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

In the Matter of the Petition for Reinstatement of: Michael Roland Pude Vivian, M.D. Physician's and Surgeon's Certificate No. G 78890 Petitioner.	Case No. 800-2021-074938

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 January 23, 2023.

IT IS SO ORDERED: December 22, 2022.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, M.D., Chair
Panel B

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

In the Matter of the Petition for Reinstatement of:

MICHAEL ROLAND PUDE VIVIAN, Petitioner.

Agency Case No. 800-2021-074938

OAH No. 2022040674

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on August 25, 2022, by videoconference.

Attorney Kevin D. Cauley represented petitioner Michael Roland Pude Vivian, who was present.

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

The matter was submitted for decision on August 25, 2022.

FACTUAL FINDINGS

Background

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 78890 to petitioner Michael Roland Pude Vivian, M.D., on May 18, 1994. An accusation was filed against petitioner on June 10, 2015, alleging cause for discipline based on dangerous use of controlled substances. Petitioner entered into a stipulated settlement agreement, which was adopted by the Board and made effective on March 4, 2016. Pursuant to this stipulation, petitioner's certificate was revoked; the revocation was stayed; and petitioner was placed on probation for five years, with standard and substance abuse conditions including abstaining from drugs and alcohol, biological fluid testing, a worksite monitor, and completing a professionalism (ethics) course.

Petitioner violated probation by failing to report for testing and by testing positive for a controlled substance. A cease practice order was issued on July 12, 2016; it was lifted on August 10, 2016. Petitioner committed additional violations of his probation by failing to cooperate with the drug testing program. A second cease practice order was issued in October 2016, and an accusation and petition to revoke probation was filed in November 2016. Petitioner surrendered his certificate pursuant to a stipulated surrender agreement, effective July 7, 2017.

2. On January 20, 2021, petitioner submitted a petition for reinstatement.

Professional Background

3. Petitioner earned his bachelor's and medical degrees at UCLA. After completing an integrated internship and residency in psychiatry at UCSF, he returned

to southern California. He moved to Ventura County in 1999, where he was on staff at a psychiatric hospital and had his own solo private practice. In his practice, he performed psychiatric evaluations and medication management, and provided psychotherapy to a few patients. During his career, petitioner has also worked for the California Department of Corrections and Rehabilitation, Los Angeles County, and a facility providing treatment for eating disorders.

Petitioner's History of Substance Abuse

4. Petitioner reported a history of depression, anxiety, and misuse of controlled substances dating back to the mid-1990's, during his residency. He sought treatment for his depression at that time and has been taking anti-depressant medications off and on for more than 20 years. He has also been in and out of therapy since then, estimating that his total attendance in therapy is 8 to 10 years. Initially, the focus in therapy was his difficult relationship with his mother. He has also attended Alcoholics Anonymous (AA) since 1997, except for periods when he relapsed.

5. Petitioner's drug of choice was stimulants. He used them to alleviate his depression, feel more comfortable socially, and for the sexual charge they gave him. Petitioner's drug abuse included snorting crushed tablets of Adderall and Ritalin that had been returned by his patients.

6. Petitioner attended a residential treatment program in 2007 and maintained sobriety for about five years, when he had a severe relapse. Petitioner's nurse practitioner was familiar with petitioner's history of substance abuse and discovered him passed out in the office one morning in May 2014. Petitioner had ingested stimulants and then taken some Saphris (an antipsychotic medication) in order to counteract the effects of the stimulants. The nurse practitioner reported the

incident to the Board. Prior to the Board acting, petitioner enrolled in a treatment program in June 2014.

7. Once on Board probation, petitioner did not maintain sobriety. He relapsed in June 2016, resulting in the first cease practice order. Petitioner was evaluated by a psychiatrist who recommended that he be allowed to return to practice upon completion of 30 days of monitored urine testing. Petitioner relapsed again shortly after the cease practice order was lifted. He closed his medical practice in anticipation of surrendering his license. He was actively using stimulants for several months in late 2016 through January 2017.

8. In January 2017, petitioner was involved in a physical altercation with his former girlfriend that resulted in a criminal prosecution against him later that year. Shortly after this incident, petitioner enrolled in the Promises rehabilitation program for physicians in Santa Monica. Even though he had been in treatment before, petitioner found this program to be a turning point in his recovery. The program identified petitioner as suffering from sex and love addiction that was impeding his ability to remain sober. Petitioner was referred for psychotherapy with a therapist with expertise in this area and began attending Love Addicts Anonymous meetings. Although petitioner subsequently had another brief relapse, he credits his experience at Promises with enabling him finally to gain deep insight into the root causes of his disease, to understand why he kept relapsing despite his sincere desire to remain sober, and to participate actively in his recovery.

9. As a result of the January 2017 incident,, petitioner entered a plea of nolo contendere to a violation of Penal Code section 243, subdivision (e)(1) (misdemeanor domestic battery), in the Superior Court of California, County of Ventura, on November 21, 2017. A sentencing hearing was conducted on December 8, 2017, at which

imposition of sentence was suspended and petitioner was placed on formal probation for a period of 36 months, with conditions including 10 days' work release in lieu of jail, a domestic violence course, and abstaining from the use or possession of alcohol and controlled substances. Petitioner violated his probation by using alcohol and controlled substances on two occasions in December 2017. He explained at hearing that these last "slips" arose shortly after his conviction because he was feeling frustrated and resentful that his former girlfriend had not been prosecuted when he believed she was equally or more culpable than him.

10. As a result of his criminal probation violation, petitioner was required to perform an additional 40 days' work release and was directed into a four-month rehabilitation program which included biological fluid testing. Petitioner committed no further violations of probation. He completed the mandated domestic violence program and complied with all other conditions. On December 4, 2019, the superior court granted petitioner's motion for early termination of probation. Petitioner's conviction was dismissed pursuant to Penal Code section 1203.4 on January 14, 2020.[1]

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[1] Petitioner contends that the Board cannot take into consideration his 2017 battery conviction in light of Business and Professions Code section 480, subdivision (c), which provides that "a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction that has been dismissed pursuant to [Penal Code section] 1203.4." Petitioner did not provide any authority establishing that this provision applies to petitions for reinstatement of revoked or surrendered licenses, as opposed to applications for initial licensure.

11. Petitioner credibly reports that he has been sober since January 1, 2018. He voluntarily enrolled in a random drug testing program in May 2017, and with the exception of a positive test on January 3, 2018 (reflecting his relapse in late December 2017), petitioner has never tested positive.

Rehabilitation Activities Since License Surrender

12. Upon surrender of his certificate, petitioner took advantage of the opportunity to focus on himself. He took sailing and guitar lessons. He connected with the AA community in a way that he had not previously done, including joining an AA hiking group. He has worked on rebuilding his relationships with his children. Petitioner believes that he benefited from losing his license. Previously, his profession had been his identity; he now views recovery as his identity. Petitioner stated that during this period of non-practice, he has been able to build a foundation he never had before, and that he has learned humility.

13. Petitioner attends three to four AA meetings weekly, including over Zoom during the pandemic. He serves as the secretary of a Saturday evening meeting every week. Petitioner also volunteers for after-hours telephone duty. Recently, he has begun serving as a sponsor for two individuals. Petitioner reports feeling a camaraderie in the AA community that he did not feel during prior periods of abstinence, commenting that he looks forward to meetings and no longer views them as something he "has to do."

14. Bill Lindsay, petitioner's AA sponsor, testified at the hearing and wrote a letter on his behalf. Lindsay first met petitioner about 12 years ago, through AA, and has served as his sponsor for many years, including during periods when petitioner struggled and relapsed. Petitioner is in daily contact with Lindsay and they attend

meetings together throughout the week. Lindsay has observed a change in petitioner since he completed the Promises program. Petitioner has become more active in his recovery since then and has taken on volunteer commitments serving the AA community. Lindsay commented that petitioner is now enjoying life and is getting along well with his ex-wife and children.

15. Since February 2020, petitioner has been attending weekly meetings with the nurse support group that he attended when he was on Board probation. John Lewis, the group's facilitator, wrote a letter in support of reinstatement, dated August 17, 2020, in which he confirmed that petitioner had rejoined the group and noted that petitioner has a positive and committed attitude towards his recovery and his encouraging towards other members.

16. Petitioner reports no interest in stimulants, which he now views as toxins. He now finds his "high" in relaxation. He enjoys yoga, meditation, and an hour of spiritual reading daily.

17. Petitioner is currently taking anti-depressant medication prescribed by his primary care physician.

18. Petitioner was in therapy for sex and love addiction for more than a year. During this therapy, he practiced healthy dating skills. Petitioner is no longer in therapy and is choosing not to date at this time.

Current Endeavors and Plans for Reinstatement

19. Petitioner bought and renovated an old Victorian house and turned it into a six-bed substance abuse treatment center, which opened in April 2021. Petitioner is the founder and CEO. His goal is "to build a better rehab." Petitioner has

written a workbook integrating what he has learned in recovery for use in his center and for possible future publication. Petitioner is a registered drug and alcohol technician, and runs counseling groups for the patients. Petitioner has consulted with counsel to avoid engaging in activities requiring medical licensure and he does not present himself as a physician. The facility employs an outside physician as medical director. Petitioner finds working with people in recovery meaningful and joyful.

20. If his certificate is reinstated, petitioner would like to provide medical services at his facility. He would like to open a second facility to meet the high demand in Ventura County. He would also consider opening a small private practice.

21. Petitioner understands that if his license is reinstated, he will be placed back on Board probation. He is willing to abide by all terms imposed by the Board, but he requested that no solo practice prohibition be imposed, noting that it is difficult to comply with that provision as a psychiatrist.

Letters

22. Petitioner submitted five letters in support of his petition. All authors are aware of the circumstances surrounding petitioner's license surrender.

23. Samuel Bern, M.D., a plastic surgeon, has known petitioner for more than 20 years, both personally and professionally. Dr. Bern wrote that petitioner has been working hard to maintain sobriety and seek reinstatement. Dr. Bern believes petitioner is a well-trained and talented psychiatrist, and has referred patients to him, including a family member. He believes that reinstatement of petitioner's certificate would provide value to the community, where there is a shortage of psychiatrists.

24. Lee D. Mendiola, M.D., a psychiatrist and neurologist, shared a medical office with petitioner from 2001 through 2011. Dr. Mendiola and petitioner collaborated on difficult cases and covered for each other. Dr. Mendiola wrote that petitioner's clinical skills were excellent, and that he still applies "clinical pearls" learned from petitioner in his day-to-day practice. Some of petitioner's patients transferred care to Dr. Mendiola when petitioner surrendered his license and reported positive feedback about petitioner to Dr. Mendiola. Dr. Mendiola believes that petitioner is skilled and compassionate and deserving of reinstatement.

25. Petitioner's mother and sister both wrote positively of the changes they have observed in petitioner during this most recent period of sobriety. Both confirm his increased spirituality, improved family relationships, and commitment to his recovery.

26. Ventura County Supervisor Steve Bennett wrote that petitioner is a highly respected member of the community and that while he was in practice, he was known to provide low- or no-cost care for patients in need. Bennett confirmed that petitioner is active in the AA community and has served as a youth soccer coach and Cub Scout leader.

LEGAL CONCLUSIONS

1. Petitioner bears the burden of proving, by clear and convincing evidence, that he is able to practice medicine safely and merits reinstatement. In evaluating the petition, the Board may "consider 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." (Bus. & Prof. Code, § 2307, subd. (e).)

2. Petitioner candidly testified about a long struggle with substance abuse and depression dating back to his residency in the 1990's. Petitioner's abuse of stimulants was severe and persistent. Petitioner acknowledged abusing drugs returned by patients. The incident leading to discipline of his certificate occurred at his medical practice. Petitioner relapsed twice within months of being placed on Board probation, and incurred a conviction for domestic battery arising from a January 2017 altercation.

Petitioner has now maintained sobriety for four and one-half years. His renewed dedication to his recovery and deepened engagement in the recovery community since 2017 was confirmed by his sponsor of many years and by family members and colleagues. Petitioner has opened a rehabilitation facility to help others struggling with addiction and has plans to continue this work.

Petitioner has met his burden of establishing that he has been rehabilitated and merits reinstatement. Because of his history of relapses and his prior failure on probation, a high level of monitoring is required to ensure that petitioner practices safely. A seven-year term of probation with standard and substance abuse conditions is appropriate. A new psychiatric evaluation as a condition precedent to resuming practice, and a solo practice prohibition, are necessary for the protection of the public. Petitioner will also be required to complete a professionalism course.

ORDER

The petition by Michael Roland Pude Vivian, M.D., for reinstatement to licensure is granted. Physician's and Surgeon's Certificate No. G 78890 is reinstated, but

immediately revoked. The revocation is stayed, however, and petitioner is placed on probation for seven years, on the following conditions.

1. Psychiatric Evaluation

Within 30 calendar days of the effective date of this decision, and on whatever periodic basis thereafter may be required by the Board or its designee, 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.

2. Controlled Substances - Abstain From Use

Petitioner shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any

drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to petitioner by another practitioner for a bona fide illness or condition.

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

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

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

3. Alcohol - Abstain From Use

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

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

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

4. 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. Petitioner shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Petitioner shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a petitioner 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, preferably by a computer program. The cost of biological fluid testing shall be borne by the petitioner.

During the first year of probation, petitioner shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, petitioner shall be subject to 36 to 104 random tests per year. Only if there have been no positive biological fluid tests in the previous three consecutive years of probation, may testing be reduced to one time per month. Nothing precludes the Board from increasing the number of random tests to the first year level of frequency for any reason, including, but not limited to, if the Board finds or has suspicion that a licensee has committed a violation of the Board's testing program or

has committed a violation as identified in section 1362.52, subdivision (a), in addition to ordering any other disciplinary action that may be warranted.

Prior to practicing medicine after the effective date of this order, 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 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 shall conform to the current United States Department of Transportation Specimen Collection Guidelines.

(c) Its testing locations shall 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 shall observe the collection of testing specimens.

(e) Its laboratories shall be 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 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 business days of receipt of the specimen. The Board will be notified of non-negative results within one business day and will be notified of negative test results within seven business days.

(g) Its testing locations shall possess all the materials, equipment, and technical expertise necessary in order to test petitioner on any day of the week.

(h) Its testing locations shall be able to test scientifically 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 online computer database that allows the petitioner 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 petitioner 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 business day and negative test results within seven business days 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 a biological fluid test result indicates petitioner has used, consumed, ingested, or administered to himself a prohibited substance, the Board shall order petitioner to cease practice and instruct petitioner to leave any place of work where petitioner is practicing medicine or providing medical services. The Board shall immediately notify all of petitioner's employers, supervisors and work monitors, if any, that petitioner 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 business day.

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

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of petitioner'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 petitioner and approved by the Board, alcohol, or any other substance petitioner has been instructed by the Board not to use, consume, ingest, or administer to himself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, petitioner has committed a major violation, as defined in California Code of Regulations, title 16, section 1361.52, subdivision (a); and the Board shall impose any or all of the consequences set forth in California Code of Regulations, title 16, section 1361.52, subdivision (b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance petitioner's rehabilitation.

5. Substance Abuse Support Group Meetings

Within 30 days of the effective date of this decision, petitioner shall submit to the Board or its designee, for prior approval, the name of a substance abuse support group that he shall attend for the duration of probation. Petitioner shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Petitioner shall pay all substance abuse support group meeting costs.

The substance abuse support group meeting facilitator shall have a minimum of three years' experience in 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 petitioner within the last five years. Petitioner's previous participation in a substance

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

6. Worksite Monitor

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 worksite monitor, the name and qualifications of one or more licensed physicians and surgeons (or 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 petitioner at work.

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

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five years, and shall sign an affirmation that he or she

has reviewed the terms and conditions of this disciplinary order and agrees to monitor petitioner as required by the Board or its designee.

Petitioner shall pay any and all worksite monitoring costs.

The worksite monitor shall (1) have face-to-face contact with petitioner in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; (2) interview other staff in the office regarding petitioner's behavior, if requested by the Board or its designee; and (3) review petitioner's work attendance.

The worksite monitor shall orally report any suspected substance abuse to the Board and petitioner's employer or supervisor within one business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the oral report shall be made to the Board or its designee within one hour of the next business day. A written report that includes the date, time, and location of the suspected substance abuse; petitioner'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 that shall include the following: (1) petitioner's name and certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or locations of the worksite; (5) the dates petitioner had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of petitioner's work attendance; (8) any change in petitioner's behavior and/or personal habits; and (9) any indicators that lead to suspicion of substance abuse by petitioner. Petitioner

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 the worksite monitor to exchange information.

If the worksite 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 assume that responsibility within 15 calendar days. If petitioner fails to obtain approval for a replacement monitor within 60 calendar days of the prior monitor's resignation or unavailability, 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.

7. 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, 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.

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 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.

9. Notification

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

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

10. Supervision of Physician Assistants and Advanced Practice Nurses

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

11. Obey All Laws

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

12. Quarterly Declarations

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

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

13. General Probation Requirements

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

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

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

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

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

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

14. Interview with the Board or its Designee

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

15. Non-Practice While on Probation

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

terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

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

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

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

Periods of non-practice 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; and Quarterly Declarations.

16. Completion of Probation

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

17. Violation of Probation

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

18. License Surrender

Following the effective date of this decision, if petitioner ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request to surrender 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.

19. Probation Monitoring Costs

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

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

DATE: 09/23/2022

Karen Reichmann

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings