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

In the Matter of the Petition for Reinstatement of: David Lawrence Hicks, M.D. Physician's and Surgeon's Certificate No. A 78818 Petitioner.	Case No.: 800-2020-072939

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 November 24, 2021.

IT IS SO ORDERED: October 27, 2021.

MEDICAL BOARD OF CALIFORNIA

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

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

In the Matter of the Petition for Reinstatement of:

DAVID LAWRENCE HICKS, Petitioner.

Agency Case No. 800-2020-072939

OAH No. 2021040690

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on August 4, 2021, by videoconference.

Attorney Marglyn Paseka represented petitioner David Lawrence Hicks, 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 August 4, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 78818 to petitioner David Lawrence Hicks, M.D., on April 24, 2002. An accusation was filed against petitioner on May 31, 2011, and a first amended accusation was filed on October 2, 2012. Petitioner entered into a stipulated settlement agreement, adopted by the Board and made effective on December 6, 2013. Pursuant to this stipulation, petitioner's certificate was revoked; the revocation was stayed; and petitioner was placed on probation for four years, with conditions including ethics and record keeping courses, a practice monitor, a clinical training program, and a solo practice prohibition. Petitioner served less than one year on probation. Petitioner surrendered his certificate pursuant to a stipulated surrender agreement, effective October 13, 2014.

2. On November 8, 2020, petitioner submitted a petition for reinstatement.

Professional Background

3. Petitioner graduated from Harvard College in 1989 with a major in biology, and earned his medical degree from Columbia College in 2000. He completed a one-year surgical internship followed by a residency in otolaryngology at UCSD. He then completed a fellowship in facial plastic reconstructive surgery at the Lasky Clinic in Beverly Hills. In May 2007, he was board-certified by the American Board of Otolaryngology in Head and Neck Surgery.

After completing his fellowship, petitioner moved to the Bay Area and opened his own practice. He had difficulty attracting patients. For several months he worked in

a locum tenens position at the otolaryngology practice of a colleague he knew from his residency.

Petitioner became frustrated with his lack of income and accepted a position working at Lifestyle Lift, a nationwide, for-profit organization that operated approximately 35 outpatient cosmetic surgery clinics.

Misconduct Leading to License Discipline

4. Discipline against petitioner arose after complaints were filed regarding his treatment of two patients on whom he performed elective cosmetic surgery procedures at the Lifestyle Lift clinic in Walnut Creek.

Patient AA

a. Petitioner performed a facelift procedure on Patient AA in March 2009. Petitioner failed to contact the patient's primary care physician prior to surgery, failed to obtain adequate informed consent, and failed to perform and/or adequately document a pre-operative physical evaluation. Petitioner used a pre-printed operative report form that failed to document blood loss, sponge and needle counts, and start and stop times. The patient had an elevated blood pressure reading at the beginning of the procedure, but no further blood pressure readings were documented.

The patient reported bleeding, pain, and swelling post-surgery, but petitioner either did not personally see or did not document that he saw the patient post-operatively for 13 days. Petitioner generated a misleading backdated pre-operative evaluation form which he provided to the Board during its investigation.

Discipline relating to Patient AA was imposed for gross negligence, false representation, and failure to maintain accurate and adequate medical records.

Patient WG

b. Petitioner performed cosmetic surgery services on Patient WG in October 2010. Patient WG was 82 years old and had been diagnosed with Alzheimer's-related dementia in 2006. He reported that he was taking a prescription medication that is commonly used for this condition; petitioner told the Board's investigator that he was unaware that the patient suffered from dementia. Petitioner was aware that the patient had a pacemaker. He sent a medical clearance form to the patient's primary care physician but did not obtain medical records for Patient WG, who had numerous medical conditions, including a complete atrioventricular block. Petitioner failed to perform and/or adequately document a pre-operative evaluation. The operative reports contain no start and stop times for the procedures, only one heart rate and blood pressure reading, no pulse oximetry reading, and no documentation that petitioner had deactivated the patient's pacemaker with a magnet for two and one-half hours. No medical staff was present to monitor the patient's vital signs and cardiac rhythm during surgery.

The patient's wife called the clinic a few hours after discharge and reported that Patient WG was bleeding and in pain. She subsequently summoned emergency medical assistance and the patient was taken to the emergency room. He was intubated and a five-hour surgery was performed during which a blood transfusion was administered. The patient was hospitalized in an intensive care unit for two weeks.

Discipline relating to Patient WG was imposed for gross negligence, repeated negligent acts, and failure to maintain accurate and adequate medical records.

Activities While on Probation and Decision to Surrender

5. Petitioner was compliant with the terms of his Board probation prior to surrendering his certificate. He completed the mandated ethics and record keeping courses in 2014. He signed up for the PACE clinical training program at UCSD, but did not attend. Petitioner described his decision to surrender his certificate as financially motivated, and noted the high costs involved for probation monitoring, practice monitor, and to complete the PACE program. Petitioner's wife was finishing a master's degree and had no income and the couple had two young children. Petitioner had left Lifestyle Lift and had difficulty finding employment due to his status on Board probation. He worked at a medical spa performing non-surgical procedures such as Botox injections. Petitioner was also frustrated with the Board's disciplinary process.

Activities Since Probation

6. Petitioner has worked in three different positions subsequent to surrendering his certificate. For three years, he worked for a small mergers and acquisitions firm which represented sellers of healthcare-related businesses. He then worked for two years as the director for the clinical and business operations for a biotech startup. Since 2019, he has been the Chief Executive Officer for Turner Scientific, LLC, which performs otologic research for the pharmaceutical industry. Working at these healthcare-related jobs has helped him maintain his medical knowledge despite no longer practicing medicine.

7. Petitioner volunteered during the pandemic with the Alameda County Department of Public Health Medical Reserve Corps. He worked over a period of several months at COVID-19 testing sites for vulnerable populations, including homeless shelters and encampments and skilled nursing facilities, and later assisted at

vaccination sites. In a performance review for the period of April 21 through August 31, 2020, the testing team manager gave petitioner very high marks and commented that he had been an invaluable asset, had technical skills of the highest caliber, was extremely dependable, put patients at ease, and was willing to take on whatever tasks needed to be accomplished.

Preparation and Plans for Reinstatement

8. Petitioner is excited about the prospect of returning to practice. Petitioner misses interacting with patients and the professional company of other physicians. If reinstated, he would leave his current position and embark on a full-time career in medicine. He explained that his financial situation is more secure than when he was on previously on probation, and he is willing to accept the expenses he would incur.

9. Petitioner's goal is to work for a general otolaryngology practice, and he also hopes to perform reconstructive (non-cosmetic) surgical procedures. He has reached out to some potential employers who were encouraging. Alternatively, he is exploring the possibility of a fellowship. Petitioner has reflected on his misconduct and believes that he has grown from the experience. He understands the obligations of doctors and wants to apply what he has learned to practice. Petitioner noted that he had placed his trust in Lifestyle Lift, believing at the time that the corporation's standards must be adequate, but he now accepts responsibility for failing to abide by the standard of care he had been taught in residency and during his fellowship. Petitioner believes he lacked professional maturity at the time and had an "unsafe mindset" because his focus had been on enhancing his career. Petitioner now has a mindfulness practice which has taught him to focus on the present. He believes this will serve him when he takes care of patients.

10. Petitioner has engaged in educational activities to prepare to return to practice. He has completed 150 hours of otolaryngology continuing education in the past year. He took a two-hour professional boundary refresher course in November 2020 and took another medical record keeping course in July 2021.

In November 2020, petitioner completed the six-month and 12-month follow-up components of the ethics program he took in 2014. He acknowledged that he had to engage in hypothesizing since he has not been in practice, but he nonetheless found the program worthwhile.

Petitioner has submitted all required materials and payment to enroll in the PACE program, and intends to attend the program as soon as possible upon reinstatement.

Other Evidence

11. Three physicians testified in support of the petition. All were familiar with the allegations in the first amended accusation, and all also wrote letters of support.

a. Mark Homicz, M.D., has known petitioner since residency and hired petitioner to work as a locum tenens at his otolaryngology practice in Santa Rosa in 2008. Petitioner worked in the outpatient clinic and demonstrated excellent skills, maintained good patient records, and looked out for the best interests of the patients.

Petitioner disclosed the incidents to Dr. Homicz and expressed regret and embarrassment about his actions. Dr. Homicz believes that the conduct was out of character and that petitioner has reflected on his misconduct. Dr. Homicz described petitioner as a good listener who tries to understand people's feelings, and who is humble and always striving to do better.

Should petitioner be reinstated, Dr. Homicz would not have reservations hiring him, after petitioner completed a retraining program.

b. Stanley Chia, M.D., is the Chairman of the Otolaryngology Department at MedStar Washington Hospital Center and a Professor at the Georgetown University Medical Center in Washington, D.C. He also met petitioner during residency at UCSD and considers him a close friend. Dr. Chia has seen petitioner at numerous otolaryngology conferences, including after petitioner surrendered his certificate.

Dr. Chia does not believe that petitioner acted with ill intent when caring for the two patients at issue in the discipline action, but instead believes that petitioner was inexperienced and followed along with Lifestyle Lift's inadequate model of care. Dr. Chia believes that petitioner has matured, truly appreciates the practice of medicine, and is committed to helping patients and pursuing work as a reconstructive surgeon. He believes that petitioner has a lot to offer and will be safe and competent.

As a physician who makes hiring decisions, Dr. Chia would have no qualms about hiring petitioner, provided that petitioner completed a clinical assessment and was found fit to practice.

c. Thomas McNemar, M.D., is a board-certified plastic surgeon in private practice. Dr. McNemar met petitioner in 2009, while both were working at Lifestyle Lift. He was favorably impressed with petitioner's operative techniques and patient care, and described him as skilled, caring, and empathetic. Dr. McNemar believes that petitioner's misconduct was out of character and reported that the standard of care at Lifestyle Lift was low. While working there, Dr. McNemar and some other physicians brought in their own monitoring equipment to ensure that they provided appropriate care, and also tried to pressure the company to improve the standard of care.

Dr. McNemar believes that petitioner has taken responsibility for his actions, and has matured and shown insight, and he supports his reinstatement.

12. Petitioner submitted additional letters:

a. Anne Mohler, M.D., is a pediatrician who met petitioner when both were volunteering performing COVID-19 testing for Alameda County. Petitioner submitted a letter of support by Dr. Mohler, dated October 7, 2020, as part of his petition packet. In this letter, she praised his interpersonal skills, his mindfulness, and his apparent empathy and respect working with vulnerable individuals. She added that she had spoken at length with him about "what has led him to this point in his career" and that he had expressed his goals of helping others. She wrote that she looks forward to working with him as a colleague.

Dr. Mohler was contacted by a special investigator for the Board in December 2020, to follow up on her letter. The investigator forwarded the first amended accusation to Dr. Mohler. Dr. Mohler wrote an email to the investigator stating:

> I have my reservations about [petitioner]. The most concerning is why he asked me, a colleague who barely knows him, to write him a letter of recommendation. According to the document you sent me, he was incredibly cavalier in his care previously. I wonder if he has burned a lot of professional bridges. I wonder if he may be using me.
>
> Be that as it may, it's been many years since this happened. He may have grown as a person and with maturity be a better doctor. He may be being honest with me. I would only recommend he gets reinstated if it's with a lot of

> scrutiny. He did mention he has already lined up a mentor for redeveloping his skills. I would like to see the medical board watching him closely as he begins to practice.

At hearing, petitioner testified that he had discussed the disciplinary action with Dr. Mohler at length, including during a 90-minute telephone call. He confirmed that he did not provide her with the first amended accusation. He asked for her to write a letter because she had recently observed him in a clinical setting and could comment on his current skills and patient interactions. He noted that he submitted three letters of support when he filed his petition, even though only two letters are required.

b. Evan Seevak, M.D., wrote a letter of support dated May 7, 2021. Dr. Seevak is a friend who met petitioner in college. Dr. Seevak is a physician in a leadership position at a large safety net health system. He has not worked with petitioner in a professional capacity, but he has spoken at length with petitioner about the disciplinary matter and has reviewed the first amended accusation. Dr. Seevak believes that the events that resulted in petitioner's discipline were out of character. Dr. Seevak described petitioner as talented, hardworking, and a wonderful husband and father. He believes petitioner has reflected on his misconduct and taken responsibility for his actions.

c. Jake Roth, M.D., is the Chief of Psychiatry at Kaiser Permanente in San Jose. He met petitioner in college and is a close friend of petitioner and his wife. Dr. Roth is familiar with the disciplinary action against petitioner and wrote that petitioner felt embarrassment and shame. Dr. Roth described petitioner as intelligent, dedicated, resilient, hardworking, and deeply committed to his goal of returning to the practice of medicine.

d. In a letter in support of reinstatement, Beth DaSilva wrote that she is president of the mergers and acquisition firm where petitioner worked when he first surrendered his certificate. Petitioner was transparent with her about his history and provided her the first amended accusation. DaSilva wrote that petitioner was honest, trustworthy, caring, kind, and had a great rapport with clients.

e. Petitioner's wife of 23 years, Elizabeth DaCosta, P.A., wrote a letter in support of her husband's reinstatement. She wrote that petitioner was aware that the standards at Lifestyle Lift were low and that he worked hard to raise them, but should have realized he was reducing his own standard of care. She confirmed that petitioner's motivation in surrendering his license was financial. She also confirmed that petitioner has been refreshing his medical knowledge and related that the couple engage in frequent conversations about cases in her practice or that he has read about during his studies. DaCosta described petitioner as compassionate and empathetic, and she believes he has matured and learned valuable lessons from his experiences.

LEGAL CONCLUSIONS

1. Petitioner bears the burden of proving, by clear and convincing evidence, that he is able 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 engaged in serious misconduct involving two patients and violated the Board's trust by producing a backdated document during its investigation. After agreeing to a period of probation, petitioner chose to surrender his certificate and pursue other endeavors to better support his family. He has maintained employment in healthcare-related positions. Petitioner demonstrated remorse and insight into his actions. He has matured and is highly motivated to return to practice and to practice safely. Petitioner has met his burden of establishing that he merits reinstatement and would not pose a threat to public safety, under appropriate terms and conditions. The four-year term of probation and conditions previously imposed remain appropriate. In light of the length of time that petitioner has not been practicing, he will be required to complete the clinical competence assessment program and to abide by the program's recommendations prior to beginning to practice.

ORDER

The petition by David Lawrence Hicks, M.D., for reinstatement to licensure is granted. Physician's and Surgeon's Certificate No. A 78818 is reinstated, but immediately revoked. The revocation is stayed, however, and petitioner is placed on probation for four years, on the following conditions.

1. 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

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 three and no more than five 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.

2. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, petitioner shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test petitioner's knowledge of the course. Petitioner shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

3. Prescribing Practices Course

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Petitioner shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Petitioner shall participate in and successfully complete the classroom component of the course not later than six months after petitioner's initial enrollment. Petitioner shall successfully complete any other component of the course within one year of enrollment. The prescribing practices course shall be at petitioner's expense and shall

be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

4. Medical Record Keeping Course

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Petitioner shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Petitioner shall participate in and successfully complete the classroom component of the course not later than six months after petitioner's initial enrollment. Petitioner shall successfully complete any other component of the course within one year of enrollment. The medical record keeping course shall be at petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the

sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

5. Practice Monitoring

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 practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with petitioner, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in petitioner's field of practice, and must agree to serve as petitioner's monitor. Petitioner shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring

plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, petitioner's practice shall be monitored by the approved monitor. Petitioner shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If petitioner fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, 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 monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of petitioner's performance, indicating whether petitioner's practices are within the standards of practice of medicine, and whether petitioner is practicing medicine safely. It shall be the sole responsibility of petitioner to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the 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 be assuming that responsibility within 15 calendar days. If petitioner fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, 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.

In lieu of a monitor, petitioner may participate in a professional enhancement program approved in advance by the Board or its designee, that includes, at a minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Petitioner shall participate in the professional enhancement program at petitioner's expense during the term of probation.

6. Solo Practice Prohibition

Petitioner is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) petitioner merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) petitioner is the sole physician practitioner at that location.

If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, 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. The petitioner shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the petitioner's practice setting changes and the petitioner is no longer practicing in a setting in compliance with this Decision, the petitioner shall notify the Board or its designee within five calendar days of the

practice setting change. If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, 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 not resume practice until an appropriate practice setting is established.

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, 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; and Quarterly Declarations.

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. If petitioner violates probation in any respect, the Board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation, or petition to revoke probation, or an interim suspension order is filed against petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

16. License Surrender

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

17. Probation Monitoring Costs

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

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

DATE: 08/31/2021

Karen Reichmann

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings