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

In the Matter of the Application of: **Joshua Michael Lynn** **Respondent.**	**File No. 800-2021-082441**

DECISION AND ORDER

The attached Stipulation for a Probationary License is hereby accepted and 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 **December 7, 2021**, although the probation will not commence until the applicant completes any remaining requirements for licensure and the license is issued.

ORDERED: November 30, 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 Application of:	)	Case No. 800-2021-082441
	)	
JOSHUA MICHAEL LYNN	)	
	)	STIPULATION FOR A PROBATIONARY LICENSE
	)	
For a Physician's and Surgeon's License	)	
	)	

1) Joshua Michael Lynn, applicant for a physician's and surgeon's license (hereinafter "applicant"), and Marina O'Connor, Chief of Licensing of the Medical Board of California (Board), hereby stipulate as follows:

2) Applicant is eligible for medical licensure in California upon meeting all licensure requirements.

3) On March 25, 2021, applicant submitted an application for a Physician's and Surgeon's License. Applicant reported to the Board that the applicant has participated in a substance abuse recovery program.

4) Section 822 of the Business and Professions Code states that the Board may take action if the applicant's ability to practice medicine safely is impaired due to a mental illness. Section 2234 of the Business and Professions Code states that the Board may take action for unprofessional conduct. Section 2239(a) of the Business and Professions Code states the Board may take action for the use of any dangerous drugs or alcoholic beverages to the extent, or in such a manner as to be dangerous or injurious to the licensee, or any other person or to the public.

The above supports a conclusion that grounds exist for denial pursuant to sections 822, 2234, and 2239(a) of the Business and Professions Code.

5) Pursuant to Section 2221 of the Business and Professions Code, the Board may deny a license to an applicant because of unprofessional conduct. Alternatively, the Board has the discretionary authority to issue a probationary license with terms and conditions.

6) Applicant acknowledges that the applicant has a right to request a Statement of Issues and a hearing upon denial of license for cause. Applicant waives notice of hearing and judicial review in favor of this Stipulation for a Probationary License, which is subject to approval by the Board. If not approved, this Stipulation is null and void and may not be used for any purpose.

7) Applicant understands and agrees that counsel for the staff of the Board may communicate directly with the Board regarding this proposed Stipulation, without notice to or participation by applicant or by the applicant's counsel. By signing the Stipulation, applicant understands and agrees that the applicant may not withdraw this agreement or

seek to rescind the Stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this Stipulation, the offer of a Stipulation for a Probationary License shall be of no force or effect; except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

ORDER

IT IS ORDERED THAT JOSHUA MICHAEL LYNN, applicant, be issued a Physician's and Surgeon's License on a probationary basis for a period of two (2) years, subject to the following terms and conditions. Probation shall begin on the date the applicant is issued a probationary license.

1) Notice of Employer or Supervisor Information
Within seven (7) days of the effective date of this Decision, applicant shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Applicant shall also provide specific, written consent for the Board and applicant's employers and supervisors to communicate regarding applicant'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 the applicant has medical staff privileges.

2) Biological Fluid Testing
Applicant shall immediately submit to biological fluid testing, at applicant'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. Applicant shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Applicant shall be tested on the date of the notification as directed by the Board or its designee. The Board may order an applicant to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the applicant.

For the duration of the probationary term, up to two (2) years, applicant shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous year of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, applicant shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

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

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

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

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

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

(f) Its testing locations shall submit a specimen to a laboratory within one (1) 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 (7) business days of receipt of the specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.

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

(h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(i) It maintains testing sites located throughout California.

(j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the applicant 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 the applicant 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 (1) business day and negative test results within seven (7) business days of the results becoming available. Applicant 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 applicant.

If a biological fluid test result indicates applicant has used, consumed, ingested, or administered to the applicant a prohibited substance, the Board shall order applicant to cease practice and instruct applicant to leave any place of work where applicant is practicing medicine or providing medical services. The Board shall immediately notify all of applicant's employers, supervisors and work monitors, if any, that applicant 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 (1) 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, the applicant's 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 an applicant'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 applicant and approved by the Board, alcohol, or any other substance the applicant has been instructed by the Board not to use, consume, ingest, or administer to the applicant.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, applicant has committed a major violation, as defined in section 1361.52(a), and the Board shall impose any or all of the consequences set forth in section 1361.52(b),

in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance applicant's rehabilitation.

In consideration of applicant's fulfillment of criteria set forth by California Code of Regulations, Title 16, section 1361.5(c)(3)(I)(1) (Previous Testing Orders/Sobriety), applicant is permitted to bypass the first-year testing frequency requirements set forth above. Accordingly, the second-year testing frequency requirements will apply upon applicant's commencement of probation.

3) Substance Abuse Support Group Meetings
Within thirty (30) days of the effective date of this Decision, applicant shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which the applicant shall attend for the duration of probation. Applicant shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Applicant shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years' experience in the 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 applicant within the last five (5) years. Applicant's previous participation in a substance abuse group support meeting 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 applicant's name, the group name, the date and location of the meeting, applicant's attendance, and applicant's level of participation and progress. The facilitator shall report any unexcused absence by applicant from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

4) Violation of Probation Condition for Substance-Abusing Licensees
Failure to fully comply with any term or condition of probation is a violation of probation.

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

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

issuance of a cease-practice order, a month is defined as thirty (30) calendar days. Applicant may not resume the practice of medicine until notified in writing by the Board or its designee that the applicant may do so.

2. Increase the frequency of biological fluid testing.

3. Refer applicant for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee (California Code of Regulations, Title 16, section 1361.52, subdivision (b)).

B. If applicant 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 applicant;

4. Order increased documentation;

5. Issue a citation and fine, or a warning letter;

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

7. Take any other action as determined by the Board or its designee (California Code of Regulations, Title 16, section 1361.52, subdivision (d)).

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke applicant's probation if the applicant has violated any term or condition of probation (See California Code of Regulations, Title 16, section 1361.52, subdivision (e)). If applicant violates probation in any respect, the Board, after giving applicant 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 applicant 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.

5) Controlled Substances – Abstain From Use

Applicant 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 applicant by another practitioner for a bona fide illness or condition. Within fifteen (15) calendar days of receiving any lawfully prescribed medications, applicant 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 applicant 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, applicant shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The applicant 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 thirty (30) days of the notification to cease practice. If the applicant requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the applicant with a hearing within thirty (30) days of the request, unless the applicant 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 fifteen (15) days of submission of the matter. Within fifteen (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 fifteen (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 thirty (30) days of the issuance of the notification to cease practice or does not provide applicant with a hearing within thirty (30) days of such a request, the notification of cease practice shall be dissolved.

6) Alcohol-Abstain From Use

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

If applicant has a confirmed positive biological fluid test for alcohol, applicant shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The applicant 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 thirty (30) days of the notification to cease practice. If the applicant requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the applicant with a hearing within thirty (30) days of the request, unless the applicant 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 fifteen (15) days of submission of the matter. Within fifteen (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 fifteen (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 thirty (30) days of the issuance of the notification to cease practice or does not provide applicant with a hearing within thirty (30) days of such a request, the notification of cease practice shall be dissolved.

7) Psychotherapy

Within sixty (60) calendar days of the effective date of this Decision, applicant shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, applicant shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Applicant shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Applicant shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require applicant to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, applicant is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over applicant's license and the period of probation shall be extended until the Board determines that applicant is mentally fit to resume the practice of medicine without restrictions.

Applicant shall pay the cost of all psychotherapy and psychiatric evaluations.

8) Solo Practice Prohibition

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

If applicant fails to establish a practice with another physician or secure employment in an appropriate practice setting within sixty (60) calendar days of the effective date of this Decision, applicant shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The applicant shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the applicant's practice setting changes and the applicant is no longer practicing in a setting in compliance with this Decision, the applicant shall notify the Board or its designee within five (5) calendar days of the practice setting change.

If applicant fails to establish a practice with another physician or secure employment in an appropriate practice setting within sixty (60) calendar days of the practice setting change, applicant shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The applicant shall not resume practice until an appropriate practice setting is established.

9) Notification
Within seven (7) days of the effective date of this Decision, the applicant shall provide a true copy of this Decision to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to applicant, at any other facility where applicant 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 applicant. Applicant shall submit proof of compliance to the Board or its designee within fifteen (15) calendar days. This condition shall apply to any change(s) in hospitals, other facilities, or insurance carrier.

10) Supervision of Physician Assistants and Advanced Practice Nurses
During probation, applicant is prohibited from supervising physician assistants and advanced practice nurses.

11) Obey All Laws
Applicant 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.

12) Quarterly Declarations
Applicant 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. Applicant shall submit quarterly declarations not later than ten (10) calendar days after the end of the preceding quarter.

13) General Probation Requirements

a) Compliance with Probation Unit
Applicant shall comply with the Board's probation.

b) Address Changes
Applicant shall, at all times, keep the Board informed of applicant'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(b).

c) Place of Practice
Applicant shall not engage in the practice of medicine in applicant's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

d) License Renewal
Applicant shall maintain a current and renewed California physician's and surgeon's license.

e) Travel or Residence Outside California
Applicant 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 (30) calendar days.

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

14) Interview with the Board or its Designee
Applicant shall be available in person upon request for interviews either at applicant's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

15) Non-practice While on Probation
Applicant shall notify the Board or its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting more than thirty (30) calendar days and within fifteen (15) calendar days of applicant's return to practice. Non-practice is defined as any period of time applicant 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 applicant resides in California and is considered to be in non-practice, applicant 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 applicant 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 applicant's period of non-practice while on probation exceeds eighteen (18) calendar months, applicant 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.

Applicant's period of non-practice while on probation shall not exceed two (2) years.

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

Periods of non-practice for an applicant residing outside of California, will relieve applicant 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.

16) Completion of Probation
Applicant 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, applicant's license shall be unrestricted.

17) Violation of Probation
Failure to fully comply with any term or condition of probation is a violation of probation. If applicant violates probation in any respect, the Board, after giving applicant notice and the opportunity to be heard, may petition to revoke probation and take appropriate action. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against applicant 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.

18) License Surrender
Following the effective date of this Decision, if applicant ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, applicant may request to surrender the applicant's license. The Board reserves the right to evaluate applicant 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, applicant shall within fifteen (15) calendar days deliver applicant's wallet and wall certificate to the Board or its designee and applicant shall no longer practice medicine. Applicant will no longer be subject to the terms and conditions of probation. If applicant re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

19) Probation Monitoring Costs
Applicant 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.

Applicant agrees to comply with the terms and conditions of the above Order.

	10-22-2021
Joshua Michael Lynn, Applicant	Date
	10/22/2021
Marina O'Connor, Licensing Chief	Date