem with alcohol and prescription drugs, and she continued to use these substances for several more years.

6. Petitioner now acknowledges a history of prescription drug and alcohol abuse, and believes that this played a role in her misconduct with patient J.L. She also believes that her feelings of isolation after moving to California contributed to her severe lapse in ethical boundaries. Petitioner accepted responsibility for her actions and expressed remorse for the harm she caused to her former patient.

Petitioner's rehabilitation has been a long process because she did not initially recognize the gravity of her situation. The first few years after she surrendered her certificate were a struggle for her emotionally and financially. She explained that she

was "given the gift of desperation" and that this was the impetus for her to transform herself into a better person.

7. Petitioner underwent hip replacement and knee replacement surgeries in 2018. After the second surgery, she felt ready to discontinue taking controlled substances and she weaned herself from all her prescription pain and sleep medications.

8. In 2019, petitioner had the realization that she needed to stop drinking alcohol as well, and she has been sober since August 2019. In April 2020, petitioner began attending AA meetings over Zoom. She now attends five different meetings per week, including two meetings comprised primarily of professionals in the San Diego area. She has developed a strong support network in the AA community in Michigan and California. She serves as secretary to one of the weekly meetings. Her involvement in AA has also prompted her to reconnect with her religious faith. In January 2021, petitioner began working with an AA sponsor and is actively working the 12 steps. She strongly believes in the AA maxim, "anything you put before sobriety, you will lose."

Through AA, petitioner has "worked backwards" through time, exploring the origins of her addiction, which was as an escape from the pain and trauma of an abusive childhood. She understands that her abuse of alcohol was self-destructive, and stated her intention not to be the person she had become while drinking.

9. Laura Duffy is petitioner's AA sponsor. Duffy is a physician assistant at Kaiser in San Diego, where she has worked for 34 years. She met petitioner through Zoom AA meetings early in the pandemic, and became petitioner's sponsor in January 2021.

Duffy described the emotional, physical, and spiritual changes she has observed, as well as petitioner's humility and remorse. Duffy spoke highly of petitioner's commitment to sobriety and to working the AA program. Duffy supports petitioner's return to medical practice.

10. Petitioner retained R. Scott Johnson, M.D., a forensic psychiatrist, to perform an evaluation and testify at hearing. Dr. Johnson evaluated petitioner on April 20, 2021. He diagnosed petitioner with 1) alcohol use disorder, moderate, in full verified remission; 2) opioid use disorder, mild, in full verified remission; and 3) persistent depressive disorder, with anxious distress, in full remission.

Dr. Johnson believes that petitioner is in good recovery and has good insight and a mature attitude. Dr. Johnson believes that petitioner is safe to practice, with restrictions:

a. petitioner should engage regularly with a substance abuse counselor, and remain in treatment until the counselor concludes that treatment is no longer necessary;

b. petitioner should continue with random drug and alcohol testing;

c. drug testing results should be sent directly to the substance abuse counselor; and

d. petitioner should continue regular engagement with AA and her sponsor.

Other Witnesses

11. Petitioner's husband, Edward Rose, testified on her behalf. He acknowledged his own wrongdoing in relation to patient J.L. He testified that petitioner is remorseful for her actions and that her "boundaries are firm."

Rose confirmed that petitioner stopped drinking in 2019 and added that he stopped drinking in January 2020. He attends AA meetings with petitioner multiple times per week and confirmed that the couple has a large support network in the AA communities in San Diego and Michigan. He related the positive changes in petitioner's life as a result of her sobriety: she is happier, more energetic, sharper mentally, and healthier. Rose described his wife as a person of "unbelievable strength."

After surrendering his physician's and surgeon's certificate, Rose worked in a variety of jobs before launching a medical writing company which has become successful. Petitioner has worked as a writer and editor for this business.

12. Maria Yi is a nurse practitioner in Michigan. She met petitioner working in the hospital in 2003, and they became friends. Yi is aware of petitioner's misconduct and loss of her medical license, and her history of alcohol abuse. Yi reported that petitioner was initially embarrassed and upset when she lost her medical license, but over time petitioner became accountable for her actions. Yi has observed petitioner's tremendous growth in recent years and believes that she has come to terms with what she did. Petitioner has expressed remorse and concern for the patient she harmed. Yi believes that petitioner's "ethical foundation was there but got lost." She supports petitioner's return to medical practice and believes that petitioner will be an effective and compassionate practitioner.

Yi noted that petitioner abstains from alcohol when they meet for lunch or dinner. She confirmed that petitioner's health has improved dramatically since she has been sober.

13. Adelbert Evangelista, M.D., is a family medicine physician in Arizona. Petitioner was the residency director during his residency, from 2003 through 2006. He views her as a mentor and stated that she was an asset to her patients and the medical community.

Dr. Evangelista testified that petitioner admitted her misconduct to him and was contrite, humble, and remorseful. He believes that she has been rehabilitated and that she will not repeat further similar misconduct, and he hopes the Board will give her a second chance.

14. Marianna Post, M.D., is a hospitalist in Florida who has known petitioner since 2004. They met when Dr. Post was in residency and petitioner was her residency mentor. Dr. Post holds petitioner in extremely high regard. She described her as an amazing and inspiring physician with strong clinical skills, who is truthful, ethical and a great teacher. Petitioner delivered one of Dr. Post's children.

Dr. Post related that petitioner has worked hard to redeem herself. Dr. Post had never observed petitioner abuse alcohol but confirms that petitioner has been attending AA, abstaining, and has deep regret for her actions.

Dr. Post strongly supports reinstatement of petitioner's certificate and believes that allowing her to return to practice would be a benefit to society.

Other Evidence

15. After losing her certificate, petitioner worked in retail for many years, as a sales associate and performing cooking demonstrations. Petitioner is committed to a healthy lifestyle and is an avid bodybuilder.

16. Petitioner has volunteered as a grant writer for the Leukemia and Lymphoma Society and for Common Ground, a nonprofit serving individuals and families in crisis.

17. In 2012, petitioner attended a two-day course in professional boundaries and ethics, which was followed by 12 weeks of maintenance and accountability. In March 2021, she completed a two-day course in medical ethics and professionalism sponsored by the Western Institute of Legal Medicine.

Petitioner is enrolled in a self-study program offered by the American Academy of Family Physicians, which many physicians use when preparing to re-certify in family medicine. She completed 54 units by the time of the hearing.

If her certificate is reinstated, petitioner is interested in participating in the clinical assessment and education program for physicians offered by the Center for Personalized Education for Professionals.

18. Petitioner is currently living in Michigan. She does not have concrete plans for returning to medical practice in California. She would like to serve an at-risk or underserved community. She envisions possibly working in a correctional institution, or with veterans, substance abusers, or victims of domestic violence.

Petitioner expressed a willingness to comply with any conditions imposed by the Board. Petitioner does not oppose substance abuse conditions.

LEGAL CONCLUSIONS

1. Petitioner bears the burden of proving, by clear and convincing evidence, that she has recovered her ability to practice medicine safely and merits reinstatement.

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).)

2. Petitioner's conduct in relation to patient J.L. was an egregious violation of ethical boundaries and an abuse of trust. Petitioner credibly established that her abuse of prescription drugs and alcohol played a role in her actions. She accepted responsibility for her actions and testified with candor and humility. There was no evidence of any other professional misconduct.

In recent years, petitioner has engaged in significant rehabilitative efforts. She participated in therapy. She eventually came to realize that she would be better off abstaining from prescription medications and alcohol and is now fully engaged in the AA community, has a sponsor, and is working the program's 12 steps. Petitioner demonstrated insight into her past negative behaviors and has a strong commitment to sobriety. Petitioner has met her burden of establishing that she merits reinstatement and would not pose a threat to public safety, under appropriate terms and conditions.

It appears extremely unlikely that petitioner will engage in further similar misconduct provided she maintains her sobriety. Given that her sobriety is relatively

recent, and given the recommendations of her own substance abuse expert, it is determined that substance abuse conditions are warranted. In light of the length of time that petitioner has not been practicing, she will be required to attend a clinical competence assessment program and to abide by the program's recommendations. The deputy attorney general also suggested a practice monitor, a psychiatric evaluation, and additional coursework. These conditions are not necessary; the public will be adequately protected by petitioner's compliance with the recommendations of the clinical competence assessment program.

ORDER

The petition by Karen Eileen Rose, M.D., for reinstatement to licensure is granted. Physician's and Surgeon's Certificate No. C 52911 is reinstated, but immediately revoked. The revocation is stayed; however, and petitioner is placed on probation for five 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, the worksite monitor, 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, preferably by a computer program. 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, including, but not limited to, if the Board finds or has suspicion that a licensee has committed a violation of the Board's testing program or has committed a violation as identified in section 1362.52, subdivision (a), in addition to ordering any other disciplinary action that may be warranted.

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 shall conform to the current United States Department of Transportation Specimen Collection Guidelines.

(c) Its testing locations shall 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 shall observe the collection of testing specimens.

(e) Its laboratories shall be 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 shall possess all the materials, equipment, and technical expertise necessary in order to test petitioner on any day of the week.

(h) Its testing locations shall be 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 online 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 herself 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, her 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 herself.

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 she 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 she 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 she 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 her 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

18. Clinical Competence Assessment Program

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Petitioner shall successfully complete the program not later than six (6) months after petitioner's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of petitioner's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to petitioner's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require petitioner's on-site participation for a minimum of 3 and no more than 5 days as determined by the program for the assessment and clinical education evaluation. Petitioner shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the petitioner has demonstrated the ability to practice safely and independently. Based on petitioner's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or

clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with the program's recommendations.

Determination as to whether petitioner successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

Petitioner shall not practice medicine until petitioner has successfully completed the program and has been so notified by the Board or its designee in writing.

DATE:06/28/2021

Karen Reichmann
KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings