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

In the Matter of the Statement of Issues Against: Paul Nicholas Horner Applicant.	Case No.: 800-2020-070898

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the petition for reconsideration, filed by Paul Nicholas Horner, and the time for action having expired at 5:00 p.m. on July 18, 2022, the petition is deemed denied by operation of law.

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

In the Matter of the Statement of Issues Against: **Paul Nicholas Horner** **Applicant.**	**Case No. 800-2020-070898** **ORDER GRANTING STAY** **(Government Code Section 11521)**

Applicant, Paul Nicholas Horner, has filed a Request for Stay of execution of the Decision in this matter with an effective date of July 7, 2022, at 5:00 p.m.

Execution is stayed until July 18, 2022, at 5:00 p.m.

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

DATED: July 6, 2022

Jenne Jones for
William Prasifka
Executive Director
Medical Board of California

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

In the Matter of the Statement of Issues Against:

PAUL NICHOLAS HORNER, Applicant.

Agency Case No. 800-2020-070898

OAH No. 2021110150

DECISION AFTER NON-ADOPTION

Administrative Law (ALJ) Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on January 13, 2022, by videoconference.

Deputy Attorney General (DAG) David Carr represented complainant William Prasifka, Executive Director of the Medical Board of California (Complainant).

Paul Nicholas Horner (Applicant) appeared representing himself. The matter was submitted for decision on January 13, 2022. The proposed decision was issued on February 1, 2022.

On February 17, 2022, 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 May 18, 2022, with ALJ Marcie Larson presiding. DAG Carr appeared by phone on behalf of the Complainant. Applicant Horner appeared by phone representing himself. 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

1. Applicant Paul Nicholas Horner applied in June 2019 for a California physician's and surgeon's certificate.

2. In October 2020, a Board staff member notified Applicant by letter that Board staff members would recommend to the Board that it grant a probationary physician's and surgeon's certificate, or deny Applicant's application if Applicant would not accept a probationary certificate. The letter explained further that if Applicant would not accept a probationary certificate, he could request an administrative hearing to appeal his application's denial. Applicant requested a hearing.

3. Acting in his official capacity as Executive Director of the Board, Complainant William Prasifka signed a statement of issues against Applicant on August 10, 2021. The statement of issues alleges that Applicant should not receive a California physician's and surgeon's certificate, or should he receive a probationary certificate, because of professional misconduct that occurred beginning in summer 2014, during Applicant's post-graduate medical residency. Complainant alleges specifically that Applicant stole opioid medication from the hospital in which he worked; that he used the stolen medication himself; and that he suffered in the past and may still suffer from a mental illness potentially affecting his competency for medical practice.

Medical Residency

4. Applicant graduated from medical school in May 2011. After a preliminary post-graduate training year in Louisiana, Applicant entered the second year of a four-year residency program in anesthesiology in July 2012 at John H. Stroger Hospital in Chicago.

5. Applicant's performance during residency was satisfactory, and he advanced from program year to program year on schedule. He began what should have been his final residency program year in July 2014.

6. In early August 2014, Applicant stole several vials of fentanyl solution from a medication-dispensing machine at the hospital. As a result of this action, the residency program terminated Applicant's participation.

7. During an investigation into the theft described in Finding 6, Applicant gave conflicting explanations for his actions. He stated to some people and at some times that he had used the stolen fentanyl, and that he had previously self-administered opioid and benzodiazepine medications. He stated to other people at other times that he had lied about past drug abuse, and about using the stolen fentanyl, and that his real intent when he stole the fentanyl was to use it for suicide.

8. At the hearing, Applicant testified credibly that he had stolen the fentanyl to use it for suicide, but did not use any of it. No evidence established what happened to the stolen medication.

9. Ned F. Nasr, M.D., was the anesthesiology residency program director during Applicant's residency. Dr. Nasr provided a letter supporting Applicant's application for a California physician's and surgeon's certificate. The letter corroborates the information summarized in Findings 5 and 6 above and in Findings 10 and 15 below. Dr. Nasr believes that Applicant "has turned his life around" and is capable of practicing medicine safely.

Mental Health Treatment

10. Soon after the incident described in Finding 6, Applicant enrolled in an intensive outpatient mental health treatment program. He received outpatient treatment for eight weeks.

11. After his termination from the anesthesiology residency program, Applicant moved to live in the Atlanta area in early 2015. He began psychiatric treatment with Navjyot Bedi, M.D. Applicant testified credibly, corroborated by a letter from Dr. Bedi, that Dr. Bedi did not diagnose any substance use disorder, but did diagnose Applicant with bipolar disorder. Applicant concurs with and accepts this diagnosis.

12. With Dr. Bedi, Applicant began taking lamotrigine, a mood-stabilizing medication. Applicant believes, again corroborated by Dr. Bedi's letter, that this medication has been effective for him. Applicant continued in treatment with Dr. Bedi through March 2019.

13. Applicant switched psychiatrists, to Gregory A. Haley, M.D., in 2019. Dr. Haley also believes Applicant to have bipolar disorder, and perhaps also attention deficit disorder. He continues to prescribe lamotrigine for Applicant, describing this medication in a letter as the "mainstay" of Applicant's treatment. Dr. Haley's letter states that with continuing treatment, Applicant has no "deficit" that might create "danger to self or patients."

14. Applicant also is in regular psychotherapy with Daniel P. David, Ph.D. Dr. David also provided a letter supporting Applicant's application, stating that Applicant has been "consistently punctual and engaging in the therapeutic process."

15. Applicant believes that his misconduct during residency resulted from his mental illness, which then was severe and untreated. He believes that he has recovered his mental health through psychiatric treatment and psychotherapy, and he intends to continue these supports for the rest of his life. His testimony about having learned from this experience and about his intention to continue treatment is persuasive and credible.

Professional Experience After Residency

16. After leaving his residency and returning to Georgia, Applicant focused at first on his mental health. He worked between 2015 and 2017 as a surgical pharmacy technician at an Atlanta hospital.

17. The Georgia Composite Medical Board issued an unrestricted Georgia medical license to Applicant in January 2017. He has experienced no license discipline since then in Georgia.

18. Applicant does not hold a medical license in any other state.

19. In September 2017, Applicant began working as a physician in an orthopedic practice. In early 2020, he joined a group of occupational medical clinics as medical director of the group's Marietta, Georgia, clinic. He continued in this position at the time of the hearing.

20. Applicant applied for a California physician's and surgeon's certificate because he was contemplating a move to California. He has since changed his mind, and intends to remain in his current home and employment in Georgia. He has contemplated pursuing a different post-graduate residency, as a step toward board certification in a medical specialty, but has no immediate plans to do so.

LEGAL CONCLUSIONS

1. The purpose of the Medical Practice Act is to assure the high quality of medical practice. (Shea v. Board of Medical Examiners (1978) 81 Cal.App.3d 564, 574-575.) The protection of the public is the Board's highest priority. (Bus. & Prof. Code, § 2001.1.)

Cause for Denial

2. The Board may deny an application for a physician's and surgeon's certificate, or may issue a probationary license, if the applicant has committed acts that would have constituted unprofessional conduct for a licensed physician, or for any other reason that would justify license revocation or suspension. (Bus. & Prof. Code, § 2221.)

3. Self-administration of controlled substances, such as fentanyl, is unprofessional conduct. (Bus. & Prof. Code, § 2239.) The matters stated in Findings 6 through 8 do not establish this type of unprofessional conduct as a ground to deny Applicant's application.

4. Dishonesty relating substantially to medical practice is unprofessional conduct. (Bus. & Prof. Code, § 2234, subd. (e).) The matters stated in Findings 6

through 8 establish this type of unprofessional conduct as a ground to deny Applicant's application.

5. Mental illness affecting professional competency may be grounds to revoke or suspend a physician's and surgeon's certificate, or to place the holder on probation. (Bus. & Prof. Code, § 822.) The matters stated in Findings 6 through 8 and 10 through 15 establish that Applicant has such an illness, and that it has affected his professional competency.

Analysis

6. The matters stated in Findings 10 through 15 demonstrate that Applicant has received treatment for his mental illness, beginning in late 2014 and continuing to the present. In combination with the matters stated in Findings 16 through 20, these matters show Applicant's treatment to have been effective in controlling his illness and restoring his ability to practice medicine, so long as he is compliant with treatment. As indicated in Finding 13, Applicant's current treating psychiatrist indicated that lamotrigine is a "mainstay" of Applicant's treatment and that with continuing treatment, he is not a danger to himself or patients. Applicant understands and accepts his need for ongoing treatment, as recommended by his providers.

7. To ensure that Applicant complies with ongoing treatment as he begins to practice in California, the Board has determined that a three-year period of probation with appropriate terms and conditions will meet its mission of consumer protection, while permitting Applicant to practice in this state.

ORDER

The application of Paul Nicholas Horner for a California physician's and surgeon's certificate is denied. However, upon successful completion of all licensing requirements, Applicant shall be issued a probationary physician's and surgeon's certificate for three (3) years with the following terms and conditions:

1. Psychiatric Evaluation

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, Applicant 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. Applicant shall pay the cost of all psychiatric evaluations and psychological testing.

Applicant 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.

2. Psychotherapy

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

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

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

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

3. Notification

Within seven (7) days of the effective date of this Decision, Applicant 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 Applicant, at any other facility where Applicant engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Applicant. Applicant shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

4. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, Applicant is prohibited from supervising physician assistants and advanced practice nurses.

5. Obey All Laws

Applicant shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

6. Quarterly Declarations

Applicant shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Applicant shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

7. General Probation Requirements

Compliance with Probation Unit

Applicant shall comply with the Board's probation unit.

Address Changes

Applicant shall, at all times, keep the Board informed of Applicant's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

Applicant shall immediately inform the Board or its designee, in writing, of travel

to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

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

8. Interview with the Board or its Designee

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

9. Non-practice While on Probation

Applicant 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 Applicant's return to practice. Non-practice is defined as any period of time Applicant is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Applicant resides in California and is considered to be in non-practice, Applicant shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Applicant from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Applicant's period of non-practice while on probation exceeds 18 calendar months, Applicant shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current

version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

Periods of non-practice for an Applicant residing outside of California, will relieve Applicant of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

10. Completion of Probation

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

11. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If Applicant violates probation in any respect, the Board, after giving Applicant notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Applicant during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

12. License Surrender

Following the effective date of this Decision, if Applicant ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Applicant may request to surrender his or her license. The

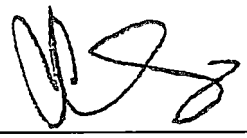
Board reserves the right to evaluate Applicant's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Applicant shall within 15 calendar days deliver Applicant's wallet and wall certificate to the Board or its designee and Applicant shall no longer practice medicine. Applicant will no longer be subject to the terms and conditions of probation. If Applicant re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

13. Probation Monitoring Costs

Applicant shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

The Decision shall become effective at 5:00 p.m. on July 7, 2022.

IT IS SO ORDERED this 7th day of June, 2022.



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

In the Matter of the Statement of Issues Against: **PAUL NICHOLAS HORNER** Applicant	Case No. 800-2020-070898 **STATEMENT OF ISSUES**

PARTIES

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

2. On June 21, 2019, the Medical Board of California, Department of Consumer Affairs (Board), received an application for a Physician's and Surgeon's Certificate from Paul Nicholas Horner (Applicant). On or about June 20, 2019, Applicant attested, under penalty of perjury, to the truthfulness of all statements, answers, and representations in the application. The Board

denied the application on October 15, 2020. Applicant was issued a license to practice medicine in the state of Georgia on January 10, 2017.

JURISDICTION

3. This Statement of Issues is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2221 of the Code states:

> (a) The board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of their license. The board in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:
>
> (1) Practice limited to a supervised, structured environment where the licensee's activities shall be supervised by another physician and surgeon.
>
> (2) Total or partial restrictions on drug prescribing privileges for controlled substances.
>
> (3) Continuing medical or psychiatric treatment.
>
> (4) Ongoing participation in a specified rehabilitation program.
>
> (5) Enrollment and successful completion of a clinical training program.
>
> (6) Abstention from the use of alcohol or drugs.
>
> (7) Restrictions against engaging in certain types of medical practice.
>
> (8) Compliance with all provisions of this chapter.
>
> (9) Payment of the cost of probation monitoring.
>
> (b) The board may modify or terminate the terms and conditions imposed on the probationary certificate upon receipt of a petition from the licensee. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board.
>
> (c) The board shall deny a physician's and surgeon's certificate to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.
>
> (d) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate for a minimum of three years from the effective date of the denial of his or her application, except that the board may, in its discretion and for good cause

demonstrated, permit reapplication after not less than one year has elapsed from the effective date of the denial.

(e) The board shall disclose a probationary physician's and surgeon's certificate issued pursuant to this section and the operative statement of issues to an inquiring member of the public and shall post the certificate and statement on the board's internet website for 10 years from issuance.

5. Section 2234 of the Code, states:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct that would have warranted the denial of a certificate.

(g) The failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

6. Section 2239 of the Code states:

(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the

conviction is conclusive evidence of such unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Medical Board may order discipline of the licensee in accordance with Section 2227 or the Medical Board may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

7. 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.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Self-Use of Controlled Substance)

8. Applicant's application is subject to denial under section 2239 and section 2221(a) in that he illicitly obtained and used a dangerous drug in a manner as to be dangerous or injurious to himself or others.

9. In his June 20, 2019, application to the Board for a Physician's and Surgeon's Certificate, Applicant acknowledged that he had been terminated from a post-graduate medical training program (Application Question No. 19) and that he had participated in a substance abuse rehabilitation program (Application Question No. 46). Records obtained from the medical

postgraduate training program from which Applicant had been terminated, in his third year of anesthesiology residency, establish the factual basis for his termination from that program.

10. In the course of an October 22, 2014, disciplinary hearing to determine whether Applicant could continue in the post-graduate training program, a senior resident in the hospital at which Applicant was engaged in his post-graduate training program testified that she observed Applicant in the OB-GYN department on August 2, 2014, a Saturday, after she had approved Applicant's request to take the weekend off. When the senior resident asked why Applicant was there, Applicant stated that he was checking on a patient he had attended earlier in the week. The senior resident confirmed that the patient Applicant told her he was checking on was not in the OB-GYN department. The senior resident further testified that, based on suspicions arising from statements she had heard regarding Applicant, she reviewed the history from the physician-access pharmaceutical dispensing station on the OB-GYN floor and discovered that Applicant had just removed a substantial amount of fentanyl[1] from the dispensing station using his unique sign-in code. When the senior resident asked Applicant why he had taken the fentanyl, Applicant told her he was preparing for a case the following Monday. The senior resident reported the incident to the program director.

11. In his testimony at Applicant's disciplinary hearing, the program director stated that he questioned Applicant about the incident on Monday, August 4, 2014, and that Applicant initially told him that he took the fentanyl to prepare for a case on Monday. Applicant then recanted and confessed that he had taken the fentanyl for his own use and described how it affected him. According to the program director's testimony, Applicant further acknowledged this was not his first use of illicitly obtained controlled substances. The program director suspended Applicant from seeing patients and cancelled his access to the pharmaceutical dispensing station.

12. Applicant enrolled in a substance abuse treatment program on or about August 13, 2014, with a diagnosis of opioid abuse, major depressive disorder, and Attention Deficit

[1] Fentanyl is a potent narcotic analgesic. It is a dangerous drug as defined in section 4022 and a Schedule II controlled substance and narcotic as defined by section 11055, subdivision (c)(8), of the Health and Safety Code.

Hyperactivity Disorder (ADHD). Applicant was discharged from the treatment program on October 3, 2014. While in the program, Applicant sent a letter, dated September 16, 2014, to the program director of his postgraduate training program. In that letter, Applicant apologizes for his "lack of good judgment" and states that his taking the fentanyl was not for "any addiction-related reasons whatsoever....it was not my intention to take it to be abused...I wanted to have the fentanyl as a means to end my life." Applicant was terminated from the postgraduate training program on January 30, 2015.

13. Applicant relocated to Georgia after his termination from the anesthesiology residency program and began out-patient treatment with Talbott Recovery in Atlanta, Georgia, from April 8, 2015 until March 29, 2016. The medical director at Talbott Recovery did not diagnose Applicant as suffering from a substance abuse disorder but rather "a mood disorder best understood as a Bipolar Disorder, Type II." Two subsequent health care providers have also disagnosed Applicant with Bipolar Disorder, Type II and ADHD. One of those two subsequent providers, in setting out Applicant's treatment history, notes that Applicant had engaged in "a cycle of self-destructive abuse of Fentanyl while in Anesthesia Residency...."

14. Applicant's application is subject to denial under section 2239 and section 2221(a) in that Applicant illicitly used the narcotic drug fentanyl in a manner as to be dangerous or injurious to himself or others.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Dishonest Acts)

15. The allegations of paragraphs 9 through 13 above are incorporated by reference as if set out in full. Applicant's application is subject to denial under section 2234(e) in that Applicant's theft of the fentanyl from the hospital where he was working and his knowingly false statements when questioned about the circumstances attending his theft of the fentanyl were acts of dishonesty substantially related to the qualifications, functions, or duties of a physician and surgeon.

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THIRD CAUSE FOR DENIAL OF APPLICATION

(Physical or Mental Impairment Affecting Competency)

16. The allegations of paragraphs 9 through 13 above are incorporated by reference as if set out in full. Applicant's application is subject to denial under 2221(a) and section 822 in that Applicant's physical or mental condition affects his ability to competently practice medicine.

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. Denying the application of PAUL NICHOLAS HORNER for a Physician's and Surgeon's certificate;

2. If issued a probationary license, ordering PAUL NICHOLAS HORNER to pay the Medical Board the costs of probation monitoring;

3. If placed on probation, revoking, suspending, or denying the approval to PAUL NICHOLAS HORNER to supervise physician assistants and advanced practice nurses; and

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

DATED: AUG 10 2021

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

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