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

In the Matter of the Petition to Revoke Probation Against: **Lawrence Hart Livingston, M.D.** **Physician's and Surgeon's Certificate No. G 27982** **Respondent.**	**Case No. 800-2021-083823**

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 October 3, 2022.

IT IS SO ORDERED September 2, 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 to Revoke Probation Against:

LAWRENCE HART LIVINGSTON, M.D.,

Physician's and Surgeon's Certificate No. G 27982

Respondent.

Agency Case No. 800-2021-083823

OAH No. 2022030924

PROPOSED DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on June 1, 2022, by videoconference.

Deputy Attorney General Kendra S. Rivas represented complainant William Prasifka, Executive Director of the Medical Board of California.

Attorney Marvin Firestone, M.D., represented respondent Lawrence Hart Livingston, M.D., who was present at hearing.

The record closed and the matter was submitted for decision on June 1, 2022.

FACTUAL FINDINGS

Background, Procedural History, and Probation Conditions

1. On August 28, 1974, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number G 27982 to Lawrence Hart Livingston, M.D. (respondent). The certificate was renewed and current as of December 1, 2021, with a scheduled expiration date of February 28, 2023.

2. In a prior disciplinary action, the Board issued a decision effective April 13, 2012, accepting the surrender of respondent's certificate, in resolution of an accusation alleging cause for discipline based on general unprofessional conduct, unprofessional conduct regarding prescription of controlled substances, false prescription, and dishonest/corrupt acts. Respondent's stipulated surrender included his agreement that if he later petitioned for reinstatement, the allegations would be deemed admitted by him.

3. The above discipline was based on respondent writing prescriptions for controlled substances for a patient and her husband (who was not a patient), and then purchasing the controlled substances from them for his own use. Respondent was subsequently convicted in 2014 of six felony counts involving appropriation of prescriptions for controlled substances from a patient and writing prescriptions to a person who was not a patient. He was placed on formal probation for three years and ordered to attend residential treatment for substance abuse.

4. In January 2019, respondent petitioned for reinstatement of his certificate. After an administrative hearing, the Board adopted a proposed decision and order, effective September 11, 2019, granting reinstatement of respondent's

certificate, immediately revoking the certificate, staying the revocation, and placing respondent on probation for three years subject to terms and conditions of probation.

5. A petition to revoke probation was filed on February 14, 2020. On July 14, 2020, a Board decision and order became effective, denying the petition to revoke probation and continuing respondent on probation for an additional three years on the same terms and conditions.

6. The 2019 decision reinstating respondent's certificate and placing him on probation found that respondent had been sober for six years and was sufficiently rehabilitated to warrant reinstatement, but also found that public protection required that respondent successfully complete a clinical competence assessment program since he had not practiced medicine since 2012.

7. Condition 1 (Clinical Competence Assessment Program) of respondent's probation requires him to successfully complete a clinical competence assessment program, including a comprehensive assessment of his physical and mental health, and the six general domains of clinical competence (as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties) pertaining to his current or intended area of practice. Condition 1 provides that the clinical competence assessment program will submit a report to the Board after the evaluation, stating whether respondent has demonstrated the ability to practice safely and independently. Condition 1 further provides that the determination as to whether respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction. Lastly, Condition 1 prohibits respondent from practicing medicine until he has successfully completed the program.

8. Condition 19 (Violation of Probation) provides that failure to fully comply with any term or condition of probation is a violation of probation, and that after giving respondent notice and an opportunity to be heard, the Board may revoke probation and carry out the disciplinary order that was stayed (revocation).

9. The Board issued a cease practice order on December 7, 2021, based on respondent's failure to complete the clinical competence assessment program successfully (as described more fully in Factual Findings 12 through 23).

10. On February 24, 2022, complainant William Prasifka, Executive Director of the Board, issued a petition to revoke respondent's probation. Complainant alleges that respondent has violated his probation by failing to complete the clinical competence assessment program successfully.

11. Respondent filed a notice of defense, and this hearing followed.

PACE Clinical Competence Assessment

12. Respondent underwent a clinical competence assessment at the University of California, San Diego (UCSD), School of Medicine's Physician Assessment and Clinical Education (PACE) Program. The evaluation included virtual assessments on October 27, 2020, and June 8, 2021, and an in-person assessment on June 11, 2021. Members of the PACE Program staff conducted a case conference on September 24, 2021, to review the results of respondent's assessments and reach a determination. The PACE Program issued a report on November 15, 2021, containing a discussion of the evaluators' findings, and a conclusion that respondent's overall performance on the assessment was "FAIL-CATEGORY 4," signifying a "poor performance that is not compatible with overall physician competency and safe practice."

13. David Bazzo, M.D., the director of the PACE Program, testified at hearing. Dr. Bazzo participated in the case conference regarding respondent, reviewed all of the results from the assessment, and agrees with the PACE Program's determination.

14. Dr. Bazzo explained that the PACE Program designs an assessment specific to the particular physician's training, experience, and area of practice. The program sends the physician an intake package in advance, containing forms and a number of self-report questionnaires to be completed, a schedule for the assessments, and an information sheet about studying in the intended area of practice. The program also assigns each physician a case manager as a resource to explain the process and answer questions.

15. Prior to surrendering his license in 2012, respondent practiced as an emergency medicine and internal medicine physician. In his reinstatement petition, and in his self-report responses to the PACE Program, respondent stated that he would like to practice in addiction medicine, to assist others based on his own experiences with substance abuse. Accordingly, the PACE Program evaluated respondent's competence to practice in the area of addiction medicine.

16. The assessment of respondent included a physical examination, physical and mental health screening, a cognitive assessment instrument, a comprehensive neuropsychological fitness for duty evaluation, a forensic psychiatric evaluation, an oral clinical examination in the area of addiction medicine regarding eight patient cases, and a Standardized Patient Evaluation (SPE) for three patient encounters.

PHYSICAL AND MENTAL ASSESSMENTS

17. Cecilia Gutierrez, M.D., a clinical professor of family medicine, conducted a physical examination of respondent on June 11, 2021. Dr. Gutierrez did not find any

health concerns that would prevent respondent from practicing safely, although she note that he has several health conditions that require ongoing monitoring. Respondent scored in the normal range on a screening for mild cognitive dysfunction.

18. On June 11, 2021, respondent underwent a comprehensive neuropsychological fitness for duty evaluation conducted by William Perry, Ph.D., a professor and vice-chair of the Department of Psychiatry. Dr. Perry found that respondent's general level of intellectual functioning was within the above-average range, and that overall, he demonstrated intact performance across the cognitive domains assessed. Dr. Perry noted that given respondent's age of 74 and slightly lower scores on some areas relative to a younger general population, he may consider retesting in 12 to 24 months to assess any change in cognitive abilities.

19. On October 27, 2020, respondent underwent a forensic psychiatric evaluation by Kai McDonald, M.D., a PACE faculty psychiatrist. Dr. McDonald made diagnoses of: (1) opiate use disorder, in sustained remission; (2) benzodiazepine use disorder, in sustained remission; (3) stimulant use disorder, in sustained remission; and (4) bipolar disorder NOS.

Dr. McDonald expressed "some ambivalence" about respondent's fitness for duty, noting that while he had documented long-term recovery from addiction and apparent psychiatric stability, respondent approached the evaluation in a "somewhat flippant, almost careless manner." Dr. McDonald also was concerned that respondent had not prepared for evaluation in the area of medicine he intended to practice (addiction medicine), but found this issue could be resolved by discipline-specific testing. Dr. McDonald noted: "given [respondent's] history of poor boundaries with prescribing and patients, I point out that patients with substance use disorders need exceptionally careful providers, able to repeatedly set clear, firm limits."

Despite these concerns, Dr. McDonald concluded that from a psychiatric perspective, respondent was fit for duty. He made the following recommendations: respondent should receive discipline-specific testing of his knowledge of addiction medicine and mental health topics; respondent should practice in a shared practice setting and receive active supervision and mentoring for the first year of practice; and respondent should continue his current treatment program of medications, recovery support meetings, and monitoring of abstinence for at least the first year of practice.

20. Respondent's clinical skills were assessed by Steven Huege, M.D., a clinical professor of psychiatry, on June 8, 2021, via oral clinical examination and SPE's.

ORAL CLINICAL EXAMINATION IN ADDICTION MEDICINE

21. Dr. Huege examined respondent on eight patient cases, and scored his performance for each case on a scale of 1 to 9 (scores of 1-3 are unsatisfactory/failing, scores of 4-6 are satisfactory/passing, and scores 7-9 are superior). Respondent received failing scores of 2 and 3 for two cases, marginally passing scores of 4 on two cases, and an overall average score of 4.6 (in the low to mid-range of satisfactory).

On Case 1, respondent received a failing score of 3. The patient presented with bipolar type I depression and worsening complaints of fatigue and sleep problems. A question in this case indicated that the patient asked if stimulants might help her. Respondent initially stated that for patients with bipolar disorder, he did not endorse using stimulants, but after being informed that the patient became more insistent in her request for stimulants, respondent backed down and indicated he might prescribe a low-dose trial. Dr. Huege found this acquiescence to patient pressure "worrisome, especially in light of his history of diversion of stimulants." Dr. Huege also found that respondent was unable to describe a thorough sleep assessment without prompting.

Lastly, respondent advocated for the use of antidepressants for this patient, even though she did not endorse symptoms of major depression, and without discussing the risk of such medication inducing mania.

On Case 3, respondent received a failing score of 2. The patient had a history of mood swings and agitation, presented after getting into an altercation at work with a colleague, and reported moderate alcohol usage of two to three beers daily. Dr. Huege found that respondent did well on some aspects of this case, but respondent received a failing score because he reversed his position on prescribing alprazolam when faced with increased pressure from the patient.

While Dr. Huege found that respondent had an overall passing score on the Oral Clinical Examination, he expressed several concerns. Dr. Huege noted that respondent was defensive when asked questions about psychopathology, saying "I'm not a psychiatrist," even though these questions were related to patients with substance use disorders, and there is often significant psychiatric comorbidity in the patient population that respondent wishes to treat. Dr. Huege was also concerned by respondent's lack of detail in presenting certain cases and commented that respondent's "unwillingness to engage in the spirit inquisitiveness of the exam process was disappointing and unexpected."

Dr. Huege was most troubled by respondent's willingness to back down on initial stances of not prescribing controlled substances when faced with patient pushback, noting that "[t]his suggests possible difficulty with boundaries and limits" and that this was a factor in the misconduct leading to respondent's license surrender.

Dr. Huege made the following recommendations, given the length of time respondent had been absent from practice and the concerns about boundaries: a

formal course on patient boundaries; review courses on psychopharmacology and pain management; peer supervision from an addiction medicine provider; no solo practice without proper oversight and monitoring; and education on the role of CURES reports.

STANDARDIZED PATIENT EVALUATIONS

22. Respondent completed three SPE's, which were recorded and reviewed by Dr. Huege, who evaluated respondent across six areas of clinical competence. Respondent failed two out of three SPE's.

Case 1 was a 72-year-old woman who presented with persisting depression despite treatment with antidepressant medication. Respondent recommended treating the patient's arthritis pain with an opiate, suggested a trial of a benzodiazepine, and recommended changing her antidepressant medication and adding two other medications including a high dose of trazodone. Dr. Huege concluded: "Given that respondent's treatment recommendations have the potential to cause serious harm to this patient: polypharmacy, increased fall risk, dependency, and sedation, his performance on case 1 was failing. Additionally, his documentation for this patient is quite limited and resembles a cursory summary to oneself rather than a sufficient intake note." He also had criticisms of respondent's patient interviewing technique.

Case 2 was a 50-year-old man who reported symptoms consistent with PTSD and major depression, and was coping with the death of his wife. Dr. Huege found that respondent's psychiatric history taking was "woefully inadequate," that his medication recommendations were concerning, and that his failure to suggest therapy for the patient's depression and grief was "substandard" and a "major oversight." Dr. Huege also assessed respondent's documentation as "very sparse notes that are marginally acceptable at best." He concluded: "Overall, [respondent's] performance on this case

does not warrant a passing score. While he avoided any profound mistakes, his lack of detail and attention in taking a psychiatric history and disorganized interviewing style do not meet the standards one would expect of a competent physician."

Case 3 was a 45-year-old woman who presented with anxiety and panic attacks, and was taking alprazolam and drinking excessively. Dr. Huege assessed this as respondent's strongest case, but found it "still represents, at best, a low passing performance." He found respondent did well on some parts of the patient interview, but his failure to take a more detailed psychiatric history was a major weakness. Respondent offered "relatively tepid guidance to reduce her drinking," which did not include discussion of 12-step meetings, lab studies, or any pharmacological treatment. Dr. Huege was also concerned by respondent's recommendation to increase the dose of alprazolam (a short-acting benzodiazepine with significant abuse potential) and to use it on an as-needed basis. He found the documentation sparse and limited.

Dr. Huege concluded in summary: "I have serious concerns about his competency to independently and safely practice addiction medicine. For a provider who himself has struggled with substance abuse and has had professional sanctions related to inappropriate prescribing of controlled medications, his seemingly default practice of prescribing medications with significant abuse potential, including to a patient (case 3) who is drinking heavily, raises a number of red flags. His treatment recommendations in case 1, which would lead to polypharmacy in a geriatric patient, pose a serious risk of harm." Dr. Huege criticized respondent's interview style, and found that respondent's "assessments seem more suited to a fourth-year medical student than a seasoned clinician."

Dr. Huege made the following recommendations: continuing education courses on psychopharmacology and management of anxiety and mood disorders; education

on prescribing in older adults and risks of polypharmacy; a ban on or independent monitoring of prescribing controlled substances; and a course or coaching to sharpen interview skills and engage in more in-depth patient encounters.

PACE SUMMARY

23. The PACE Program's overall summary found that respondent's performance was unsatisfactory. On the oral clinical examination, respondent failed two cases, his performance on the remaining cases demonstrated lapses, and he "demonstrated potentially dangerous prescribing tendencies and a concerning lack of patient boundaries surrounding controlled substances." Respondent's SPE performance was substandard overall, and demonstrated unsafe prescribing practices and inadequate medical interviewing and patient assessment.

The evaluators concluded: "Based on our evaluation, we do not feel [respondent] currently possesses the ability to practice medicine safely. He demonstrated significant flaws across multiple evaluation formats, which have the potential to lead to patient harm." The evaluators' recommendations for remediation were ideally a formal residency/mini-residency, preceptorship, or observership, or if this was not possible, at least 6 to 12 months of intensive self-study for multiple hours per week, at the level of a medical student or resident. They recommended a repeat clinical competence evaluation after such remediation and retraining.

Respondent's Additional Evidence

24. Respondent described his history of addiction to pain medication, his treatment for substance abuse, and his ongoing activities to maintain sobriety. Respondent has been sober since March 10, 2013.

25. Respondent submitted a copy of a psychiatric evaluation by Richard J. Corelli, M.D., dated January 12, 2020, which was performed at the Board's request. Dr. Corelli concluded that respondent's ability to practice medicine safely was not impaired by his mental illness, as long as respondent remains sober.

26. Respondent provided copies of quarterly reports submitted to the Board by Ginny Estupinian, Ph.D., his psychotherapist. Respondent has seen Dr. Estupinian every two to three weeks since August 2020 for sobriety maintenance and mood management. Dr. Estupinian reported that respondent's mood has been stable with medications and psychotherapy and that he remains sober.

27. Respondent incorrectly thought he would be evaluated by the PACE Program in the area of emergency medicine, and that was the area that he studied in Fall 2020. He denied being told in advance that he would be evaluated in addiction medicine, his desired practice area. At his October 2020 psychiatric evaluation, he was informed that the PACE assessment would be in addiction medicine. Respondent then began studying addiction medicine, and studied for about 150 hours before June 2021 (about 20 hours a month).

28. Respondent has not pursued any of the PACE Program evaluators' recommendations for remediation. He has been waiting for a decision on this petition. Upon reflection, respondent agrees with the concerns raised by the PACE Program evaluators about his prescribing practices and medical interviewing and assessment skills. He expressed willingness to engage in further study.

29. Respondent submitted certificates for completing an eight-hour course on understanding addiction in April 2019 (prior to his reinstatement), and an eight-hour online course about medication-assisted treatment of addiction, on an

unspecified date. Respondent stated that he has taken a 40-hour course to prepare for the addiction medicine board examination; he did not provide documentation of this.

30. Stephen M. Stein, M.D., testified at hearing and wrote a letter dated April 28, 2022. Dr. Stein has been board-certified in addiction medicine since 2009. He is semi-retired, currently working two days per week in private practice. Dr. Stein has treated respondent since 2013 for bipolar II disorder and substance use disorder. He believes respondent will continue to remain sober.

Since March 2022, Dr. Stein has allowed respondent to observe his addiction medicine practice twice a week, with the consent of patients (some of whom volunteered that they recognized respondent from 12-step meetings). Dr. Stein testified that he would support allowing respondent to practice medicine in a limited capacity, with respondent treating Dr. Stein's ongoing patients, not prescribing Schedule II drugs, and not making changes to patient prescriptions. Dr. Stein would not send new patients to respondent yet, because he has not practiced since 2012 and is "rusty." Dr. Stein also concurred with the PACE Program that respondent needs additional education before treating psychiatric patients.

31. Saundra Mills, M.D., testified at hearing. She worked with respondent in an emergency department for nearly 20 years, describing him as a competent and compassionate emergency medicine doctor. She stated respondent has a sincere desire to "be useful" and practice medicine again. She was aware of his history of addiction. She was not aware respondent failed a clinical competence assessment.

32. Kevin Fischer, M.D., testified in support of respondent and wrote a letter dated April 30, 2022. Dr. Fischer met respondent in 2013, when they were both in a residential treatment program for substance abuse, and they have remained friends

since then. Dr. Fischer described respondent's ongoing commitment to sobriety. He believes respondent can continue to contribute professionally and hopes he can return to practicing medicine. Dr. Fischer is aware of the reason for this petition.

33. Carol Cramer testified in support of respondent and wrote a letter dated April 29, 2022. Cramer has known respondent for a year, and called him her best friend and companion. She described respondent as open-minded, compassionate, and "sweetly naïve" in trusting other people. She confirmed respondent's ongoing sobriety. She is aware of this petition's allegations.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving cause to revoke probation, by a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441.)

2. Respondent violated Condition 1 of his probation by failing to complete the PACE clinical competence assessment program successfully. (Factual Findings 12 & 23.) Cause for revocation of probation has been established.

3. The Board's Manual of Disciplinary Orders and Disciplinary Guidelines advises: "It is the expectation of the Medical Board of California that the appropriate penalty for a physician who did not successfully complete a clinical competence assessment program ordered as part of his or her probation is revocation."

4. In the decision reinstating respondent's certificate and placing him on probation, the administrative law judge found that public protection required that respondent successfully complete a clinical competence assessment program because

it had then been seven years since he practiced medicine. (It has now been more than 10 years.) Respondent wants to resume practice in a new area, addiction medicine, and his clinical competence was assessed in that area, which he should have expected. The reasons that respondent failed the clinical competence assessment, coupled with the reasons he originally faced discipline and surrendered his license, are a cause for serious concern and show he cannot practice safely at this time. Respondent conceded that the concerns of the PACE Program evaluators are valid, but he has apparently not formulated any plan for remediation other than shadowing his own treating doctor twice a week. Even Dr. Stein does not believe respondent is currently competent to practice addiction medicine independently.

The Board cannot allow respondent to resume practice without assurance that he is safe to do so. Respondent requested to be continued on probation and given another opportunity to pass the PACE Program's clinical competence assessment. However, upon consideration of the record as a whole, the recommendation of the Guidelines for revocation of probation is the appropriate outcome in this case.

ORDER

The petition to revoke probation concerning Physician's and Surgeon's Certificate No. G 27982, held by respondent Lawrence Hart Livingston, M.D., is granted. The stay of revocation is lifted and the certificate is revoked.

DATE: 06/29/2022

HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings

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

In the Matter of the Petition to Revoke Probation Against: **LAWRENCE HART LIVINGSTON, M.D.** **336 Hidden Lane** **Santa Cruz, CA 95060-1276** **Physician's and Surgeon's Certificate No. G 27982,** Respondent.	Case No. 800-2021-083823 **PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

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

2. On August 28, 1974, the Board issued Physician's and Surgeon's Certificate Number G 27982 to Lawrence Hart Livingston, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on February 28, 2023, unless renewed.

3. On March 9, 2012, Complainant filed Accusation No. 03-2011-216473, against Respondent, alleging cause for discipline based on general unprofessional conduct, unprofessional conduct regarding prescription of controlled substances, false prescriptions, and dishonest/corrupt acts. In a Decision effective April 13, 2012, the Board accepted the surrender of Respondent's physician's and surgeon's certificate. Attached as Exhibit A is a copy of the Decision in Case No. 03-2011-216473. On September 11, 2019, the Board's Decision in Case No. 800-2019-052119, became effective, granting reinstatement of Respondent's license, subject to a three-year probation with certain terms and conditions. Attached as Exhibit B is a copy of the Decision in Case No. 800-2019-052119 (2019 Decision).

JURISDICTION

4. This Petition to Revoke Probation 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.

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2228 of the Code states:

> The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:
>
> (a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.
>
> (b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.
>
> (c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

(d) Providing the option of alternative community service in cases other than violations relating to quality of care.

CAUSE TO REVOKE PROBATION

(Failed Clinical Competence Assessment Program)

7. Condition 1 of the Board's 2019 Decision required Respondent to enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent was to successfully complete the program, which consisted of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The 2019 Decision provided that the determination whether Respondent successfully completed the assessment was solely within the program's jurisdiction. The 2019 Decision provided that Respondent was not to practice medicine until he successfully completed the program and was notified by the Board or its designee in writing. The 2019 Decision further provided that Respondent's failure to comply with the conditions of the probation would constitute a violation of that probation, for which the Board may revoke the Respondent's probation and carry out the order of license revocation that was stayed.

8. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 1, referenced above. Respondent underwent a clinical competency assessment at the University of San Diego Physician Assessment and Clinical Education (PACE) program on October 27, 2020; June 8, 2021; and June 11, 2021. On November 15, 2021, the PACE program provided a report to the Board indicating that Respondent's results were "fail-Category 4," which signifies a poor performance that is not compatible with overall physician competency and safe practice; and reflects major, significant deficiencies in clinical competence.

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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. G 27982, issued to Respondent Lawrence Hart Livingston, M.D.;

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

3. Ordering Respondent Lawrence Hart Livingston, M.D., if placed on probation, to pay the costs of the probation monitoring; and

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

DATED: FEB 24 2022

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

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Exhibit A

Decision and Order

Medical Board of California Case No. 03-2011-216473

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

In the Matter of the Accusation Against:	)	
LAWRENCE H. LIVINGSTON, M.D.	)	Case No. 03-2011-216473
Physician's and Surgeon's Certificate No. G-27982	)	
Respondent	)	

DECISION

The attached Stipulated Surrender of License 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 April 13, 2012.

IT IS SO ORDERED April 6, 2012.

MEDICAL BOARD OF CALIFORNIA

By: _____
Linda K. Whitney
Executive Director

MEDICAL BOARD OF CALIFORNIA
I do hereby certify that this document is a true and correct copy of the original on file in this office.
S. Woods
Signature
For Custodian of Record
Title
12/1/2021
Date

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

In the Matter of the Accusation Against: **LAWRENCE H. LIVINGSTON, M.D.** 336 Hidden Lane Santa Cruz, CA 95060 Physician's and Surgeon's Certificate No. G27982 Respondent.	Case No. 03-2011-216473 **STIPULATED SURRENDER OF LICENSE**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of California. This action has at all times been maintained solely in the official capacity of the Executive Director of the Medical Board of California (Board), who is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Jane Zack Simon, Deputy Attorney General.

2. Lawrence H. Livingston, M.D. (Respondent) is represented by Edward A. Hinshaw of Hinshaw, Marsh, Still & Hinshaw, 12901 Saratoga Avenue, Saratoga, CA 95070-9998.

3. Respondent has received, read, discussed with counsel, and understands the Accusation which is presently on file and pending in case number 03-2011-216473 (the "Accusation") a copy of which is attached as Exhibit A.

4. Respondent has carefully read, discussed with counsel and understands the charges and allegations in the Accusation. Respondent also has carefully read, discussed with counsel, and understands the effects of this Stipulated Surrender of License.

5. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

6. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

7. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations contained in the Accusation and that he has thereby subjected his license to disciplinary action. Respondent wishes to surrender his physician's and surgeon's certificate at this time.

8. Pursuant to section 2224(b) of the Business and Professions Code, this Stipulation for Surrender of License shall be subject to the approval of the Board. Respondent understands and agrees that the Medical Board's staff and counsel for Complainant may communicate directly with the Board regarding this Stipulation, without notice to or participation by Respondent or his counsel. By signing this Stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the Stipulation prior to the time the Board considers and acts upon it. In the event that this Stipulation is rejected for any reason by the Board, it will be of no force or effect for either party. The Board will not be disqualified from further action in this matter by virtue of its consideration of this Stipulation.

9. Upon acceptance of this Stipulation by the Board, Respondent understands that he will no longer be permitted to practice as a physician and surgeon in California, and also agrees to surrender and cause to be delivered to the Board any license and wallet certificate in his possession before the effective date of the decision.

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

11. Respondent fully understands and agrees that if he ever files an application for relicensure or reinstatement in the State of California, the Board shall treat it as a petition for reinstatement, and Respondent must comply with all laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed.

12. Respondent understands that he may not petition for reinstatement as a physician and surgeon for a period of three (3) years from the effective date of his surrender. Information gathered in connection with Accusation number 03-2011-216473 may be considered by the Board in determining whether or not to grant the petition for reinstatement. For the purposes of the reinstatement hearing, the allegations contained in Accusation number 03-2011-216473 shall be deemed to be admitted by Respondent, and Respondent waives any and all defenses based on a claim of laches or the statute of limitations.

13. The parties understand and agree that facsimile or electronic copies of this Stipulated Surrender of License, including facsimile or electronic signatures thereto, shall have the same force and effect as the originals.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License. I enter into it freely and voluntarily and with full knowledge of its force and effect, do hereby surrender my Physician and Surgeon's Certificate Number G27982 to the Medical Board of California, for its formal acceptance. By signing this Stipulated Surrender of License, I recognize that upon its formal acceptance by the Board, I will lose all rights and privileges to practice as a physician and

surgeon in the State of California and I also will cause to be delivered to the Board any license and wallet certificate in my possession before the effective date of the decision.

DATED: March 20, 2012

LAWRENCE H. LIVINGSTON, M.D.
Respondent

I have read and fully discussed with Respondent Lawrence H. Livingston, M.D. the terms and conditions and other matters contained in the above Stipulated Surrender of License. I approve its form and content.

DATED: March 20, 2012

EDWARD A. HINSHAW
Hinshaw, Marsh, Still & Hinshaw

Attorneys for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 3/29/2012

KAMALA D. HARRIS
Attorney General of California

JANE ZACK SIMON
Deputy Attorney General

Attorneys for Complainant

Exhibit B

Decision and Order

Medical Board of California Case No. 800-2019-052119

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

In the Matter of the Petition for Reinstatement of Surrendered Certificate of:	)	
LAWRENCE HART LIVINGSTON	)	Case No. 800-2019-052119
Physician's and Surgeon's Certificate No. G27982	)	OAH No. 2019060668
Petitioner.	)	

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 11, 2019.

IT IS SO ORDERED: August 12, 2019.

MEDICAL BOARD OF CALIFORNIA

Ronald H Lewis, MD

Ronald Lewis, M.D., Chair
Panel A

MEDICAL BOARD OF CALIFORNIA
I do hereby certify that this document is a true and correct copy of the original on file in this office.
S. Wells
Signature
for Custodian of Records
Title
12/1/2021
Date

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

In the Matter of the Petition for Reinstatement of Surrendered Certificate of:	Case No. 800-2019-052119
LAWRENCE HART LIVINGSTON,	OAH No. 2019060668
Petitioner.	

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on July 8, 2019, in Oakland, California.

Certified Law Student Sean Frawley represented the Office of the Attorney General, Department of Justice. Deputy Attorney General Brenda P. Reyes was also present.

Petitioner Lawrence Hart Livingston represented himself.

The matter was submitted for decision on July 8, 2019.

FACTUAL FINDINGS

Procedural History

1. On August 28, 1974, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 27982 to Lawrence Hart Livingston (petitioner).

2. On March 9, 2012, the Board filed an accusation against petitioner. The misconduct alleged in the accusation involved a patient petitioner treated in 2011. Petitioner wrote prescriptions for opiates, benzodiazepines and Adderall for the patient and her husband (who was not his patient), then purchased the controlled substances from them for his own use. The patient sued petitioner for malpractice and his misconduct was reported to the Board. During a tape recorded pretext telephone call between petitioner and the patient, petitioner advised the patient to lie to the Board to protect him. During petitioner's November 2011 Board interview, he denied his misconduct and described his patient as a

drug-seeking, mentally deteriorating patient who engaged in bizarre, hysterical, hostile, inappropriate and seductive behavior. On April 6, 2012, the Board adopted as its decision a stipulated surrender of petitioner's license, effective April 13, 2012.

3. In December 2014, in the Superior Court of California, County of Santa Clara, petitioner pled guilty to six felony counts involving the appropriation of prescriptions for controlled substances from a patient, and writing prescriptions to an individual who was not a patient. Imposition of sentence was suspended and petitioner was placed on formal probation for a period of three years on conditions that included residential treatment for substance abuse.

4. On January 15, 2019, petitioner signed a petition for reinstatement of his surrendered certificate, and this hearing followed.

Petitioner's Education and Employment History

5. Petitioner attended medical school at the University of California, San Francisco from 1969 to 1973. He completed a residency in internal medicine at Highland Hospital in 1976. Petitioner was board certified in internal medicine in 1976, and in emergency medicine in 1985. Petitioner lost his board certifications after surrendering his license in 2012.

6. Petitioner worked as an emergency room physician in various hospitals in the Bay Area, Santa Cruz, Gilroy and Modesto areas between 1976 and 2009. He worked at Saratoga Medical Clinic from 2009 to 2012.

Substance Abuse History and Treatment

7. Petitioner has a lengthy substance abuse history. He first used Flurazepam[1] and Oxycodone[2] in 1968, at age 21. He also has a history of cocaine and marijuana use.

8. In 1981, petitioner's hip was shattered during a ski accident. He has undergone four to five hip surgeries, culminating with a hip replacement in 2004. Petitioner became addicted to prescribed opiate medication, including Fentanyl[3] patches, following the injury.

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[1] Flurazepam, sold under the brand name Dalmane, is a benzodiazepine and a Schedule IV controlled substance pursuant to Health and Safety Code section 11057.

[2] Oxycodone is an opiate medication; it is a Schedule II controlled substance pursuant to Health and Safety Code section 11055.

[3] Fentanyl is an opioid analgesic and a Schedule II controlled substance pursuant to Health and Safety Code section 11055.

9. In 1983, petitioner was referred to the Board's substance abuse diversion program. He completed a 28-day residential treatment program for opiate and Flurazepam abuse as part of the program. He was clean and sober for approximately five years following the treatment. Petitioner successfully completed the five-year diversion program.

10. Petitioner was treated for depression and bipolar disorder by Richard Robinson, M.D., from 1986 to 2010. In 2008, petitioner reports that Dr. Robinson prescribed Adderall,[4] which prompted a manic episode. Petitioner began to act erratically and irrationally; he was overspending and had a disagreement with his partners where he worked in the emergency department at Doctors Hospital in Modesto. Petitioner left the practice and opened Saratoga Medical Clinic. It was at this clinic where petitioner's drug diversion led to his certificate surrender and the filing of criminal charges.

11. On March 10, 2013, on the advice of his criminal defense attorney, petitioner entered treatment at Hazelden Betty Ford Clinic in Oregon (Hazelden). Hazelden classified petitioner's substance abuse as severe. On entry, petitioner was dependent on Flurazepam, Fentanyl and Oxycodone; he had stopped using Adderall on his own in 2012. Petitioner went through detoxification and treatment and remained at the facility for 90 days; he successfully completed the program on June 4, 2013. Petitioner's sobriety date is March 10, 2013.

12. On August 7, 2013, petitioner began treating with Stephen Stein, M.D., an addiction specialist. Dr. Stein treats petitioner's bipolar disorder and substance use disorder; he has treated petitioner with Abilify, Lamictal and Trazodone, which has been effective. Petitioner sees Dr. Stein every four to six months.

13. On January 6, 2015, as a condition of his criminal probation, petitioner entered a sober living environment run by Amicus House in San Jose. He resided there for three months, followed by six months of outpatient treatment. While in the sober living environment, petitioner abided by the rules, completed required assignments and was a positive influence on his house peers. He attended six 12-step meetings per week. While in the outpatient program, petitioner attended two two-hour group meetings and one one-hour individual counseling session, and three 12-step meetings each week. While participating in the Amicus House programs, petitioner submitted to random urinalysis testing; all test results were negative for controlled substances.

14. Lori Johnson, Executive Director of Amicus House, wrote a letter for the Board's consideration dated May 1, 2019. Johnson writes to confirm that since petitioner's discharge, petitioner continues to practice recovery tools necessary to ensure long-term sobriety. She reports that petitioner continues to attend meetings regularly, work with his sponsor, and entrench himself in the recovery process and community.

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[4] Adderall is a stimulant and a Schedule II controlled substance pursuant to Health and Safety Code section 11055.

Petitioner's Testimony

15. Petitioner accepts full responsibility for, and is humiliated by, his misconduct. Petitioner lost his marriage, his career and his financial stability as a result of his addiction. For the past five years he has survived financially on social security and by renting rooms in his home. Petitioner would like to return to the practice of medicine for financial reasons and because he misses it.

16. Petitioner continues to attend Narcotics Anonymous meetings twice per week. He works with his sponsor and has developed a circle of support within the recovery community. Petitioner's sister has recently moved in with him and is supportive of his recovery efforts.

17. Petitioner reports that he no longer craves controlled substances and feels stable in his recovery. He also feels that his bipolar disorder is stable and that his medication regimen has helped him maintain his mental health.

18. Dr. Stein wrote a letter for the Board's consideration dated August 28, 2018. Dr. Stein reports that petitioner has been diligent in working his recovery program and has maintained his sobriety during treatment. Dr. Stein reports that petitioner is compliant with taking his medications and has had no episodes of bipolar mania or depression during his treatment. Dr. Stein supports the reinstatement of petitioner's certificate. He believes petitioner is capable of functioning in a safe and competent manner.

19. Kevin D. Fischer, M.D., wrote a letter for the Board's consideration dated November 5, 2018. Dr. Fischer attended the Hazelden rehabilitation program while petitioner was at the treatment facility. Dr. Fischer is a board certified allopathic physician licensed in the state of Washington. Dr. Fischer and petitioner have maintained a friendship since leaving Hazelden and Dr. Fischer visits petitioner in his home several times each year. Dr. Fischer reports having observed a remarkable change in petitioner over the years. He notes that petitioner has accepted responsibility for his misconduct and has remained active as a positive influence with members of his sober living environment community. Dr. Fischer vouches for petitioner's continuing commitment to sobriety and ongoing participation in 12-step recovery. Dr. Fischer supports reinstatement of petitioner's certificate.

20. Petitioner has no intention of returning to emergency medicine. He would like to work with Dr. Stein assisting recovering addicts and reports that Dr. Stein has offered him a position in his office. Petitioner plans to pursue certification in addiction medicine.

21. Petitioner regularly reads Journal Watch online. Between April 16 and May 8, 2019, petitioner earned 23 hours of continuing medical education from Harvard Medical School in the subject of substance use disorders and understanding addiction.

22. Petitioner is agreeable to accepting and complying with a probationary certificate, including substance abuse treatment conditions and the engagement of a practice monitor.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 2307, subdivision (b)(1), reinstatement petitions may be filed three years after an individual surrenders his license for unprofessional conduct. Petitioner's petition is timely. (Factual Findings 2 and 4.)

2. In a proceeding for the restoration of a license, the burden rests on the petitioner to establish that he has rehabilitated himself and that he is entitled to have his 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.)

3. The primary purpose of this proceeding is to protect the public, while aiding petitioner in his continued rehabilitation. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; Bus. & Prof. Code, § 2229, subd. (a).)

4. Business and Professions Code section 2307, subdivision (e), provides that relevant factors to consider concerning a petition for reinstatement of a surrendered license include "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."

In addition, the Board has set forth the following factors to be considered: a) the nature and severity of the act(s) under consideration; b) evidence of any subsequent misconduct; c) the amount of time that has elapsed since commission of the underlying act(s); and d) evidence of rehabilitation. (Cal. Code Regs., tit. 16, § 1360.2)

5. Petitioner has abused controlled substances over many years during his lifetime. He successfully completed the Board's diversion program in the 1980's, but relapsed after being prescribed controlled substances following surgery. However, petitioner has been sober for six years and is actively engaged in efforts to ensure his continued sobriety. Petitioner has established that he is rehabilitated and safe to practice medicine under the heightened scrutiny of probation including substance abuse treatment conditions, a practice monitor and a prohibition on prescribing controlled substances. Because petitioner has not practiced since 2012, completion of a clinical competency assessment program prior to resuming practice is also warranted to protect the public. Good cause exists to reinstate petitioner's surrendered certificate under appropriate probationary conditions pursuant to Business and Professions Code section 2307.

ORDER

The petition of Lawrence Hart Livingston, M.D., for reinstatement of his surrendered license is granted. Physician's and Surgeon's Certificate No. G 27982 is reinstated. The certificate is immediately revoked and petitioner is placed on probation for three years on the following terms and conditions.

1. Clinical Competence Assessment Program

   Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Petitioner shall successfully complete the program not later than six months after petitioner's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

   The program shall consist of a comprehensive assessment of petitioner's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to petitioner's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require petitioner's on-site participation for a minimum of three and no more than five days as determined by the program for the assessment and clinical education evaluation. Petitioner shall pay all expenses associated with the clinical competence assessment program.

   At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the petitioner has demonstrated the ability to practice safely and independently. Based on petitioner's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with the program's recommendations.

   Determination as to whether petitioner successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

   Petitioner shall not practice medicine until petitioner has successfully completed the program and has been so notified by the Board or its designee in writing.

2. Controlled Substances – Total Restriction

Petitioner shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

Petitioner shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5.

If petitioner forms the medical opinion, after an appropriate prior examination and a medical indication, that a patient's medical condition may benefit from the use of marijuana, petitioner shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and a medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, petitioner shall inform the patient or the patient's primary caregiver that petitioner is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on petitioner's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Petitioner shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits petitioner from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

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

4. 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. The 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 the petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the petitioner with a hearing within 30 days of the request, unless the 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.

5. 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. The 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 the petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the petitioner with a hearing within 30 days of the request, unless the 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.

6. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Petitioner shall participate in and successfully complete that program. Petitioner shall provide any information and documents that the program may deem pertinent. Petitioner shall successfully complete the classroom component of the program not later than six months after petitioner's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Petitioner shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

7. 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.

Psychiatric evaluations conducted prior to the effective date of the Decision shall not 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.

8. 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.

9. Monitoring - Practice

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. A 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 Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), 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 (3) calendar days after being so notified. Petitioner shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) 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, billing appropriately or both. 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 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 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.

10. 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. The petitioner shall not resume practice until an appropriate practice setting is established.

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

11. Notification

Within seven days of the effective date of this Decision, the petitioner 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 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.

12. Supervision of Physician Assistants and Advanced Practice Nurses

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

13. 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.

14. 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 conditions of probation.

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

15. 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 license.

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 30 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.

16. 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.

17. 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 (2) years.

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

Periods of non-practice for a petitioner 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 and/or Controlled Substances; and Biological Fluid Testing.

18. Completion of Probation

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

19. Violation of Probation

Failure to fully comply 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.

20. 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 his or her 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.

21. 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.

DATED: July 18, 2019

DocuSigned by:
Jill Schlichtmann
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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings