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

In the Matter of the Accusation Against:

JOHN STANLEY LEE, M.D., Respondent

Agency Case No. 800-2018-048415

OAH No. 2021010142

DECISION AFTER NON-ADOPTION

Julie Cabos Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 8, 2021. William Prasifka (Complainant), Executive Director of the Medical Board of California (Board) was represented by Latrice Hemphill, Deputy Attorney General (DAG). John Stanley Lee, M.D. (Respondent) was represented by Henry Fenton and Randy Hsieh, Attorneys at Law, with Fenton Law Group LLP.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on June 8, 2021. A proposed decision was issued on June 21, 2021.

On August 25, 2021, Panel A of the Board issued an Order of Non-Adoption of Proposed Decision. Oral argument on the matter was heard by Panel A on November 17, 2021, with ALJ Marcie Larson presiding. DAG Hemphill appeared on behalf of the Complainant. Respondent was present and was represented by Henry Fenton, Attorney at Law. Panel A, having read and considered the entire record, including the transcript

and the exhibits, and having considered the written and oral argument, hereby enters this Decision After Non-Adoption.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 24, 1979, the Board issued Physician's and Surgeon's Certificate Number A 33764 to Respondent. The license is scheduled to expire on April 30, 2023.

2. On October 21, 2020, Complainant filed the Accusation while acting in his official capacity as the Executive Director of the Board. Respondent filed a Notice of Defense, and this hearing ensued.

Board Order and Board Evaluations

3. Respondent is an ophthalmologist who practices in Beverly Hills, California.

4. Upon Order of the Board, dated July 23, 2019, Respondent was required to undergo physical and mental examinations and biological fluid testing to determine if he could safely practice medicine.

5A. On August 16, 2019, clinical psychiatrist, Nathan Lavid, M.D., conducted a comprehensive psychiatric evaluation of Respondent. The evaluation lasted almost the entire day, and it included an interview, psychological testing, and a urine drug and alcohol screening. On August 23, 2019, Dr. Lavid issued a report of his findings.

5B. During the evaluation, Respondent provided Dr. Lavid with a fragmented history of his intertwined psychiatric and substance abuse treatment.

(1) Respondent reported that several years prior to the evaluation, he was admitted to the Professionals Treatment Program at Promises Treatment Facility

in Santa Monica. Dr. Lavid noted Respondent "states that he does not feel comfortable discussing why he had to go to substance abuse treatment with me. He does understand that this evaluation is nonconfidential and ordered by the [Board]." (Exhibit 5, p. AG-038.)

(2) Respondent reported "he next received inpatient treatment at Cedar Sinai Hospital when he was admitted to the psychiatric ward in September 2018. He states that after he was discharged from Cedar Sinai Hospital, he went to Klean Residential Treatment Center [from September to November 2018], which is a substance abuse treatment facility that cares for dual diagnosed patients. He reports he was clean for two months." (Exhibit 5, p. AG-039.)

(3) Respondent disclosed "an exacerbation of his mental illness resulting in a suicide attempt with an overdose of medication. Again, he does not feel comfortable discussing addiction. He was admitted to Las Encinas Psychiatric Ward approximately six weeks ago [about June 2019]. He states he had 8 days of psychiatric hospitalization and was discharged home. He states then in July [2019], he cannot recall exactly when, he had another overdose. He does not feel comfortable discussing addiction. [He] then was admitted to Cedar Sinai Psychiatric Ward. He reports he was hospitalized there for 8 days. He was then was (sic) discharged home." (Exhibit 5, p. AG-039.)

(4) Respondent further disclosed that "about a week ago [in early August 2019], he was hospitalized at Huntington Memorial Hospital after a suicide attempt and discharged a couple of days ago." (Exhibit 5, p. AG-039.)

(5) After discharge from Huntington Memorial Hospital, Respondent resumed outpatient psychiatric treatment with psychiatrist Franklin Dines, M.D., whom he first visited in mid-July 2019 on referral by his internist, Laurence Seigler, M.D. As of the date of the evaluation, Dr. Dines had prescribed Zyprexa for Respondent.

5C. Respondent's urine drug screen on August 16, 2019, was positive for benzodiazepines, specifically nordiazepam, oxazepam, and temazepam. Dr. Lavid

notes these "are the three metabolites of Valium (diazepam), which is understandable considering his recent overdose and psychiatric hospitalization." (Exhibit 5, p. AG-045.)

5D. Respondent told Dr. Lavid he had arranged to begin a 30-day inpatient treatment program at the University Behavioral Center in Orlando, Florida. Respondent informed Dr. Lavid this was a dual diagnosis facility.

5E. Contemplating solely Respondent's psychiatric history and treatment, Dr. Lavid noted:

> [Respondent] has four suicide attempts all by overdose of prescription medication. The first one was in September 2018 where he was subsequently hospitalized at Cedar Sinai; the second time in June 2019 where he was hospitalized at Las Encinas, the third in July 2019 when he was hospitalized at Cedar Sinai[,] and the last when he was hospitalized earlier this month [August 2019] at Huntington Memorial Hospital in Pasadena. These are his four psychiatric hospitalizations. He has multiple medication trials. He states that he has developed a number of adverse reactions to the medication, such as stiffness that decreases compliance with the medication. [¶] . . . [¶] Regarding prior trials of psychotropic medication, in reviewing the records does reveal that he has been prescribed many different medications including olanzapine, lithium, Valium, gabapentin, Seroquel, Ambien, Topamax, trazodone and klonopin. Dr. Lee also states that he has had trials of Abilify, Lamictal and Latuda.
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> Regarding his current regimen of Zyprexa, he thinks it is helpful from a mood-stabilizing standpoint, but thinks he is getting a tremor in his right hand. [Respondent] was at my

> office for over 7 hours and didn't demonstrate any tremors in his right hand. Nonetheless, he thinks he is developing one.

(Exhibit 5, pp. AG-040 – AG-041.)

5F. Dr. Lavid diagnosed Respondent with "Bipolar I Disorder, Unspecified" and "Unknown Substance Use Disorder, Severe." (Exhibit 5, p. AG-045.)

5G. Dr. Lavid's report contained a lengthy assessment of his findings, set forth, in pertinent part, as follows:

> Regarding addiction, he does not feel comfortable disclosing details regarding substance abuse. [Respondent] does acknowledge that he received treatment at dual diagnosed facilities. Moreover, he is entering treatment at a dual diagnosed facility. Regarding addiction, the urine drug testing that I conducted was indicative of Valium (diazepam). . . . He was prescribed Valium in June and states he took an overdose of Valium before his hospitalization at Huntington Memorial Hospital. As such, considering the long half-life of Valium that he still has Valium in his urine is understandable, and not indicative of acute intoxication or addiction.
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> Regarding treatment for substance abuse and monitoring, I did discuss with [Respondent] if he would be receptive to urine drug screening after his treatment in Florida, and he is receptive to this type of monitoring. . . . He reports that once he receives treatment in Orlando, he plans on resuming care with psychiatrist[,] Dr. Dines. He states he will be compliant with psychiatric treatment and follow

medical advice regarding his treatment of Bipolar Disorder and any other type of Substance Use Disorder.

Regarding his ability to safely practice medicine, [Respondent] does suffer from Bipolar I Disorder. Bipolar I Disorder in itself does not make him unable to practice medicine, as the condition is treatable and responds to treatment. Currently, he is receiving treatment and was without symptoms of Bipolar Disorder during my evaluation. Moreover, he is going to enter a higher inpatient treatment tomorrow. With continued treatment and psychiatric monitoring, I do not believe he will be impaired by his Bipolar Disorder from safely practicing medicine. He does not appear to have any type of physical limitation that impairs his ability to practice medicine.

Dr. Lee does have a history of dual diagnosis treatment and any type of addiction is unknown with my evaluation, my ability to review records, and his hesitancy about disclosing any abuse of substances in a nonconfidential evaluation[.] I would default that there is an addiction and that he requires monitoring to prevent any type of relapse. He is receptive to this type of monitoring, which is typically your random urine drug screens. These can be conducted through the Medical Board or through any outpatient treatment facility.

In addition, [we] discussed his participation in a health professional support group. These can be an effective remedy for physicians who suffer from addiction. He states he did participate in such a group four years ago at Promises Treatment Center and would be receptive to such treatment.

(Exhibit 5, pp. AG-045 – AG-046.)

5H. Dr. Lavid concluded:

> I believe after [Respondent] receives his inpatient treatment with the appropriate outpatient treatment consisting of psychiatric care, psychotropic medication per his treating psychiatrist, enrollment in a health professional support group and urine drug and alcohol screening, he can continue to practice medicine safely and not pose a danger or threat to the public.

(Exhibit 5, p. AG-047.)

6. The Accusation contains allegations, at paragraphs 13 through 15, pertaining to Respondent's physical examination by addiction medicine specialist, James L. Gagne, M.D. (Exhibit 1, pp. AG-005 – AG-006.) Those allegations were not established by clear and convincing evidence because Dr. Gagne did not testify at the administrative hearing. However, Dr. Gagne's September 24, 2019 report and November 5, 2019 Addendum were admitted as administrative hearsay to supplement the testimony and expert opinions that referenced Dr. Gagne's reports.[1]

Current Treatment and Evaluation

7A. Respondent began voluntarily participating in the Flying Knee Physician's Monitoring Support Group (support group) on December 26, 2016. He

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[1] The term "administrative hearsay" refers to the provisions of Government Code section 11513, subdivision (d), which allows otherwise inadmissible hearsay evidence to be used to supplement or explain other evidence but not, by itself, to support a factual finding.

temporarily stopped attending the support group after February 5, 2018, but he rejoined on October 14, 2019. The support group includes weekly meetings of physicians in recovery, facilitated by licensed clinical psychologist Helene O'Mahoney, Ph.D. The support group also includes substance abuse monitoring by Professional Monitoring Services which conducts random urine drug testing on Respondent. The testing was conducted initially five times per month and is currently performed at least three times per month. Dr. Alex Schwipper serves as the monitoring services facilitator and Respondent's monitor.

7B. In addition to the support group, Respondent also attends Alcoholics Anonymous (AA) meetings several times per week, including a Caduceus (i.e., physicians') AA meeting.

7C. Since July 15, 2019, Respondent has been under the care of psychiatrist, Franklin Dines, M.D., Ph.D., from whom he receives psychotherapy and medication management. Respondent was referred to Dr. Dines by his internist, Laurence Seigler, M.D.

8. Dr. O'Mahoney submitted an April 30, 2021 letter confirming Respondent's voluntary participation in the support group and his dedication to sobriety and rehabilitation. Specifically, Dr. O'Mahoney wrote:

> [Respondent] has been attending consistently. [Respondent] has been an active participant in this group. He shares each week and seems to appreciate the support and feedback he received from his peers. He has connected with his peers and seems to be benefiting from engaging with them in this private setting. He receives substance use monitoring through Professional Monitoring Services LLC and must submit a [urinalysis sample] when selected to test. The testing is random. He takes on average 3 random UA's a month. He also remains in

> regular contact with this facilitator and his monitor Dr. Alex Schwipper.
>
> [Respondent] seems highly motivated to stay sober. He attends AA and12 step meetings as well as caduceus meetings several times a week. He also works with a psychiatrist for medication management and therapy to gain insight into his behavior. Since he has attended this group[,] he has tested negative for all substances and remains committed to this process. At this time he shows no mental impairment and is fully able to continue with his practice.

(Exhibit I.)

9A. Respondent's treating psychiatrist, Dr. Dines, testified credibly at the administrative hearing, and he submitted a letter on Respondent's behalf.

9B. Dr. Dines confirmed Respondent has been seeing him regularly for approximately two years (except for the month Respondent was in Florida for inpatient care). Sessions were initially every week and eventually decreased to every two weeks.

9C. Dr. Dines noted Respondent's bipolar disorder is well-controlled by several factors, including psychotherapy and medications prescribed by Dr. Dines. Respondent's prescriptions include the combination of a mood stabilizer and antipsychotic medication, as wells as a beta-blocker to control his tremor. Respondent is complying with his medication regimen.

9D. Regarding Respondent's diagnosis of substance abuse disorder, Dr. Dines testified that, during their first encounter, Respondent was "still struggling through the tail end of a manic phase and struggling with abusing substances." Dr. Dines noted this "was part of his mania," which prompted Dr. Dines to recommend inpatient treatment. Following Respondent's inpatient treatment in Florida, Dr. Dines observed no indication of Respondent's substance abuse, which he noted was related

to Respondent's bipolar disorder. Dr. Dine's observations were confirmed by the consistent negative toxicology reports from Respondent's random testing.

9E. Dr. Dines opined that Respondent's diagnoses "do not present a risk to patients at all as long as [Respondent] continues treatment in the manner he is now employing." He noted the incentives are high for Respondent to maintain his treatment regimen, observing that Respondent is a "dedicated physician with a very good reputation, and he is motivated to maintain that." However, Dr. Dines conceded that it is not uncommon for individuals with bipolar disorder to stop taking their medications, and given the nature of bipolar disorder, there is always a possibility of relapse. If that occurred and Respondent suffered another manic episode, Respondent could again abuse drugs as he had in the past.

9F. Dr. Dines agreed that Respondent needed ongoing treatment to safely practice medicine and that some type of oversight is necessary. He opined that this oversight "may come in the form of another evaluation" to make sure Respondent remained compliant with all treatment requirements.

9G. Dr. Dines also submitted a May 10, 2021 letter on Respondent's behalf which mirrored much of his testimony. His letter also stated:

> I have been impressed by [Respondent's] consistency and compliance with our treatment regimen. It should be noted that [Respondent] recently took on more responsibility in his practice by taking over much of his retiring partner's practice. It was seriously discussed whether [Respondent] should or could do this given his medical vulnerability and we agreed he was prepared as long as he maintained his treatment regimens. He has done this well and seems to be feeling more confident and stable in his professional and personal lives.

> I do recognize that [Respondent] remains vulnerable and at risk for decompensation and even suicide. However, I do not believe he would ever be at risk for harming his patients. He requires ongoing treatment, drug monitoring and support from his professional community and family.
>
> I am prepared to continue to treat [Respondent] and be a part of his treatment team.

(Exhibit G.)

10. Respondent's urine drug screening test results from January 1, 2020, through May 20, 2021, were all negative.

11A. On April 28, 2021, Respondent underwent a psychiatric evaluation performed by Brian Jacks, M.D. As part of the evaluation, Dr. Jacks took an extensive history noting Respondent's hospitalizations and suicide attempts, reviewed records, and conducted psychological testing. On May 1, 2021, Dr. Jacks issued a report of his findings.

11B. Dr. Jacks noted Respondent's current treatment includes prescribed medications (lithium, Wellbutrin XL, and atenolol for his tremor) and therapy sessions with his psychiatrist, Dr. Dines. Dr. Jacks also noted:

> In the past [Respondent] has had difficulties with substance abuse but he has been free of any substance abuse for several years, at least two. He is in a physicians' support group for the last two years with Dr. O'Mahoney and he gets substance monitoring, which was five times initially a month but now three times a month; it has always been negative for the last two years in that group. He attends [AA] groups every Saturday, Monday evening a physicians' support AA group, and every Wednesday an AA group.

(Exhibit C, p. 13.)

11C. Dr. Jacks diagnosed Respondent with bipolar disorder 1, in full remission. He opined that "the history, mental status examination, and psychological test findings are consistent with no evidence of any mental disorder at the present time but a past history of bipolar 1 disorder." (Exhibit C, p. 26.)

11D. Dr. Jacks did not find Respondent suffered from substance abuse disorder. Specifically, Dr. Jacks found:

> [I] do not find the presence of any substance abuse disorder or addictive tendency. . . . Dr. Gagne on 09/24/2019 who was an addiction medicine specialist, found no diagnosis of an addictive disorder. On the other hand, Dr. Gagne does indicate on 11/05/2019 that [Respondent] may be minimizing his drug use history or at least to some extent and did indicate then cocaine and stimulant use, mild-to-moderate, true severity unknown, but no evidence of impairment.
>
> I am not convinced [of] any substance use disorder or addictive disorder, because he has never used illegal or addictive substances on any regular basis. He has never had any arrests for driving under the influence either with alcohol or drugs, his office partner Dr. Silverman noted that in the eighteen years he has shared offices with him he has never seen him under the influence, his secretary in his office for five years also has never seen him to appear intoxicated. He has never appeared intoxicated to any of the evaluators that have evaluated him in regards to the Medical Board complaint and there is no history that this has ever interfered with his ability to practice medicine safely or to perform surgery.

> He has used substances in the past but this was only very intermittent and would be encompassed under the diagnosis of bipolar disorder 1, which includes impulsive acting out at times. Use of substances like this are a frequent accompaniment of bipolar disorder. Therefore, there is not really a substance use disorder or addictive disorder present but this is part and parcel of his bipolar disorder.

(Exhibit C, pp. 26-27.)

11E. Dr. Jacks found no evidence that Respondent's illness impacted his ability to safely practice medicine or perform surgery. He pointed out that addiction specialist, Dr. Gagne, "found no current indication that [Respondent's] illness is affecting [his] ability to practice medicine safely." (Exhibit C, p. 27.) However, Dr. Gagne also highlighted Respondent's prior, sporadic methamphetamine use and concluded Respondent should be restricted from performing surgery. Dr. Jacks disagreed with Dr. Gagne's suggested restriction. Specifically, Dr. Jacks opined:

> Unfortunately, and respectfully, I must disagree with Dr. Gagne about [Respondent's] ability to perform surgery since there was no history at all, or observation by any mental health professional or indication that over many years of practice, there has been any interference with his ability to perform surgery or to practice medicine safely due to any problems with addiction. As I mentioned above, the addiction disorder is not present or really a problem. It is really part of the bipolar disorder, which involves in the past using substances intermittently without any impairment or inability to practice medicine or surgery safely.

(Exhibit C, pp. 27-28.)

11F. Regarding Respondent's suicide attempts, Dr. Jacks noted that the first suicide attempt in 2018 occurred after Respondent discontinued his prescribed medication (Latuda), and his emotional condition deteriorated. Respondent reported the other suicide attempts stemmed from "his feelings of hopelessness and helplessness and despair because of the Medical Board complaints." (Exhibit C, p. 28.) However, Respondent reported feeling more hopeful since meeting with Dr. Lavid, and Dr. Jacks opined, "there is no current imminent risk for suicide. Therefore, there is a very low risk for further suicide attempts in the future, especially if he follows up with his medications and psychological treatments." (Exhibit C, pp. 28-29.)

11G. Dr. Jacks concluded:

> [I] do not find any substance abuse disorder or addictive potential in this gentleman but rather find that his use of substances in the past have been intermittent and part of his bipolar disorder. The bipolar disorder has been able to be safely contained and in remission with medications unless he stops them. When he stopped Latuda, unfortunately this resulted in a suicide attempt in 2018. Otherwise, there have been no suicide attempts just related to the bipolar disorder but he has had several suicide attempts following the Medical Board complaint in relationship to his extreme upset with the Medical Board complaint and his despair and hopeless feelings about that.
>
> Therefore, I would conclude that bipolar disorder is now in remission, there is no significant addictive potential here to be concerned about unless the bipolar disorder is not properly treated.

(Exhibit C, p. 29.)

11H. Dr. Jacks emphasized the need for Respondent's continued treatment of his bipolar disorder to maintain his ability to safely practice medicine and perform surgery. Dr. Jacks specified:

> [Respondent] needs continued treatment for his bipolar disorder with the treatments with Dr. Dines and the medications as well as continuation with the professional support groups that he is in. I am not opposed to his being in the [AA] groups which he finds somewhat helpful so would recommend that he also continue those.
>
> I would also recommend that, because of the serious nature of his past suicide attempts and his need to continue being on the medications for bipolar disorder that he continues with Dr. Dines on a regular basis as he has with the professional support group and the [AA] treatments and that he be followed along and reevaluated by myself in approximately six to eight months. If at that time he is complying with the psychiatric treatments and there have been no additional problems, I do not feel any further follow-up would be necessary.

(Exhibit C, pp. 29-30.)

11I. Dr. Jacks testified credibly at the administrative hearing, and his testimony mirrored the opinions in his report.

12. Dr. Lavid testified credibly at the administrative hearing. His testimony echoed the opinions in his 2019 report. He reiterated that, in order to practice medicine safely, Respondent should be receiving psychiatric care, psychotropic medication per his treating psychiatrist, enrollment in a health professional support group (such as Dr. O'Mahoney's), and urine drug and alcohol screening. Dr. Lavid agreed that Respondent is at high risk for relapse if he stops taking his medications.

Dr. Lavid opined that Respondent should practice with conditions or oversight for the length of time determined by his treating doctors, but he also noted that a three-year period of oversight would be reasonable to ensure Respondent is receiving appropriate care.

13. Respondent testified credibly at the administrative hearing. He confirmed that, in the 40 years he has been practicing medicine, he has never been under the influence of any substance while seeing patients or performing surgeries.

14A. Respondent runs a private ophthalmology practice in Beverly Hills, California. He works five days per week, spending 75 percent of his time in his medical office and 25 percent of his time in surgery, primarily at Cedars-Sinai Hospital (Cedars). Respondent has held privileges at Cedars since 1984, and he has performed between 400 to 500 surgeries there.

14B. A June 1, 2021 letter from the Cedars credentialing coordinator confirmed Respondent "was appointed to the [Cedars] Medical Staff on 10/02/1984 and is currently a member in good standing of the Attending staff category with membership and privileges in the Department of Surgery, Division of Ophthalmology." (Exhibit M.)

15. Respondent assured the Board that "circumstances in [his] life have changed" since his last overdose. He now receives treatment from "amazing" doctors and therapists, he enjoys attending the physician support group, and his medication is appropriately titrated.

16. Respondent has the support of his treating physicians, Drs. Seigler and Dines, and Dr. O'Mahoney, who testified on his behalf. He also has the support of several patients who submitted emails and letters on his behalf.

LEGAL CONCLUSIONS

1. The standard of proof which must be met to establish the charging allegations is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) This means the burden rests on Complainant to establish the charging allegations by proof that is clear, explicit, and unequivocal – "so clear as to leave no substantial doubt" and "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. Business and Professions Code section 2229 provides, in pertinent part:

> (a) Protection of the public shall be the highest priority for the [Board] . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.
>
> (b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence.

3. Business and Professions Code section 822 provides:

> If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

4A. The clear and convincing evidence established that Respondent's ability to practice medicine safely is impaired by his mental illness if left untreated. However, the clear and convincing evidence also established that Respondent may control his condition and practice medicine safely if he maintains his current treatment regimen for his bipolar disorder. The parties disagree about whether a period of Board oversight is necessary to confirm that Respondent is able to maintain control over his condition and practice medicine safely.

4B. The statutory categorization of this hearing as a "disciplinary" matter and the statutory description of any ensuing oversight of probation as "discipline" are unfortunate misnomers. Respondent has committed no violations by suffering from a mental illness, and any Board oversight should not be regarded as discipline. Despite the severe and punitive terminology used, the need for oversight has been established, and probation is the only mechanism to achieve unfettered Board oversight.

4C. Respondent has a concerning history of substance abuse and suicide attempts related to his bipolar disorder. Notably, Respondent refused to be forthcoming with the evaluators regarding his history of using illegal substances. However, he has made laudable strides in controlling the effects of his bipolar disorder with psychotherapy, correctly titrated medications, a physician's support group, and monitoring through urine drug testing. This full regimen began about October 2019. Nevertheless, Drs. Lavid, Jacks, and Dines all acknowledged the risk of relapse. Given Respondent's history of relapses, and his relatively short time on his current treatment regimen, a period of Board oversight is warranted. The Board has the authority and the duty to ensure public health and safety by confirming Respondent's ability to safely practice medicine through the Board's own methods, independent of Respondent's voluntary efforts over which the Board has no control nor access to his private patient information.

4D. The remaining question is the proper length of oversight. Dr. Lavid credibly opined that three years of oversight is warranted. Respondent has already established almost two years of rehabilitation; however, under the circumstances of this case, the Board is obligated to monitor and confirm Respondent's rehabilitation itself. Consequently, a three-year period of Board oversight should allow the Board to confirm that Respondent has adequate control over his condition while protecting the public.

4E. Respondent should be allowed to continue treatment with his current providers to maintain continuity of effective care.

4F. Given the nature of this matter, modification of the standard terms and conditions found in the Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines is warranted.

ORDER

Physician's and Surgeon's Certificate Number A 33764, issued to Respondent, John Lee Stanley, M.D., is revoked, but the revocation is stayed. Respondent is placed on probationary oversight for three (3) years upon the following terms and conditions.

1. Controlled Substances - Abstain from Use

Respondent 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 Respondent by another practitioner for a bona fide illness or condition, including, but not limited to, Respondent's medications to treat his bipolar disorder noted above (i.e., lithium, Wellbutrin XL, and atenolol).

Within 15 calendar days of receiving any lawfully prescribed medications, Respondent 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 Respondent 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, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent 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 Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide Respondent with a hearing within 30 days of the request, unless Respondent 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 Respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

2. Alcohol - Abstain From Use

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

If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent 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 Respondent requests a hearing on the Accusation and/or petition to revoke probation, the Board shall provide Respondent with a hearing within 30 days of the request, unless Respondent 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 Respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

3. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at Respondent'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.

This condition may be satisfied by Respondent's continued substance abuse monitoring by Professional Monitoring Services.

If Respondent discontinues substance abuse monitoring by Professional Monitoring Services, Respondent shall cease the practice of medicine until he contracts with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing.

Respondent's contract with any testing service shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probationary oversight.

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

If Respondent fails to cooperate in a random biological fluid testing program within the specified time frame, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent 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 Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide Respondent with a hearing within 30 days of the request, unless Respondent 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 Respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

4. Psychiatric Evaluation

Within 60 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the

Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

5. Psychotherapy

Respondent may continue psychotherapy with his treating psychiatrist Franklin Dines, M.D. If Respondent terminates, or is terminated from, psychotherapy with Dr. Dines, within 30 calendar days of that termination Respondent 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, Respondent 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. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

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

shall be extended until the Board determines that Respondent is mentally fit to resume the practice of medicine without restrictions.

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

6. Substance Abuse Support Group Meetings

Respondent may continue attending the Flying Knee Physician's Monitoring Support Group facilitated by licensed clinical psychologist, Helene O'Mahoney, Ph.D. If Respondent terminates, or is terminated from, his participation in Dr. O'Mahoney's support group, within 30 days of the termination, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three 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 Respondent within the last five years. Respondent'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 Respondent's name, the group name, the date and location of the meeting, Respondent's attendance, and Respondent's level of participation and progress. The facilitator shall report any unexcused absence by Respondent from any substance abuse support group meeting to the Board, or its designee, within 24 hours of the unexcused absence.

7. Solo Practice Prohibition

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

If Respondent 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, Respondent 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 Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the Respondent's practice setting changes and the Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If Respondent 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, Respondent 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 Respondent shall not resume practice until an appropriate practice setting is established.

8. Notification

Within seven days of the effective date of this Decision, Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent 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 Respondent. Respondent 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.

9. Obey All Laws

Respondent 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

Respondent 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.

Respondent 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

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent'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).

Place of Practice

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

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent 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 30 calendar days.

In the event Respondent should leave the State of California to reside or to practice Respondent 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

Respondent shall be available in person upon request for interviews either at Respondent'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

Respondent 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 Respondent's return to practice. Non-practice is defined as any period of time Respondent 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 Respondent resides in California and is considered to be in non-practice, Respondent 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 Respondent 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 Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent 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.

Respondent'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 Respondent residing outside of California, will relieve Respondent 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 Controlled Substances; and Biological Fluid Testing.

14. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent 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 Respondent 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.

15. License Surrender

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

16. Probation Monitoring Costs

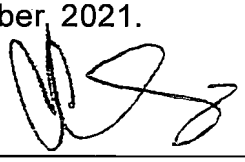
Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and

17. Completion of Probation

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

The Decision shall become effective at 5:00 p.m. on January 28, 2022.

IT IS SO ORDERED this 30th day of December, 2021.



Laurie Rose Lubiano, J.D., Chair
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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **John Stanley Lee, M.D.** **9675 Brighton Way, Suite 390** **Beverly Hills, CA 90210** **Physician's and Surgeon's Certificate No. A 33764,** Respondent.	Case No. 800-2018-048415 **A C C U S A T I O N**

PARTIES

1. William Prasifka (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about April 24, 1979, the Medical Board issued Physician's and Surgeon's Certificate Number A 33764 to John Stanley Lee, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2021, unless renewed.

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JURISDICTION

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

4. Section 2004 of the Code states:

The board shall have the responsibility for the following:

(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(b) The administration and hearing of disciplinary actions.

(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

(f) Approving undergraduate and graduate medical education programs.

(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

(h) Issuing licenses and certificates under the board's jurisdiction.

(i) Administering the board's continuing medical education program.

5. Section 820 of the Code states:

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

6. Section 822 of the Code states:

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing section shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

7. Section 824 of the Code states:

The licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections.

8. Section 826 of the Code states:

The proceedings under Sections 821 and 822 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the licensing agency and the licentiate shall have all the rights and powers granted therein.

FACTUAL ALLEGATIONS

9. Respondent is an ophthalmologist who practices in Beverly Hills.

10. Upon Order of the Board dated July 23, 2019, Respondent was required to undergo physical and mental examinations and biological fluid testing to determine if he could safely practice medicine.

11. Following his mental examination performed on August 23, 2019, Respondent was found to suffer from Bipolar I Disorder and an unknown substance use disorder. Respondent was going to receive in-patient treatment to be followed by outpatient treatment for substance abuse.

12. The psychiatrist who performed the mental examination stated that upon completing the in-patient treatment program, Respondent should receive outpatient psychiatric care, enroll in a health professional support group, and have drug and alcohol biological fluid testing.

13. Respondent underwent a physical examination by a specialist in addiction medicine on September 24, 2019. Initially, the examiner found that Respondent suffered from Bipolar I Disorder, possible substance use disorder, unknown substances and no clear evidence of impairment at present.

14. Respondent was re-evaluated by the specialist in addiction medicine on November 5, 2019. In the Addendum Report the examiner noted that there was a discrepancy between the heath history provided to the psychiatrist than that provided to him and he needed to obtain a hair follicle sample from Respondent. He further noted Respondent's substance abuse and his history of rehabilitation attempts. The new assessment of Respondent was Bipolar I Disorder; Cocaine and stimulant use disorder, mild to moderate, true severity unknown; no evidence of impairment at present.

15. The examiner recommended that Respondent continue psychotherapy, weekly support meetings, biological fluid testing and that he should no longer perform surgery.

16. Respondent's urine drug screen on August 16, 2019, was positive for benzodiazepines. Respondent's hair follicle drug test of March 30, 2020, was negative.

CAUSE FOR DISCIPLINE

(Inability to Practice Medicine Safely Due to a Mental and/or Physical Condition)

17. Respondent John Stanley Lee, M.D. is subject to disciplinary action pursuant to section 822 of the Code in that Respondent cannot safely practice medicine without practice restrictions. The circumstances are as follows:

18. Complainant refers to and, by this reference, incorporates paragraphs 9 through 16, above, as though set forth fully herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 33764, issued to John Stanley Lee, M.D.;

2. Revoking, suspending or denying approval of John Stanley Lee, M.D.'s authority to supervise physician assistants and advanced practice nurses;

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3. Ordering John Stanley Lee, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: OCT 21 2020

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

LA2020601555