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

In the Matter of the Petition for Reinstatement of: Babak Abedi Physician's and Surgeon's Certificate No. A 95902 Petitioner.	Case No. 800-2021-077840

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 29, 2022.

IT IS SO ORDERED: August 30, 2022.

MEDICAL BOARD OF CALIFORNIA

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

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

In the Matter of the Petition for Reinstatement of:

BABAK ABEDI, Petitioner.

Agency Case No. 800-2021-077840

OAH No. 2022040666

PROPOSED DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on July 6, 2022, by videoconference.

Attorney Derek O'Reilly-Jones represented petitioner Babak Abedi, who was present.

Deputy Attorney General Brenda P. Reyes represented the Department of Justice, Office of the Attorney General.

The record closed and the matter was submitted for decision on July 6, 2022.

FACTUAL FINDINGS

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 95902 to petitioner Babak Abedi on June 9, 2006.

Disciplinary History

2013 Accusation and 2014 Board Probation

2. On June 11, 2013, the Board's Interim Executive Director filed an accusation seeking to impose discipline on petitioner's certificate based on a conviction and acts of unprofessional conduct (including gross negligence, repeated negligence, prescribing without medical indication, and record keeping violations) in the care and treatment of two patients.

Petitioner was arrested for driving under the influence in November 2011, after running a red light while driving, striking another vehicle, and admitting to police that he had taken Xanax, Adderall, and Ambien. In March 2012, petitioner pleaded nolo contendere to a lesser charge and was convicted of exhibition of speed on a highway, in violation of Vehicle Code section 23109, subdivision (c). He was placed on summary probation for three years.

Petitioner inappropriately prescribed controlled substances to a person who was his medical colleague and romantic partner (now his husband), and also prescribed to that person's brother, without conducting physical examinations, having necessary expertise, or maintaining adequate medical records.

3. To resolve the above disciplinary action, petitioner signed a stipulated settlement in which he admitted the allegations. In a decision and order effective

October 8, 2014, the Board revoked petitioner's certificate, stayed the revocation, and placed petitioner on probation for three years on terms and conditions including substance-abuse terms, and taking courses on prescribing practices, medical record keeping, and professional boundaries.

FIRST PETITION TO REVOKE PROBATION AND EXTENSION OF PROBATION

4. On February 7, 2017, the Board issued a cease practice order for failure to provide biological fluid test samples.

5. On February 21, 2017, the Board's Executive Director filed a petition to revoke probation. After a hearing, an administrative law judge determined that petitioner failed to make daily contact with the testing provider on multiple dates from 2014 to 2017; failed to submit to testing on 14 occasions from December 2014 to February 2017; and repeatedly was late in filing his quarterly declarations with the Board.

6. In a decision and order effective May 24, 2017, the Board revoked probation, stayed the revocation, and extended petitioner's probation by 18 months on the same terms and conditions.

SECOND PETITION TO REVOKE PROBATION AND 2017 LICENSE REVOCATION

7. On August 25, 2017, the Board issued another cease practice order for failure to provide a biological fluid test sample on August 14, 2017.

8. On September 8, 2017, the Board's Executive Director filed a petition to revoke probation. After a hearing, an administrative law judge determined that petitioner failed to test on August 14, 2017, and then submitted a dilute test sample on August 18, 2017, which subsequently tested positive for methamphetamine.

Petitioner's explanation for missing his testing on August 14 was that he was too ill to get out of bed. He failed to notify his probation monitor, although he called in sick to work. Petitioner denied using methamphetamine and speculated it was given to him without his knowledge. Petitioner offered no evidence at hearing other than his own testimony.

9. In a decision and order effective December 15, 2017, the Board granted the petition to revoke probation, and revoked petitioner's certificate.

PETITION FOR REINSTATEMENT

10. Petitioner submitted a petition for reinstatement dated April 16, 2021. A Board investigator interviewed him on December 16, 2021. This hearing followed.

Petitioner's Evidence

BACKGROUND, EDUCATION, AND PROFESSIONAL EXPERIENCE

11. Petitioner was born and raised in Iran during the Islamic Revolution and the Iran/Iraq war. As a very young child, petitioner witnessed his father's abuse of his mother. Petitioner later experienced seven years of sexual abuse by his stepfather. Petitioner fled to Germany at age 15 and immigrated to the United States in 1992.

12. Petitioner received his undergraduate degree in 1998 and his medical degree in 2004. He completed an internship in 2005, completed a residency in anesthesiology in 2010, and completed a fellowship in pain medicine in 2012.

13. Petitioner practiced as an anesthesiologist at various medical centers and outpatient surgery centers until 2017. From September 2016 to February 2017, petitioner also was in solo practice as a pain management provider.

14. Since his medical license was revoked, petitioner has worked as an administrator and operations manager of his husband's medical practice.

15. Petitioner also served as primary caregiver for his grandmother during her cancer treatment from 2019 to 2020.

16. In the summer of 2020, petitioner completed an online certificate course in "MBA essentials."

EVENTS PRIOR TO REVOCATION OF CERTIFICATE

17. In October 2011, petitioner was diagnosed with HIV. Receiving this diagnosis affected petitioner greatly and sent him into a downward spiral of negative feelings and self-loathing.

18. Petitioner testified, consistent with his explanations in prior proceedings, that on the night of his arrest in November 2011 he had taken Ambien for insomnia before going to bed, and had no recollection of driving until he awakened in his vehicle after a traffic collision at an intersection.

19. Petitioner accepts responsibility for the prescribing and medical record keeping violations that were also part of the original disciplinary matter. Petitioner now understands that emotional involvement with a patient can cloud his judgment as a physician. He would no longer prescribe for family members or friends, and acknowledges the need to fully document patient interactions.

20. Petitioner now recognizes he must comply with all terms of probation. However, when he was placed on probation in 2014, petitioner felt resentful and like he was being punished, and was defiant. Having to call in daily to the laboratory monitoring system triggered him to feel upset and angry, and he eventually asked his

husband to do it for him and tell him if he was required to submit a test sample. Petitioner now acknowledges it was his own responsibility and he did not pay enough attention.

21. After the first petition to revoke probation in 2017, petitioner was grateful he was given a chance to continue on probation. However, he was still not in the correct frame of mind to comply with the Board's requirements, and continued to engage in self-sabotaging behaviors.

22. Petitioner explained that when he missed his testing on August 14, 2017, he was sick in bed with a severe case of flu. He acknowledges, however, that he should have notified his probation monitor. Petitioner still does not know for certain why the urine sample he submitted on August 18, 2017, tested positive for methamphetamine, a substance that he denies taking. In hindsight, he believes he should have consulted a toxicologist at that time for help understanding why he might have tested positive. Petitioner now believes that this positive test for methamphetamine might have been caused by cold medications or herbal supplements from foreign countries that he was given by friends and family, which he took without knowing their exact contents.

REHABILITATION ACTIVITIES SINCE REVOCATION OF CERTIFICATE

23. The revocation of petitioner's certificate in December 2017 was devastating to him, and he felt worthless. In January 2018, petitioner had a fight with his husband and left their home. In despair, he obtained a bag of illegal drugs on the street, which he was told contained methamphetamine, and he ingested its entire contents, intending to overdose and end his life. Petitioner testified that this was the only time in his life that he intentionally took methamphetamine or other illegal drugs.

After taking these drugs, petitioner realized he did not actually want to die. Petitioner points to this experience as the beginning of his rehabilitative journey.

Mental Health Treatment and Voluntary Monitoring for Substance Use

24. After the events described in Factual Finding 23, petitioner sought mental health treatment from psychiatrist Michael Sucher, M.D. Dr. Sucher suggested he participate in a substance use monitoring program. Dr. Sucher monitored petitioner for substance use until his retirement in early 2020. Petitioner then transitioned his mental health care to The Moment, an outpatient group practice for treatment of psychiatric and substance use disorders.

25. Stacy A. Cohen, M.D., has monitored petitioner for substance use since March 18, 2020. Dr. Cohen is a psychiatrist board-certified in addiction psychiatry and general psychiatry, and is the CEO and founder of The Moment. When Dr. Sucher retired, he passed his physician monitoring practice to Dr. Cohen, including petitioner's monitoring. Dr. Cohen discussed petitioner's case with Dr. Sucher before his retirement, and reviewed the documents regarding petitioner's Board discipline.

26. In addition to the monitoring program (discussed in more detail below), petitioner sees Sarah Sicher, M.D., a psychiatrist with The Moment, for medication management and prescription of Adderall.

27. Since April 1, 2020, petitioner has received weekly psychotherapy from Mary Ann Rege, L.M.F.T., who practices with The Moment. Rege testified at hearing and wrote a letter dated March 19, 2021. Rege is a trauma-focused therapist who uses EMDR (Eye Movement Desensitization and Reprocessing) in her therapy. She has also previously worked with doctors and other professionals in substance abuse treatment.

Petitioner was referred to Rege by Dr. Cohen, for treatment of trauma and complex PTSD (post-traumatic stress disorder) with ensuing anxiety. Rege has focused her therapy with petitioner to help him address issues of childhood trauma and abuse, growing up as a gay male in Iran, his HIV diagnosis, and his maladaptive and avoidant behaviors. In addition to EMDR, Rege has also used talk therapy, cognitive behavioral therapy, and mindfulness-based stress reduction techniques with petitioner.

Rege testified credibly that since April 2020, petitioner has made tremendous progress in his therapy, and is very dedicated to the psychotherapeutic process. Rege reports that petitioner has developed healthy coping skills for emotional regulation and has demonstrated the ability to apply them effectively. He has gained insight, and has worked to integrate his past trauma, live focused on the present, and assert healthy boundaries. Petitioner has taken accountability for his past maladaptive behaviors and come to understand why he made the choices he did.

Rege is familiar with the Board's disciplinary actions against petitioner. In Rege's clinical opinion, petitioner is ready to resume the practice of medicine, and can practice safely. She believes petitioner has "turned a corner" and would now be able to comply with the Board's probation requirements, including daily check-ins and random testing. Rege recommends that petitioner continue with weekly therapy.

28. Petitioner, in his testimony and written statement to the Board, credibly described the great benefit he has received from more than two years of therapy with Rege. He found EMDR to be especially helpful, and no longer feels triggered by requirements such as daily check-ins and random testing. Petitioner explained that therapy has fundamentally changed the way he views himself, which was the root source of his maladaptive behaviors, and that he has developed a greater sense of

self-worth. Petitioner has learned tools to cope with life stressors. Petitioner reports that he now feels like a completely different person.

29. As noted above, petitioner has participated in a voluntary substance use monitoring program since early 2019, first with Dr. Sucher and now with Dr. Cohen. Petitioner checks in daily with the testing program, and submits urine samples (or occasionally other types of biological samples) when he is chosen for random testing. All of his urine tests are observed samples. Petitioner's samples consistently test positive for amphetamine at a level consistent with his prescribed dosage of Adderall, as confirmed by Dr. Cohen. Apart from the following instances, petitioner's samples have tested negative for other banned substances.

(a) A urine sample was submitted by petitioner on September 5, 2019, which tested positive for methamphetamine. He submitted a follow-up hair sample on September 16, 2019, and another urine sample on September 23, 2019, both of which tested positive for methamphetamine. Petitioner denied taking methamphetamine. He discussed these positive test results with Dr. Sucher. Petitioner believes that they may have been due to a diet supplement with unknown ingredients that he was taking at that time to lose weight. He stopped taking that supplement.

(b) A urine sample was submitted by petitioner on August 13, 2020, which tested positive for methamphetamine. Petitioner denied taking methamphetamine. He discussed this positive test result with Dr. Cohen. Petitioner believes that this positive test might have been due to herbal digestive supplements he was taking that his cleaning lady brought him from Mexico. He no longer takes such supplements.

(c) A hair sample was submitted by petitioner on June 4, 2021, which tested positive for methamphetamine. Dr. Cohen ordered a follow-up test, and a hair sample

submitted on June 18 tested negative. Petitioner also submitted random urine samples on June 14, June 22, and June 30, all of which tested negative for methamphetamine. Petitioner went to a different laboratory on June 30, 2021, and submitted a hair sample, which tested negative for methamphetamine.

Petitioner had just returned from a vacation to Cabo San Lucas at the time he submitted the hair sample on June 4. He was surprised to receive this positive test result because he had been very careful not to take any supplements or medications with unknown ingredients. Petitioner denied taking methamphetamine. Petitioner discussed the positive test from June 4 with Rege, and thought that perhaps he had been environmentally exposed to methamphetamine at a party by other people smoking the drug, or from ingesting semen of a person who had used the drug. Petitioner has not found any literature showing the latter as a possible cause for a false positive test, although he has heard it suggested anecdotally. Petitioner has stopped engaging in sexual contact with anyone he does not know, and is staying away from places where other people may use illegal drugs.

Based on the different results between the June 4 and June 30 hair samples that were processed by different laboratories, petitioner suspects that the June 4 positive test may have been due to a laboratory error. It is his understanding based on review of literature that a hair sample will reflect the use of drugs for at least three months.

30. Rege confirmed in her testimony that petitioner does not have any diagnosis related to substance use, and nothing leads her to think he has a substance use disorder or problem with methamphetamine. After the June 4 test result, Rege recommended petitioner take a polygraph test, which he did. Rege believes petitioner when he says that the only time he has taken methamphetamine was in January 2018.

31. In spring 2021, in preparation for his reinstatement petition, petitioner consulted with a toxicologist, Okorie Okorocha, in an effort to understand possible reasons for biological samples testing positive for methamphetamine if he had not intentionally ingested that substance. Okorocha wrote a report dated April 1, 2021. Okorocha explained to petitioner that some drugs contain ingredients that when metabolized, may create a positive test result for methamphetamine. Famprofazone, a non-steroidal anti-inflammatory drug, is one such drug offered as an example by Okorocha. Petitioner thinks he may have taken this in August 2017. Okorocha also told petitioner that many herbal supplements, particularly those produced in other countries, are unregulated and may contain unlisted prescription ingredients in addition to the herbal ingredients listed on the label.

32. Petitioner testified that prior to his consultation with Okorocha, he had not appreciated the risk that medications and supplements produced in other countries may contain unlisted ingredients, and that such ingredients might cause positive drug test results. Since his consultation with Okorocha, he has stopped taking any supplements or medication obtained from other countries, and has been diligent in not taking any substances with unknown ingredients.

33. Petitioner has had no positive test results since June 2021, a period of more than a year as of the date of hearing.

34. Dr. Cohen wrote a letter of support dated January 26, 2022. Dr. Cohen described petitioner as an active and compliant patient in the monitoring program. She stated that petitioner's positive test levels of amphetamine have always been consistent with the dosage of his prescribed Adderall medication. Dr. Cohen reported that petitioner had three incidents of unexplained positive tests for methamphetamine (the incidents from September 2019, August 2020, and June 2021, discussed in Factual

Findings 29 (a)-(c)). Dr. Cohen noted that she is not a toxicologist and offered no opinions regarding the reasons for the positive tests. She also noted that petitioner reported changing his behaviors regarding supplements and sexual activity, in an attempt to foreclose any possible vectors for introduction of methamphetamine into his system. Dr. Cohen concluded: "It is my professional opinion that notwithstanding his past positive test, [petitioner] is ready to rejoin the medical profession and is fit to practice at this time. I would recommend continued monitoring for a period of 5 years, based on his history."

PACE Clinical Competence Assessment

35. Petitioner voluntarily underwent an assessment by the PACE Program (Physician Assessment and Clinical Education) at the University of California, San Diego (UCSD) School of Medicine. Petitioner participated in the assessment in May 2021, and the PACE Program issued a report dated September 3, 2021.

The psychiatrist who evaluated petitioner, Kai MacDonald, M.D., diagnosed him with major depressive disorder, recurrent, in sustained remission; insomnia; and narcissistic traits. Dr. MacDonald discussed how these narcissistic traits may have contributed to petitioner's past problems with self-sabotaging behaviors and non-compliance with Board probation. Dr. MacDonald did not find that petitioner has a substance use disorder. Dr. MacDonald concluded that petitioner is fit for duty from a psychiatric perspective, and made recommendations regarding ongoing treatment.

Petitioner underwent a clinical competence assessment that included a mock patient history and physical, an oral clinical examination on six anesthesiology scenarios, and three anesthesiology simulations. The examiners concluded that petitioner's "knowledge base, communication and perioperative management

assessment for the oral clinical examination and simulation case scenarios meet minimum standards to practice anesthesiology safely."

The PACE Program's overall assessment for petitioner was "Pass, Category 2," reflecting the ability to practice competently, but with some minor deficiencies for which the examiners made remedial recommendations.

The PACE Program recommended the following: ongoing psychiatric monitoring by a psychiatrist with experience in treating physicians; ongoing therapy; substance use monitoring for a minimum of five years; proctoring for a minimum of 50 cases upon return to practice; a practice monitor for a period of time determined by the Board; a prohibition against solo practice; and reviewing UCSD's online practical guide to clinical medicine to improve his history-taking and physical examination skills.

36. Petitioner agrees with the recommendations made by the PACE Program. His medications are currently prescribed by a psychiatrist, and he continues with his psychotherapy. Petitioner has reviewed the UCSD online materials. Petitioner agrees that proctoring upon his resumption of practice would be appropriate.

Continuing Education on Medical Topics

37. Petitioner submitted certificates reflecting that he completed 14 hours of medical education in connection with the October 2020 online annual meeting of the American Society of Anesthesiologists, and completed 87 hours of medical education on various topics in January 2021.

38. Petitioner has been studying for the American Board of Anesthesiology oral examination, including reviewing its booklets, and re-reading an anesthesia

textbook. He also studied anesthesia topics in preparation for the PACE Program's clinical competence assessment. He also reads the New England Journal of Medicine.

TESTIMONY OF CHARACTER WITNESSES AND LETTERS OF SUPPORT

39. Shetal H. Patel, M.D., testified at hearing and wrote a letter. Dr. Patel is an obstetric anesthesiologist. She met petitioner in 2008 when she was an anesthesia resident at Cedars Sinai Medical Center, and he was a senior resident. Petitioner was Dr. Patel's mentor, and they became close friends. They currently live near each other and talk daily by telephone. Dr. Patel described petitioner as a skilled anesthesiologist with a good bedside manner. She is aware of the reasons for his past Board probation and license revocation. Dr. Patel has never witnessed petitioner use illicit drugs or had any concern that he was doing so. Dr. Patel described petitioner as a different person than he was several years ago. She stated that he has turned his life around and is no longer depressed or fazed by small things, and has returned to the structured personality he displayed during his residency. She believes that petitioner is ready to safely return to the practice of medicine.

40. Mona Mofid, M.D., testified at hearing and wrote a letter. Dr. Mofid is a dermatologist who maintains a private practice and is also the medical director of the American Melanoma Foundation. Dr. Mofid has known petitioner since 2005 or 2006. Petitioner worked as an anesthesiologist in the surgical center of Dr. Mofid's medical practice for five or six years, and they have remained friends since that time. Dr. Mofid described petitioner as a skilled anesthesiologist, and as being compassionate and attentive to patients. She is aware of petitioner's past Board probation and license revocation. She has never seen any red flags or had any concern that petitioner used illegal drugs. Dr. Mofid has seen an extraordinary change and personal growth in petitioner since his license was revoked in 2017. She described her observations that

he has worked very hard in therapy to deal with his past trauma and his HIV diagnosis, and has made a journey to self-acceptance. She believes that petitioner is able to safely return to medical practice.

41. Petitioner also submitted letters of support from four other physicians.

(a) Bahman Ben Shamloo, M.D., wrote a letter dated December 20, 2020. Dr. Shamloo is board-certified in anesthesiology and pain management. Dr. Shamloo has known petitioner for more than 15 years and supervised him during his anesthesiology residency and pain medicine fellowship. Dr. Shamloo described petitioner as an excellent, professional, and compassionate physician. He has never witnessed petitioner to be under the influence of illicit drugs. He is familiar with petitioner's Board discipline and license revocation. Dr. Shamloo believes that petitioner has changed dramatically since that time, and that after participation in therapy and acceptance of responsibility, petitioner has "come back to his old self and is once again the driven, meticulous, goal oriented, thirsty to help physician I remember from residency and fellowship."

(b) M. Ryan Khosravi, M.D., wrote a letter dated December 20, 2020. Dr. Khosravi is a board-certified plastic surgeon who has known petitioner professionally and personally for more than 10 years. He has never seen petitioner under the influence of drugs. Petitioner performed anesthesia for many of his patients, and Dr. Khosravi described petitioner as highly skilled and compassionate. Dr. Khosravi is aware of petitioner's Board discipline and license revocation. He has found that petitioner has gotten back on his feet and made significant changes in his life since that time, and has improved psychologically. Dr. Khosravi supports petitioner's petition for reinstatement, and would like to hire him at his surgical center.

(c) Nasrin Mani, M.D., is a board-certified ophthalmologist and has known petitioner for more than 12 years. Petitioner was the anesthesiologist for a medical procedure undergone by Dr. Mani, and Dr. Mani praised his performance. He is aware of petitioner's Board discipline. He has never seen petitioner under the influence of alcohol or drugs. Dr. Mani described petitioner's positive personal qualities and the effort he has made to overcome hardship to improve himself, and believes that petitioner can safely and competently return to practice.

(d) Farzin Tayefeh, M.D., wrote a letter dated January 12, 2021. Dr. Tayefeh is an anesthesiologist. He has known petitioner since petitioner was a college student, and is now petitioner's husband. Dr. Tayefeh described, consistent with petitioner's testimony, petitioner's struggles to overcome past trauma, come to terms with his HIV diagnosis, accept responsibility for his behavior, and improve himself. Dr. Tayefeh has never witnessed petitioner take illicit drugs. Dr. Tayefeh believes that petitioner is ready to resume the practice of medicine and able to comply with Board probation.

PETITIONER'S PLANS IF REINSTATEMENT IS GRANTED

42. Petitioner wants to resume the practice of medicine and feels that he could now successfully comply with the Board's probation requirements. If petitioner's license is reinstated on probation, he plans to practice outpatient anesthesiology. After completing probation, he would like to obtain hospital privileges.

LEGAL CONCLUSIONS

1. In a proceeding for the restoration of a license, the burden rests on the petitioner to prove that he or she is rehabilitated and entitled to have his or her license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392,

1398.) The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

2. Business and Professions Code section 2307, subdivision (b)(1), states that reinstatement petitions may be filed three years after an individual's license is revoked or surrendered. Petitioner filed his petition more than three years after revocation. The Board may consider this petition.

3. In determining whether to grant reinstatement, "all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability" may be considered. (Bus. & Prof. Code, § 2307, subd. (e).)

Factors considered in determining whether a licensee has been rehabilitated include: the nature and gravity of the misconduct; any subsequent misconduct; the amount of time that has elapsed; evidence of rehabilitation; and for cases involving a criminal conviction, total criminal record, compliance with probation, parole, or other sanctions, and evidence of dismissal proceedings under Penal Code section 1203.4. (Cal. Code Regs., tit. 16, §§ 1360.1 & 1360.2)

4. The primary purpose of this proceeding is to protect the public, not to punish the licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) This view is consistent with the Medical Practice Act, which provides that in exercising its disciplinary authority, the Board's highest priority is the protection of the public. (Bus. & Prof. Code, § 2229, subd. (a).)

Analysis

5. The above-described criteria have been considered to determine the outcome of petitioner's request for reinstatement.

Since the revocation of his license, petitioner has put forth significant effort to turn his life around. He has participated in weekly therapy for more than two years, has demonstrated insight into his past behavior and its root causes, and has developed more appropriate coping mechanisms for past trauma and ongoing life stressors. Petitioner's treating clinicians, friends, and colleagues describe him as a changed man.

Petitioner has also voluntarily participated in substance use monitoring, and has demonstrated the ability to comply with daily check-in requirements. The incidents of positive test results for methamphetamine are concerning and are not fully explained. However, the clinicians who have examined petitioner do not believe he has a substance use problem. Petitioner has investigated possible reasons for positive test results, and has made changes to his lifestyle in an attempt to eliminate false positives. Petitioner has had no positive test results for methamphetamine for more than a year.

A recent psychiatric evaluation and comprehensive clinical competence assessment have found petitioner fit to practice medicine safely. Petitioner has also worked to refresh and maintain his medical knowledge.

Overall, petitioner has demonstrated sufficient rehabilitation that allowing him to resume the practice of medicine, subject to the following terms and conditions for a probationary period of five years, would not be inconsistent with public protection.

ORDER

The petition by Babak Abedi for reinstatement to licensure is granted. Physician's and Surgeon's Certificate No. A 95902 is reinstated but immediately revoked. The revocation is stayed, however, and petitioner is placed on probation for five years, on the following conditions.

1. Controlled Substances - Abstain From Use

Petitioner 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 petitioner by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, petitioner 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 petitioner 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, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner 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 petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall

provide petitioner with a hearing within 30 days of the request, unless petitioner 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 petitioner with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

2. Alcohol - Abstain From Use

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

If petitioner has a confirmed positive biological fluid test for alcohol, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner 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 petitioner requests a hearing on the

accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner 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 petitioner with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

3. Biological Fluid Testing

Petitioner shall immediately submit to biological fluid testing, at petitioner'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. Prior to practicing medicine, petitioner 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. The contract 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. Petitioner 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 petitioner.

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

petitioner with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

4. Education Course

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

5. 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, petitioner 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. Petitioner may request that the psychiatric evaluation conducted by the PACE Program in 2021 be accepted towards the fulfillment of this requirement. Petitioner shall pay the cost of all psychiatric evaluations and psychological testing.

Petitioner 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.

6. Psychotherapy

Within 60 calendar days of the effective date of this Decision, petitioner 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, petitioner 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. Petitioner shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

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

until the Board determines that petitioner is mentally fit to resume the practice of medicine without restrictions.

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

7. Practice Monitoring

Within 30 calendar days of the effective date of this Decision, petitioner shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. The practice monitor shall have no prior or current business or personal relationship with petitioner, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in petitioner's field of practice, and must agree to serve as petitioner's monitor. Petitioner shall pay all monitoring costs.

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

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, petitioner's practice shall be monitored by the approved

monitor. Petitioner shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If petitioner fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

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

If the monitor resigns or is no longer available, petitioner shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If petitioner fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

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

8. Solo Practice Prohibition

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

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

If, during the course of the probation, petitioner's practice setting changes and petitioner is no longer practicing in a setting in compliance with this Decision, petitioner shall notify the Board or its designee within five calendar days of the practice setting change. If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so

notified. Petitioner shall not resume practice until an appropriate practice setting is established.

9. Notification

Within seven days of the effective date of this decision, petitioner shall provide a true copy of this decision and the accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner, at any other facility where petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to petitioner. Petitioner shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

10. Supervision of Physician Assistants and Advanced Practice Nurses

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

11. Obey All Laws

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

12. Quarterly Declarations

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

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

13. General Probation Requirements

Compliance with Probation Unit: Petitioner shall comply with the Board's probation unit.

Address Changes: Petitioner shall, at all times, keep the Board informed of petitioner's business and residence addresses, email address (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, subdivision (b).

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

License Renewal: Petitioner shall maintain a current and renewed California physician's and surgeon's certificate.

Travel or Residence Outside California: Petitioner shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty calendar days.

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

14. Interview with the Board or its Designee

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

15. Non-Practice While on Probation

Petitioner shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If petitioner resides in California and is considered to be in non-practice, petitioner shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve petitioner from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of

that state or jurisdiction shall not be considered non practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event petitioner's period of non-practice while on probation exceeds 18 calendar months, petitioner shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Petitioner's period of non-practice while on probation shall not exceed two years.

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

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

16. Completion of Probation

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

17. Violation of Probation

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

18. License Surrender

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

19. Probation Monitoring Costs

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

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

DATE: 08/05/2022

HOLLY M. BALDWIN
Administrative Law Judge
Office of Administrative Hearings