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Attorneys for Petitioner

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

WILLIAM PRASIFKA, Executive Director, Medical Board of California, Department of Consumer Affairs, State of California, Petitioner, v. **JOHN GILBERT MCNUTT, M.D.** **1 Beacon Pt.** **Ladera Ranch, CA 92694-0536** **Physician's and Surgeon's Certificate No. A 61636,** Respondent.	Case No. 800-2020-069903 OAH No. 2022050449 **STIPULATION OF THE PARTIES RE: INTERIM ORDER IMPOSING LICENSE RESTRICTIONS AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. William Prasifka (Petitioner) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this

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matter by Rob Bonta, Attorney General of the State of California, by Deputy Attorney General Christine A. Rhee.

2. Respondent John Gilbert McNutt, M.D. (Respondent) is represented in this proceeding by attorney Kathleen Brahn, Esq., whose address is: 790 East Colorado Boulevard, 9th Floor, Pasadena, CA 91101.

JURISDICTION

3. On or about February 14, 1997, the Board issued Physician's and Surgeon's Certificate No. A 61636 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant herein and will expire on October 31, 2022, unless renewed.

4. Pursuant to the provisions of California Government Code section 11529, an administrative law judge of the Medical Quality Hearing Panel established pursuant to section 11371 may issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare. Interim orders may also be issued without notice if it appears from the facts shown by affidavit that serious injury would result to the public before the matter can be heard on notice.

FACTUAL BASIS FOR INTERIM ORDER IMPOSING LICENSE RESTRICTIONS

5. Respondent does not contest that, at an administrative proceeding, Petitioner could establish a prima facie case with respect to the allegation that Respondent is presently unable to practice medicine safely without restrictions due to a mental or physical condition. The admissions made by Respondent herein are only for the purposes of this Interim Suspension Order proceeding and shall not be admissible in any other criminal or civil proceeding.

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6. Respondent agrees to the issuance of an Interim Order Imposing License Restrictions under Government Code section 11529, immediately restricting his Physician's and Surgeon's Certificate No. A 61636 as detailed in paragraph 8, below.

7. In exchange for Respondent's admissions, above, Petitioner agrees to file this stipulation in lieu of filing a petition for interim suspension order and supporting affidavits with the Office of Administrative Hearings in San Diego, California.

8. Based on the foregoing stipulations and agreements, the parties hereby stipulate and agree that an interim order imposing the following license restrictions on Respondent's Physician's and Surgeon's Certificate No. A 61636 should be issued forthwith by the Office of Administrative Hearings, in order to protect the public health, safety and welfare. The parties further stipulate and agree that, once this interim order imposing license restrictions is issued by the Office of Administrative Hearings, Respondent shall be required to fully comply with the following license restrictions until issuance of a final decision by the Medical Board of California on an Accusation to be filed against him, or until further order from the Office of Administrative Hearings:

A. 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 cease practice order is lifted or a final decision on an accusation is effective, whichever occurs first.

B. 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

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lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.

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 cease practice order is lifted or a final decision on an accusation is effective, whichever occurs first.

C. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Stipulation, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed psychiatrist who is board certified in addiction psychiatry 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 with 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 Respondent is found to be mentally unfit to resume the practice of medicine without restrictions, 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 cease practice order is lifted or a final decision on an accusation is effective, whichever occurs first.

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

D. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7) days of the effective date of this Stipulation, Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's worksite monitor, and Respondent's employers and supervisors to communicate regarding Respondent'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 Respondent has medical staff privileges.

E. 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. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a Respondent 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

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done on a random basis. The cost of biological fluid testing shall be borne by the Respondent.

Respondent shall be subject to 52 to 104 random tests. Respondent 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 of 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 Respondent 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 Respondent 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 Respondent 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. Respondent 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 Respondent.

If a biological fluid test result indicates Respondent has used, consumed, ingested, or administered to himself a prohibited substance, the Board shall order Respondent to cease practice and instruct Respondent to leave any place of work where Respondent is practicing medicine or providing medical services. The Board shall immediately notify all of Respondent's employers, supervisors and work

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monitors, if any, that Respondent 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, his 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 a Respondent'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 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, Respondent 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 Respondent's rehabilitation.

F. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of the effective date of this Stipulation, 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 (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 Respondent within the last five (5) 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 twenty-four (24) hours of the unexcused absence.

G. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty (30) calendar days of the effective date of this Stipulation, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring the Respondent at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with Respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased

reports to the Board or its designee. If it is impractical for anyone but Respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth by the Board or its designee.

Respondent shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with Respondent in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding Respondent's behavior, if requested by the Board or its designee; and review Respondent's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; Respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) Respondent's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if

applicable; (7) a report of Respondent's work attendance; (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by Respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, 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. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

H. VIOLATION OF THIS STIPULATION FOR SUBSTANCE ABUSING LICENSEES . Failure to fully comply with any term or condition of this Stipulation is unprofessional conduct.

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

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

length of time a Respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer Respondent for disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee.

B. If Respondent 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 Respondent;

(4) Order increased documentation;

(5) Issue a citation and fine, or a warning letter;

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

(7) Take any other action as determined by the Board or its designee.

WAIVERS

9. Respondent is fully aware of all of his rights under California Government Code section 11529, subdivision (d), to a noticed hearing on the issue of whether an interim order of license restrictions should be issued in the above-entitled matter, and all other rights accorded him under California Government Code section 11529, subdivision (d), at which he is entitled, at a minimum, to all the following rights:

(a) To be represented by counsel.

(b) To have a record made of the proceedings, copies of which may be obtained by the licentiate upon payment of any reasonable charges associated with the record.

(c) To present written evidence in the form of relevant declarations, affidavits, and documents. The discretion of the administrative law judge to permit testimony at the hearing conducted pursuant to this section shall be identical to the discretion of a superior court judge to permit testimony at a hearing conducted pursuant to Section 527 of the Code of Civil Procedure.

(d) To present oral argument.

10. Having the benefit of counsel, Respondent hereby knowingly, intelligently, freely and voluntarily waives and gives up each and every one of the rights set forth and/or referenced in paragraph 9, above.

11. Respondent is fully aware of all of his rights under Government Code section 11529, subdivisions (f) and (g), which state as follows:

> (f) In all cases in which an interim order is issued, and an accusation is not filed and served pursuant to Sections 11503 and 11505 within 30 days of the date on which the parties to the hearing on the interim order have submitted the matter, the order shall be dissolved. Upon service of the accusation the licensee shall have, in addition to the rights granted by this section, all of the rights and privileges available as specified in this chapter. If the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request, unless the licensee stipulates to a later hearing, and a decision within 15 days of the date the decision is received from the administrative law judge, or the board shall nullify the interim order previously issued, unless good cause can be shown by the Division of Medical Quality for a delay.
>
> (g) If an interim order is issued, a written decision shall be prepared within 15 days of the hearing, by the administrative law judge, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

12. Having the benefit of counsel, Respondent hereby knowingly, intelligently, freely and voluntarily waives and gives up each and every one of the rights set forth and/or referenced in paragraph 11, above.

ADDITIONAL PROVISIONS

13. The parties hereby stipulate that all proceedings in the above-entitled Interim Order Imposing License Restrictions matter shall be conducted at the Office of Administrative Hearings located in San Diego, California.

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14. The parties further stipulate that copies of this "Stipulation of the Parties Re: Interim Order Imposing License Restrictions," including copies of signatures appearing thereon, may be used in lieu of original documents and signatures and, further, that such copies and signatures shall have the same force and effect as originals.

DATED: 5-12-22

JOHN GILBERT MCNUTT, M.D.
Respondent

DATED: 05-12-2022

KATHLEEN BRAHN, ESQ.
Attorney for Respondent

DATED:

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
CHRISTINE A. RHEE
Deputy Attorney General
Attorneys for Petitioner

INTERIM ORDER IMPOSING LICENSE RESTRICTIONS

Based on the foregoing stipulations and agreements, an Interim Order Imposing License Restrictions is hereby issued immediately imposing license restrictions on Physician's and Surgeon's Certificate No. A 61636, heretofore issued by the Medical Board of California to Respondent John Gilbert McNutt, M.D., and, accordingly, Respondent is hereby immediately ordered to comply with all of the terms, conditions and license restrictions contained in paragraph 8, above. This Interim Order Imposing License Restrictions shall remain in full force and effect until issuance of a final decision by the Medical Board of California on an Accusation to be filed against Respondent, or until further order from the Office of Administrative Hearings. Any motion to vacate this Interim Order Imposing License Restrictions shall be filed in accordance with the provisions of Title 1, California Code of Regulations, sections 1006 and 1022. However,

14. The parties further stipulate that copies of this "Stipulation of the Parties Re: Interim Order Imposing License Restrictions," including copies of signatures appearing thereon, may be used in lieu of original documents and signatures and, further, that such copies and signatures shall have the same force and effect as originals.

DATED: _____

JOHN GILBERT MCNUTT, M.D.
Respondent

DATED: _____

KATHLEEN BRAHN, ESQ.
Attorney for Respondent

DATED: May 12, 2022

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
CHRISTINE A. RHEE
Deputy Attorney General
Attorneys for Petitioner

INTERIM ORDER IMPOSING LICENSE RESTRICTIONS

Based on the foregoing stipulations and agreements, an Interim Order Imposing License Restrictions is hereby issued immediately imposing license restrictions on Physician's and Surgeon's Certificate No. A 61636, heretofore issued by the Medical Board of California to Respondent John Gilbert McNutt, M.D., and, accordingly, Respondent is hereby immediately ordered to comply with all of the terms, conditions and license restrictions contained in paragraph 8, above. This Interim Order Imposing License Restrictions shall remain in full force and effect until issuance of a final decision by the Medical Board of California on an Accusation to be filed against Respondent, or until further order from the Office of Administrative Hearings. Any motion to vacate this Interim Order Imposing License Restrictions shall be filed in accordance with the provisions of Title 1, California Code of Regulations, sections 1006 and 1022. However,

no such motion may be heard on an *ex parte* basis and any motion to vacate this Interim Order Imposing License Restrictions shall be served on Petitioner's counsel and filed with the Office of Administrative Hearings no less than thirty (30) business days prior to any hearing on the motion. Once served and filed, no such motion shall be decided without first affording the parties the opportunity to present oral argument.

IT IS SO ORDERED this 13th day of MAY, 2022.

Donald P. Cole

PRESIDING ADMINISTRATIVE LAW JUDGE

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Attorneys for Complainant

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

03

In the Matter of the Accusation Against:	Case No. 800-2020-069903
JOHN GILBERT MCNUTT, M.D. **1 Beacon Pt.** **Ladera Ranch, CA 92694-0536** **Physician's and Surgeon's Certificate No. A 61636,** Respondent.	**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 February 14, 1997, the Medical Board issued Physician's and Surgeon's Certificate No. A 61636 to John Gilbert McNutt, 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 October 31, 2022, 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 2227 of the Code states, in pertinent part:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.
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> ...

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.

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(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.

SECTION 822 CAUSE FOR ACTION
(Mental Illness Affecting Ability to Practice Medicine Safely)

7. Respondent has subjected his Physician's and Surgeon's Certificate No. A 61636 to action under section 822 of the Code in that his ability to practice medicine safely is impaired due to a mental illness affecting competency, as more particularly alleged hereinafter:

8. On or about August 11, 2020, the Board received a notification pursuant to Business and Professions Code section 805 that Respondent's privileges at Newport Beach Surgery Center had been suspended on July 13, 2020.

9. During the course of the investigation, Board investigators interviewed Newport Beach Surgery Center management and co-workers of Respondent. They reported that Respondent, an anesthesiologist, had been missing or unavailable when he was scheduled to work and that his speech was slurred.

10. Medical records show that Respondent went to the emergency department on or about November 16, 2020 for alcohol use disorder. Respondent told hospital treatment providers that he had been consuming approximately a pint of hard liquor per day for the past 18 months. Respondent was admitted for treatment and medical detox.

11. In or around April 2021, a Board investigator asked Respondent to submit to mental and physical examinations. On or about September 8, 2021, Respondent attended a mental examination with M.N., M.D., a psychiatrist who is board-certified in addiction medicine by the American Board of Preventative Medicine.

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12. During the mental examination with M.N., M.D., Respondent stated the following: After having a seizure in 2012, Respondent entered into a substance abuse treatment program. Following the residential program, Respondent attended 12-step meetings approximately three times a week. He told M.N., M.D., that he did not consume alcohol from 2012 to 2018. In approximately 2018 or 2019, Respondent was consuming alcohol a few times a week. In 2018, Respondent had another seizure, was hospitalized, and started on medication. From approximately November 2020 to March 2021, Respondent attended another residential treatment program for alcohol use disorder.

13. Based upon his examination of Respondent and the results from psychological testing, M.N., M.D., diagnosed Respondent with alcohol use disorder, depressive disorder with anxiety, and post-traumatic stress disorder. M.N., M.D., opined that Respondent could not practice medicine safely without certain restrictions being put in place. Specifically, M.N., M.D., recommended random urine and drug testing, group support meetings, psychotherapy, anti-craving drugs if needed, a neurological examination, and workplace monitoring.

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 No. A 61636, issued to Respondent John Gilbert McNutt, M.D.;

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

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

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

DATED: MAY 13 2022

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

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