

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

In the Matter of the Petition for Reinstatement of:

ALEXANDER POPOV, M.D., Petitioner.

Case No. 800-2021-080548

OAH No. 2022010501

DECISION AFTER NON-ADOPTION

Cindy F. Forman, Administrative Law Judge (AU), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 10, 2022.

Robert K. Weinberg, Attorney at Law, represented petitioner Alexander Popov.

Deputy Attorney General Ryan J. McEwan represented the Attorney General as authorized by Government Code section 11522.

The record was closed, and the matter submitted for decision on March 10, 2022. In response to Attorney General's motion, the Administrative Law Judge issued a protective

order sealing parts of Exhibits 6 and A. The Administrative Law Judge also redacted the names of witnesses and other personal identifying information from Exhibits 17 and 18.

On April 8, 2022, the Administrative Law Judge issued the Proposed Decision.

On June 7, 2022, Panel B (Panel) of the Board issued an Order of Non-Adoption of the Proposed Decision and afforded the parties the opportunity to submit written and oral argument. On August 18, 2022, Respondent submitted written argument, and on August 19, 2022, the Office of the Attorney General submitted written argument. On August 25, 2022, the Panel heard oral argument. The Board having read the administrative record and considered the submitted oral and written argument, the Panel now makes and enters its Decision after non-adoption as follows:

SUMMARY

Petitioner filed a Petition for Penalty Relief (Petition), seeking reinstatement of his physician's and surgeon's certificate. Petitioner surrendered his certificate in 2013 after a jury found him guilty in 2011 of felony health care fraud. Petitioner presented clear and convincing evidence of rehabilitation. The public will best be served by placing petitioner's reinstated license on probation with terms imposed to avoid any risk petitioner will re-offend and to ensure petitioner is competent to resume the practice of medicine considering his more than ten-year absence.

FACTUAL FINDINGS

Procedural History

1. On March 6, 2002, the Medical Board of California (Board) issued to

petitioner Physician and Surgeon certificate number A78244 (license). On September 19, 2012, the Board issued an order automatically suspending petitioner's license. On September 24, 2012, the Board filed an Accusation against petitioner seeking disciplinary action based on his 2011 criminal conviction under Business and Professions Code (Code) sections 490, 2234, and 2236. On November 6, 2012, petitioner stipulated to the surrender of his license. On February 27, 2013, the Board ordered the surrender of petitioner's license effective March 6, 2013.

2. On August 12, 2021, the Board received the Petition, signed by petitioner and seeking reinstatement of his license. This hearing followed.

Criminal and Disciplinary History

2011 CRIMINAL CONVICTION

3. The specifics of the criminal conviction triggering the suspension order and Accusation against petitioner and his subsequent license surrender are as follows: On July 8, 2011, a jury convicted petitioner in the United States District Court, Eastern District of California, case number 2:08-cr-00427, of one count of conspiracy to commit health care fraud and three counts of health care fraud in violation of 18 U.S.C. §§ 1347 and 1349, respectively, all Class C felonies. On January 12, 2012, the district court sentenced petitioner to 97 months' imprisonment, followed by three years of supervised release. The court remanded petitioner into the custody of the United States Marshall to start serving his prison sentence on that same date. The court also ordered petitioner to pay \$607,456.80 in restitution, jointly and severally, with his codefendant. Petitioner has complied with the payment terms in the restitution order. (Ex. 16.)

4. The facts and circumstances of the 2011 criminal conviction are that

between February 2006 and March 2007, petitioner, after joining a medical practice located in Sacramento, obtained a Medicare Provider Identification Number (PIN) and, using that PIN, signed medical records documenting services purportedly provided to patients he did not examine or treat. Billing claims for those services were submitted to Medicare, and petitioner received proceeds from Medicare for those services. The Grand Jury Superseding Indictment, filed against six doctors, including petitioner, and at least five other individuals, identified three instances in which petitioner signed forms indicating numerous medical services were provided to a patient at the Sacramento clinic even though petitioner did not have any personal interaction with the patient and the services petitioner listed on the forms were not provided to the patient. (Ex. 16, pp. A304-A305.) The Grand Jury Superseding Indictment also alleged, from May 2006 through February 2007, Medicare deposited approximately \$260,000 into a bank account petitioner set up to receive payments on claims submitted for services allegedly performed by him or incident to his Sacramento practice and petitioner withdrew approximately \$50,000 from the account. (Ex. 16, p. A299.)

5. The Medicare rules and regulations require procedures and services provided to Medicare patients to be reasonable and medically necessary, actually rendered by an approved Medicare provider, and rendered by the person identified in the billing as having rendered those services or procedures. The jury found petitioner conspired to violate and violated these rules by billing Medicare for services that were not performed, were not performed as billed, and were not performed by petitioner under whose PIN they were billed. (Ex. 16.) Petitioner committed these acts while his license was on probation for failure to disclose an earlier criminal conviction more fully described below in Factual Findings 6 and 7.

EARLIER CRIMINAL CONVICTIONS

1995 Criminal Conviction and Board Probation

6. Petitioner sustained two criminal convictions before his 2011 criminal conviction. On May 12, 1995, in the Superior Court of California, County of Los Angeles, case number 95M00272, the court convicted petitioner, upon his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b), driving under the influence (DUI) with over 0.08 percent by weight of alcohol in blood, a misdemeanor. The court placed petitioner on three years' summary probation and ordered him to perform 91 hours of community service, instead of paying a fine, pay fees of \$915, and take part in a 90-day counseling or treatment program. As of September 1, 1995, petitioner had paid all fines, completed his community service, and completed his DUI program. (Ex. 18.)

7. The facts and circumstances of the 1995 criminal conviction are that on January 14, 1995, sometime between 2:00 a.m. and 3:00 a.m., petitioner made a sharp right turn on a residential street, and due to his excessive speed, lost control of his car, sideswiped one car, and collided with another. According to the drivers and passengers in the other vehicles, petitioner then abandoned his car at the scene of the accident and walked away. Although the passengers sought medical care at the hospital for their injuries, there was no evidence the injuries were serious or long-lasting. Petitioner was arrested in his home, two blocks from the accident scene, after a breathalyzer test showed 0.15 and 0.14 blood alcohol concentration levels. Petitioner admitted to the police he hit the other vehicles but testified he only left the scene after he had checked to make sure the people in the other cars had not sustained injuries. (Ex. 18.)

8. Petitioner did not disclose the 1995 criminal conviction on his license application to the Board. As a result, the Board issued petitioner a probationary license for five years, subject to terms and conditions. On March 6, 2007, petitioner completed his license probation, and the Board fully restored his license. At the time of his license restoration, petitioner had not yet been arrested for his 2006-2007 health care fraud.

2010 Criminal Conviction

9. On March 15, 2010, in the Superior Court of California, County of Los Angeles, case number 9HY02231, the court convicted petitioner, on his plea of nolo contendere, of violating Penal Code sections 242-243, subdivision (e)(1), spousal battery, a misdemeanor. The court suspended the imposition of sentence and placed petitioner on summary probation for 36 months, with the following terms: serve one day in Los Angeles County Jail, less credit for one day, pay \$569 in court costs and fees; and pay restitution of \$100. The court barred petitioner from owning, using, or possessing any firearms, knives, or other concealable weapons. Additionally, the court ordered petitioner to complete a 52-week domestic violence treatment program and attend 26 Alcoholics Anonymous (AA) meetings at a rate of one per week. Petitioner complied with the court order and completed his AA meetings and domestic violence program by May 2, 2011. (Ex. 15.)

10. The facts and circumstances of the 2010 conviction are that on August 1, 2009, petitioner's wife called the police to report a domestic battery by petitioner. According to the police report, petitioner and his wife had been separated for three months after approximately 17 years of marriage and were not living together at the time of petitioner's wife's complaint. Petitioner's wife told police petitioner had driven into her driveway, went to her home office, and at the door wielded a switchblade

knife and told her he knew how to cut people. He then left to go into the sauna. The police arrested petitioner without incident in the sauna and retrieved a knife from petitioner's car. (Ex. 17.)

11. Petitioner failed to report his criminal conviction for spousal battery to the Board in the required time period. At the administrative hearing, petitioner testified he was unaware of the notification requirement, and he was ashamed of what he had done. Petitioner now understands that his failure to disclose the conviction was not ethical.

Petitioner's Testimony

12. At the administrative hearing, petitioner testified consistently with the contents of his declaration provided with his Petition and the statements he made in his interview with Board Special Investigator Sarah Peters (SI Peters). (Ex. 3, pp. A25- AZ8; Ex. 13.)

13. Petitioner is 57 years old. He is married and has two grown children. He was born and educated in Russia. He moved to the United States from Russia in the early 1990s, and he became a U.S. naturalized citizen in 1999.

14. Petitioner graduated from the Russian State Medical University of Moscow in 1986. After a one-year clinical internship, he completed a two-year Clinical Cardiology Fellowship in 1989 at the Cardiology Center of the Russian Academy of Medical Sciences.

15. Petitioner began work in the United States at the Department of Cardiology of Cedars Sinai Medical Center (Cedars Sinai) as a research fellow beginning

in 1992 and then as a research scientist from 1994 to 1999. During his tenure, petitioner took part in the development of several medical devices including the Cutting Balloon, Infiltrator Angioblast Balloon Catheter, LP Stent, and other devices. He co-authored several publications in peer-reviewed journals and presented research data at various U.S. and international conferences. He holds two U.S. patents with his co-inventor on Method and Devices for Performing Vascular Anastomoses.

16. In 1999, petitioner began a three-year internal medicine clinical residency at Cedars Sinai, which he completed in 2002. From 2002 until 2011, he worked as a doctor of internal medicine in different practices. During this time, petitioner began to drink heavily, a habit he developed in his youth, although he never did so on the job. He had his own medical offices until 2006, when his alcohol habits forced him to close them.

17. Petitioner also experienced significant and increasing personal turmoil from 2005 to 2009. Petitioner's 17-year marriage fell apart because of his alcohol abuse, and he was divorced in 2006. He was unable to see his two daughters. He was hospitalized and diagnosed with depression. Petitioner testified he lacked the healthy coping skills to deal with the turmoil. Petitioner also testified his mental state and severe alcohol use disorder obscured his judgment in his dealings with his wife, which lead to his spousal battery conviction, and in his involvement in the Medicare fraud scheme. Further, when asked if he had ever drank alcohol while working as a doctor, petitioner testified that he did not recall, but that he may have been under the influence of alcohol "from perhaps drinking the night before."

18. In 2006, petitioner was approached by a physician colleague who solicited him to join a medical clinic in Sacramento. Petitioner was receptive to the offer because

he needed additional income to pay for his divorce-related expenses. Petitioner joined the Sacramento clinic, but he remained in Los Angeles working at his own two offices. He also applied for a Medicare PIN for his Sacramento-related work. Petitioner did not operate or control the Sacramento clinic, but he was aware the clinic used his PIN for Medicare billing. At the administrative hearing, petitioner acknowledged "to his shame" (his words) he reviewed and signed medical records for several Medicare patients purportedly seen by a doctor at the Sacramento practice even though petitioner had not treated the patients and was unaware whether the billed services and treatments had been provided. Petitioner did not know the Sacramento clinic was not legitimate when he joined the practice. Nor did he think, at least initially, that what he was doing was illegal. However, petitioner also acknowledged he never took the time to review the Medicare regulations which he now knows clearly stated he, as the billing doctor, had to provide the billed-for medical services. Petitioner testified it was completely his fault for not reviewing the regulations and blamed his drinking, at least in part. At that time, petitioner was drinking alcohol daily, from two glasses to more than a bottle of wine.

19. Petitioner participated in these unlawful Medicare billing practices from 2006 to 2007 and received remuneration for his unlawful activity. Petitioner severed his relationship with the Sacramento clinic in 2007 because of his increased discomfort with the clinic's billing practices. He realized there were too many repeat visits by patients, the clinic was aggressively billing for services, and the practice was not up to the standard of care.

20. Petitioner then worked as a doctor of internal medicine for Serra Medical Group, a community multispecialty clinic/hospital in Sun Valley, and for Kaiser Permanente. However, his alcohol abuse interfered with his ability to work night shifts

at the hospital and keep up with the practice, and he consequently left both jobs. Petitioner then began working part-time in a medical office and for Medi-Cal. About this time, petitioner was arrested for spousal battery resulting in his 2010 criminal conviction. (See Factual Findings 9-10.)

21. After his August 1, 2009, arrest for spousal battery, petitioner decided to become sober. He has been sober since the arrest. Petitioner also reconciled with and remarried his wife at a date not made clear in the record. Petitioner's continued sobriety was a condition of his wife's agreement to remarry.

22. In 2010, petitioner was arrested for Medicare fraud based on his participation in the Sacramento clinic in 2006 and 2007. Petitioner testified he did not recognize the scope of his wrongdoing until after the jury found him guilty.

23. On January 12, 2012, petitioner was incarcerated at FCI Terminal Island, a low security federal correctional institution located in San Pedro. While in prison, petitioner completed a drug education class, a Non-Residential Drug Abuse Program, and a nine-month Dual Diagnosis Residential Drug and Alcohol Program (RDAP). (Ex. 6, p. A79, ABO, A81) According to the RDAP director, petitioner was an active participant in the program. Petitioner was open to peer feedback, demonstrated insight into his own issues, was dedicated to his recovery, and took the program seriously. He completed all required journals and additional assignments and showed a willingness to help other program members. The RDAP director further noted petitioner showed strong leadership qualities, effectively managed daily stressors, and experienced a shift in thought and behavioral patterns. According to the RDAP director, petitioner was "humbled by his incarceration, but also seems to have a firm comprehension of the challenges he is likely to encounter, which contributes to his motivation to make

significant changes in his life." (*Id.* at p. A83.) Petitioner found these programs offered "significant insight into [his] criminal conduct and poor coping skills. [He] started on a path of self-improvement through self-awareness and meditation as well as working on changing [his] perspectives. These skills helped [him] improve [his] wellbeing and ... have served to enhance [his] role in society." (Ex. 3, p. A27.)

24. While incarcerated, petitioner acted as a confidant and informal counselor to inmates who were depressed, suicidal, lost, or scared. He used his medical knowledge to help others understand their physical conditions so they could better explain their complaints to medical prison staff. Petitioner taught two courses through the prison adult school that reflected his new skills: Practicing Mindfulness and Natural Healing.

25. During his prison term, petitioner also completed an apprenticeship for the occupation of Stationary Engineer (8,000 hours). As part of his spiritual work, petitioner earned a Doctor of Divinity Degree by correspondence. Petitioner also studied medical texts, including Harrison's Principles of Internal Medicine, to keep up with developments in the medical field and prepare for the internal medicine Board examination.

26. Because of good behavior, petitioner was allowed to move to a halfway house during the last 12 months of his confinement, instead of the usual six months. While living in the halfway house, he secured temporary employment as a data analyst for a computer repair company. During the final six months of his confinement, petitioner was allowed to live at home provided he checked into the halfway house every day, where he was administered sobriety and drug tests almost daily, which he passed. Petitioner was officially released from confinement on July 21, 2017, after

serving 66 months of his 97-month sentence.

27. Following his release from prison, petitioner served a term of three years of supervised release without any violation. During this time, petitioner took part in an outpatient psychotherapy group and quarterly federal-appointed psychiatrist visits. His supervised release ended on July 21, 2020.

28. Since November 2017, petitioner has worked as a data analyst for Legal Medical Evaluators (LME), a workers' compensation fund related company. His job duties include analyzing patient files, which often have thousands of pages of medical records. Petitioner is responsible for summarizing these documents for the medical professionals who are engaged with LME. Petitioner testified LME has offered him full-time employment as a Legal MD Examiner if the Board reinstates his license.

29. Petitioner has volunteered his time at Spectrum Hospice (Spectrum) for the last four years. At Spectrum, petitioner monitors the company's quality assurance program and assists with reviewing progress notes, meeting notes, medication log records, and internal communications records to ensure they comply with appropriate standards and regulations. Spectrum is aware of petitioner's incarceration for criminal healthcare-related charges and that he is not licensed. Spectrum's chief executive officer (CEO) wrote two letters to the Board in support of the Petition. (Ex. 7, A94; Ex. 9, A101.) According to the CEO, petitioner's work has made a "substantial difference in improving the quality assurance aspect" of the Spectrum program and acknowledged Spectrum is "very lucky" to have petitioner. Petitioner testified Spectrum has offered him an opportunity to work as a medical consultant if the Board reinstates his license.

30. Since September 2021, petitioner has also volunteered for Digidoc, Inc. (Digidoc), an international telemedicine company startup. Petitioner conducts literature

reviews to develop medical news digests on current American medical practices for patients and participating physicians in third world countries. His work keeps him current with medical developments. In a letter dated November 12, 2021, Digidoc's Medical Director states petitioner's input is "very valuable for our company." (Ex. 11, p A162.)

31. Petitioner testified he has not drunk alcohol since 2009. There is no evidence he was required to participate in AA as a condition of his supervised release. He last attended AA meetings in 2017 and 2018 as a sponsor for others. Petitioner has continued to meditate and practice mindfulness. He has tapered his psychiatrist visits from monthly to quarterly; during these visits, petitioner discusses any issues he may have with alcohol. Petitioner has also found solace in religion; after his criminal conviction, he converted to Judaism and is learning the practices of his new religion.

32. Petitioner's wife corroborated petitioner's continued sobriety in a declaration submitted with the Petition. (Ex. 3, p. A40). Petitioner's wife stated petitioner had abused alcohol in the past but had kept his commitment to sobriety. She confirmed petitioner had substantially changed during his prison stay, becoming more expressive and taking responsibility for his actions. He has continued the daily meditation and mindfulness practices he learned during his incarceration. She has no fear of petitioner abusing alcohol in the future. Petitioner's two daughters also submitted declarations noting the positive changes they have observed in petitioner. (*Id.* p. A42, A43.)

33. Petitioner has kept himself abreast of developments in the medical field. He recently passed the internal medicine Board examination for which he was credited 150 hours of AMA PRA Category 1 credits in MedStudy 19th Edition Internal Medicine

Core. (Ex. 3, p. A44.) He also has attended annual training conferences and several online lectures and seminars offered through Hospice MD. In the course of his work for LME, petitioner participated in three training seminars, totaling 48 hours, regarding the proper use of technology in medical and med-legal reporting, best practices in documentation, and indexing, sorting, and summarization of medical records. (Ex. 8, p. A97.) Petitioner also keeps current on his medical knowledge by regularly reading JAMA and The New England Journal of Medicine, to which he has a subscription.

34. Since his license surrender, petitioner has not been charged or convicted of any criminal offense. He has never had staff privileges disciplined by any hospital or had any malpractice claims filed against him. At the administrative hearing, petitioner acknowledged he misread the question on the Petition regarding treatment for use of alcohol since his license surrender; he stated in response to that question he had not been treated for alcohol abuse. Petitioner in fact participated in a drug and alcohol program while he was incarcerated.

35. Petitioner's testimony was honest and sincere. He described his past conduct as "entitled and irresponsible behavior" as a result of "emotional luggage and immaturity that became more severe." Petitioner testified he deeply regrets his criminal acts and will regret them for the rest of his life. He believes he was "fairly convicted for health care fraud" and punished for his "irresponsible behavior." In his statement to the Board, petitioner states, "Not only did I destroy everything for which I had worked so hard, but I took advantage of my adopted country, the United States, and breached the trust of the medical profession and patients." (Ex. 3, p. A25.) In his interview with the Board, petitioner stated he should have reported the fraud to the authorities once he realized it was happening, but he was not thinking straight.

36. Petitioner has learned from his incarceration. It allowed him to rethink his attitude, address his flaws, and find ways to redeem himself. If the Board grants the Petition, petitioner would like to provide medical services to people who are struggling with addiction. He has no interest in resuming private practice. Petitioner would like to work in a more structured environment, so he only is involved with the medical aspects of practice and has no involvement with the business aspects. In his statement to the Board, petitioner described his "unique skills and talents" as follows:

My experience has given me an understanding and empathy that comes through adversity. While it may sound trite, it is genuine. In the past nine years, I have learned so much about myself. Now, more than ever, I find happiness in listening to, caring for, and healing others. I take responsibility for my actions and feel a calling, a duty, to mend lives. If my license is restored, I will be afforded an opportunity to repay my debt to society in a meaningful way.

(Ex. 3, p. A28.)

Letters Supporting Reinstatement

37. Five licensed doctors submitted letters supporting the reinstatement of petitioner's license. Each of the doctors was interviewed by SI Peters, who confirmed their California medical licenses were in good standing, they authored their respective letters, they were aware of petitioner's criminal conviction for health care fraud, and they had reviewed the disciplinary papers. (Ex. 2, pp. A11-A16.)

38. Vladimir Bokarius, M.D., is a board-certified psychiatrist and pain specialist. He has known petitioner since 1995, and they did their residencies at Cedars-

Sinai at the same time. When Dr. Bokarius and petitioner both went into private practice, they collaborated in the treatment of difficult cases. Dr. Bokarius and petitioner currently communicate once a month and are on good terms. Notwithstanding petitioner's healthcare fraud conviction, Dr. Bokarius believes petitioner is an "excellent, compassionate physician" and a "highly qualified professional and wonderful human being." (Ex. 3, p. A33.) In his letter to the Board, Dr. Bokarius writes:

I know [petitioner] as an excellent, compassionate physician. He takes pride in providing unparalleled level of care, maintaining up to date knowledge and expertise in his field of internal medicine. I have always received positive feedback from patients who were referred to him and have seen the great outcomes from the treatment that he recommended. He comes from a family of physicians and continues the tradition of helping those in need, oftentimes providing his services pro bona.

(Ex. 3, p. A33.) In his conversation with SI Peters, Dr. Bokarius stated petitioner did not become involved in the billing fraud for money and thought petitioner was taken advantage of by others in the scheme.

39. Peter Barath, M.D., supervised petitioner's research work from about 1992 until about 2000. During that time, Dr. Barath characterized petitioner as an "extremely intelligent, ambitious, diligent and reliable physician with original ideas and great love for medicine." (Ex. 3, p. A39.) Dr. Barath lost contact with petitioner in 2000 after the research was finished. However, he reconnected with petitioner after petitioner's release from prison. Dr. Barath believes petitioner learned from his situation and is determined to start a new life. He noted petitioner has expressed "deep sorrow"

for his wrongdoing and "a strong desire to start a new professional life." He supports petitioner's reinstatement because of petitioner's talent and diligence. (Ex. 3, p. A39.)

40. Sergey Lyass, M.D., is a board-certified surgeon who practices at Cedars Sinai. Petitioner and Dr. Lyass went to the same medical school in Russia, and they were both in residency at Cedars Sinai together. Dr. Lyass worked directly with petitioner from 2000 until 2011. They have been friends for more than 35 years. Dr. Lyass stays in touch with petitioner, and they speak on the phone every couple of weeks. In his letter to the Board, Dr. Lyass wrote petitioner has accepted full responsibility for the actions leading to the surrender of his license and incarceration. He describes petitioner as "a talented, hard-working, and responsible physician with in-depth knowledge in internal medicine and cardiology- his specialty by education and academic involvement. I believe his clinical ability is excellent." (Ex. 3, p. A34.) Dr. Lyass acknowledged the seriousness of petitioner's crime. However, Dr. Lyass believes petitioner "paid a high price for his lapse in judgment" and "is ready to resume professional life and contribute talent and skill to making this world a better place." (*Ibid*)

41. Maria Brickman, M.D., is a neurologist. Dr. Brickman and petitioner graduated from the same medical school in Moscow, and she has known him since 1984. They attended the same Russian medical meetings and had common friends. They currently see each other every few months. Dr. Brickman believes petitioner is a great doctor, who is knowledgeable and compassionate. She described him as giving, attentive, and committed. According to Dr. Brickman, petitioner "goes the extra mile for patients" and has in-depth diagnostic knowledge and a great intuitive sense. (Ex. 3, p. A37.)

42. Mischa Lanzat, D.P.M., is a licensed physician of the Podiatric Medical

Board of California. Dr. Lanzat has known petitioner for 30 years. They currently meet occasionally. Dr. Lanzat believes petitioner is a different person since his incarceration, and he observed petitioner's wife has stood by him. Dr. Lanzat vouched for petitioner's sobriety. He too noted petitioner's great medical knowledge. He described petitioner as having a "tremendously big heart and truly altruistic." According to Dr. Lanzat, petitioner would ask him to see indigent patients and would offer to pay for their care. (Ex. 3, p. A36.)

LEGAL CONCLUSIONS

1. The primary purpose of this proceeding is to protect the public, not to punish the licensee. (*Camacho v. Voude* (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. (Code, § 2229, subd. (a).) Code section 229 further specifies that, to the extent consistent with public protection, disciplinary actions are to assist in the rehabilitation of licensees.

2. A person who surrendered his certificate may petition the Board for reinstatement. (Code, § 2307.) The petition must be accompanied by at least two verified recommendations from licensed physicians and surgeons who have personal knowledge of petitioner's activities since the surrender of his license. (Code, § 2307, subd. (c).) The person may file the petition after at least three years have elapsed from the effective date of the surrender. (Code, § 2307, subd. (b).) As petitioner's surrender date was March 6, 2013, the Petition, filed on August 12, 2021, is timely.

3. The burden is on a petitioner to prove he has rehabilitated himself and he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) Before granting a petition for restatement, the Board "must be

satisfied and fully convinced by positive evidence that the effort [the petitioner] has made toward rehabilitation of his character has been successful. [Citations omitted.]" (*Housman v. Board of Medical Examiners (Housman)* (1948) 84 Cal.App.2d 308, 315.) Acts of fraud and dishonesty vitiate the obligation of utmost honesty and integrity doctors owe to their patients. (See *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470.) According to *Housman*, "[i]t is only reasonable that the person seeking reinstatement ... should be required to present stronger proof of his present honesty and integrity than one seeking admission for the first time whose character has never been in question." (*Housman, supra*, 84 Cal.App.2d at p. 315.) Thus, those who have surrendered their licenses for acts involving a high degree of moral turpitude, which include the acts of health fraud committed by petitioner, should not be reinstated except upon clear and convincing evidence. (*Ibid.*)

4. Rehabilitation is a state of mind, and the law looks with favor upon rewarding one who has achieved reformation and regeneration with the opportunity to serve. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) Cases authorizing reinstatement to a professional practice commonly involve a substantial period of exemplary conduct following the misdeeds. The more serious the misconduct, the stronger the showing of rehabilitation must be. (*In re Gossage* (2000) 23 Cal.4th 1080, 1098.)

5. 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." California Code of Regulations, title 16 (CCR), section

1360.2, subdivision (a), also identifies the following criteria by which evidence of rehabilitation must be evaluated when considering a petition for reinstatement and the petitioner completed the criminal sentence at issue without a violation of parole or probation:

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on petitioner's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for the modification.

6. Consideration of the factors listed in Code section 2307, subdivision (e), and CCR section 1360.2, subdivision (a), establishes clearly and convincingly petitioner has demonstrated sufficient rehabilitation to warrant reinstatement of his license, albeit with restrictions. (Factual Findings 12-42.) The crimes triggering petitioner's surrender were serious and raise questions about his general reputation for truth and his integrity, particularly when examined with his earlier criminal convictions and his prior Board discipline. (Factual Findings 6-11.) However, petitioner's fraud crimes occurred more than 15 years ago; his failure to report his spousal battery conviction occurred more than 12 years ago, and his failure to disclose his DUI conviction occurred 20 years ago. Petitioner has made significant changes during this time. Since even before his

2011 criminal conviction, petitioner took substantial steps toward personal growth and gaining the skill set necessary to cope with stress and his alcohol abuse, which seems to be the root of all his misconduct. He became sober, and he reconciled with his wife. While incarcerated, petitioner took advantage of the resources offered and enrolled in substance abuse and other programs to further improve his coping skills. He helped his inmates, taught two classes, learned new skills, and continued to study medicine. Because of his good behavior, he transferred to a halfway house early, was able to secure employment, and for the last six months of his sentence was allowed to live at home. He was released after serving only two-thirds of his sentence. He successfully completed his probation without incident.

7. Since his release from confinement, petitioner testified he has remained sober. He continues to practice mindfulness and meditation. He attends synagogue regularly. He has been gainfully employed, without incident, in a medically related field. But despite Petitioner's testimony of maintained sobriety, there is no meaningful evidence of Petitioner's treatment for alcohol abuse. Petitioner's lack of formal treatment for alcohol abuse causes grave concern given his own testimony that his long-term alcohol abuse is directly related to his criminal conduct, as well as his inability to definitively testify that he never drank while working as a doctor. Because Petitioner attributes his criminal conduct to his alcohol abuse, he is presumed to be a substance-abusing licensee.

8. His employer has offered him a full-time job if his license is reinstated. Petitioner has also volunteered his services for a hospice and a start-up medical company. In each instance, petitioner has been able to use his medical knowledge and keep abreast of medical developments. His employer and the two organizations where he volunteers each support the reinstatement of his medical license.

9. The evidence shows petitioner is an intelligent, competent, and dedicated physician. The physicians who submitted letters supporting the Petition uniformly praised petitioner for his skills and generosity; none thought petitioner would re-offend. Petitioner has shown his dedication to the medical field by completing continuing medical education courses since surrendering his certificate, attending training and seminars, and reviewing medical journals and treatises. Petitioner expressed genuine remorse for his crimes, and his colleagues and family corroborate petitioner's assertion that his prison time has changed him for the better. His testimony at the administrative hearing was frank. Considering the changes petitioner has made since his incarceration, his expressions of remorse, his candid testimony, and the passage of time without further incident, petitioner has demonstrated integrity and honesty, and his verbal assurances that the conduct leading to his license surrender will never happen again are credible.

10. Based on all the facts and circumstances, a seven-year probation will allow the Board to monitor petitioner's conduct and provide the necessary assurances that petitioner is trustworthy. A seven-year probationary term is consistent with the minimum penalty recommended by the Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th ed. 2016) (Guidelines) for felony convictions arising from patient billing. (Guidelines, p. 24.) Public protection is ensured by granting the Petition with terms and conditions limiting the nature of petitioner's practice, monitoring his billing, and requiring psychiatric and medical evaluations before commencing practice. Considering petitioner has not practiced medicine since his incarceration more than ten years ago, further assurances are provided by completion of a clinical competence assessment program before the practice of medicine. Petition will also be subject to the Uniform Standards for Substance-Abusing Licenses, including abstaining from alcohol and biological fluid testing. The terms do not include suspension or community service, given

petitioner's surrender of his license and his volunteer work in the medical field.

ORDER

The petition of Alexander Popov, M.D., for reinstatement of his surrendered certificate is granted. Petitioner's Physician's and Surgeon's Certificate No. A78244 is reinstated. However, the reinstated certificate is revoked, the revocation is stayed, and petitioner is placed on probation for seven years on the following terms and conditions:

1. Controlled Substances – Abstain From Use

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation

is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

2. Alcohol – Abstain from Use

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

If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until the final decision on an accusation and/or 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 respondent requests a hearing to on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of the submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

3. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its

designee. The Board may order a respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the respondent.

During the first year of probation, respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five (5) years, respondent shall be subject to 36 to 104 random tests per year. Only if there have been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, respondent shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

- (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
- (b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines
- (c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.

- (d) Its specimen collectors observe the collection of testing specimens.
- (e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.
- (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.
- (g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test respondent on any day of the week.
- (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.
- (i) It maintains testing sites located throughout California.
- (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the respondent to check in daily for testing.
- (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if the respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

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

If a biological fluid test result indicates respondent has used, consumed, ingested, or administered to himself or herself a prohibited substance, the Board shall order respondent to cease practice and instruct respondent to leave any place of work where respondent is practicing medicine or providing medical services. The Board shall immediately notify all of respondent's employers, supervisors, and work monitors, if any, that respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his or her treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of a respondent's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by respondent and approved by the Board, alcohol, or any other substance the respondent has been instructed by the Board not to use, consume, ingest, or administer to himself or herself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, respondent has committed a major violation, as defined in section 1361.52(a), and the Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance respondent's rehabilitation.

4. Notice of Employer or Supervisor Information

Within seven (7) days of the effective date of this Decision, respondent shall

provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, respondent's worksite monitor, and respondent's employers and supervisors to communicate regarding respondent's work status, performance, and monitoring.

For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when the respondent has medical staff privileges.

5. Substance Abuse Support Group Meetings

Within thirty (30) days of the effective date of this Decision, respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he or she shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years' experience in the treatment and rehabilitation of substance abuse and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with respondent within the last five (5) years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing

respondent's name, the group name, the date and location of the meeting, respondent's attendance, and respondent's level of participation and progress. The facilitator shall report any unexcused absence by respondent from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

6. Worksite Monitor for Substance-Abusing Licensee

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

The worksite monitor shall not have a current or former financial, personal, or familial relationship with respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall respondent's worksite monitor be an employee or supervisee of the licensee.

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

Respondent shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with respondent in the work

environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding respondent's behavior, if requested by the Board or its designee; and review respondent's work attendance.

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

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) respondent's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of respondent's work attendance; (8) any change in respondent's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

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

unavailability of the monitor, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

7. 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 education programs(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.

8. 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 (6) 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 (1) year after attending the classroom component. The professionalism program shall be at petitioner's expense and shall be in addition to the CME requirements for renewal of licensure.

A professionalism program taken after the acts that give 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.

9. 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, Accusation, 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 not 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 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.

10. Clinician Diagnostic Evaluations and Reports

Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a

written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether respondent has a substance abuse problem, whether respondent is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that respondent is a threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: respondent's license type; respondent's history; respondent's documented length of sobriety (i.e., length of time that has elapsed since respondent's last substance use); respondent's scope and pattern of substance abuse; respondent's treatment history, medical history and current medical condition; the nature, duration and severity of respondent's substance abuse problem or problems; and whether respondent is a threat to himself or herself or the

public.

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on respondent based on the recommendations made by the evaluator. Respondent shall not be returned to practice until he or she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that he or she has not used, consumed, ingested, or administered to himself or herself a prohibited substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that he or she is fit to practice medicine safely. The period of time that respondent is not practicing medicine shall not be counted toward completion of the term of probation.

Respondent shall undergo biological fluid testing as required in this Decision at least two (2) times per week while awaiting the notification from the Board if he or she is fit to practice medicine safely.

Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified by the Board or its designee.

11. 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.

Petitioner shall not engage in the practice of medicine until notified by the Board or its designee that petitioner is mentally fit to practice medicine safely. The period of

time that petitioner is not practicing medicine shall not be counted toward completion of the term of probation.

12. Medical Evaluation and Treatment

Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, petitioner shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee. Petitioner shall provide the evaluating physician any information and documentation that the evaluating physician may deem pertinent.

Following the evaluation, petitioner shall comply with all restrictions or conditions recommended by the evaluating physician within 15 calendar days after being notified by the Board or its designee. If petitioner is required by the Board or its designee to undergo medical treatment, petitioner shall within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval the name and qualifications of a California licensed treating physician of petitioner's choice. Upon approval of the treating physician, petitioner shall within 15 calendar days undertake medical treatment and shall continue such treatment until further notice from the Board or its designee.

The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Petitioner shall have the treating physician submit quarterly reports to the Board or its designee indicating whether or not the petitioner is capable of practicing medicine safely. Petitioner shall provide the Board or its designee with any and all medical records pertaining to treatment, the Board or its designee deems necessary.

If, prior to the completion of probation, petitioner is found to be physically incapable of resuming 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 physically capable of resuming the practice of medicine without restrictions. Petitioner shall pay the cost of the medical evaluation(s) and treatment.

Petitioner shall not engage in the practice of medicine until notified in writing by the Board or its designee of its determination that petitioner is medically fit to practice safely.

13. Monitoring-Billing

Within 60 calendar days of the effective date of this Decision, petitioner shall submit to the Board or its designee for prior approval as a billing 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 be 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, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision 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 90 calendar days of the effective date of this Decision, and continuing for the first year of probation, petitioner's billing 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 90 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 billing, and whether petitioner is billing appropriately. 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 (PEP) equivalent to one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at a 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.

14. 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.

15. Notification

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

16. Supervision of Physician Assistants and Advanced Practice Nurses

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

17. 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.

18. 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 no later than 10 calendar days after the end of the preceding quarter.

19. General Probation Requirements

Compliance with Probation Unit

Petitioner shall comply with the Board's probation unit and all terms and conditions of this Decision, including:

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 to 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 of 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.

20. 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.

21. 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 in California 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 or its designee shall not be considered non-practice. 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 a clinical training 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 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; and Quarterly Declarations.

22. Completion of Probation

Petitioner shall comply with all financial obligations (e.g., restitution, probation costs) no later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, petitioner's certificate shall be fully restored.

23. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation.

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

(1) Issue an immediate cease-practice order and order respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at respondent's expense. The cease-practice order issued by the Board or its designee shall state that respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time a respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he or she may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its

designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

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

- (1) Issue a cease-practice order;
- (2) Order practice limitations;
- (3) Order or increase supervision of respondent;
- (4) Order increased documentation;
- (5) Issue a citation and fine, or a warning letter;
- (6) Order respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at respondent's expense;
- (7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke respondent's probation if he or she has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the

disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

24. Violation of Probation Condition for Substance-Abusing Licensees

Failure to fully comply with any term or condition of probation is a violation of probation.

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

(1) Issue an immediate cease-practice order and order respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at respondent's expense. The cease-practice order issued by the Board or its designee shall state that respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of the determining the length of time a respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he or she may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of respondent;

(4) Order increased documentation;

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

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

(7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke respondent's probation if he or she has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

25. 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 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.

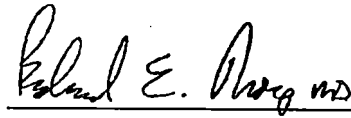
26. Probation Monitoring Costs

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.

The Decision shall become effective at 5:00 p.m. on November 14, 2022.

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

A handwritten signature in cursive script, reading "Richard E. Thorp, M.D.", written in black ink. The signature is positioned above a horizontal line.

Richard E. Thorp, M.D.
Chair, Panel B
Medical Board of California