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

In the Matter of the First Amended Accusation Against:

ROOZBEH BADII, M.D.,

Physician's and Surgeon's Certificate No. C 143701

Respondent.

Agency Case No. 800-2020-068036

OAH No. 2021080720

DECISION AFTER SUPERIOR COURT REMAND

This matter was originally heard by Administrative Law Judge (ALJ) Karen Reichmann, State of California, Office of Administrative Hearings, on December 2, 2021, by videoconference.

Supervising Deputy Attorney General Jane Zack Simon represented complainant William Prasifka, Executive Director (Complainant) of the Medical Board of California (Board).

Attorney Marvin Firestone, M.D., represented Respondent Roozbeh Badii, M.D., (Respondent) who was present.

The record closed and the matter was submitted for decision on December 2, 2021. The ALJ issued a proposed decision revoking Respondent's license on December 20, 2021. The Board adopted the proposed decision on January 27, 2022, with an effective date of February 25, 2022. At Respondent's request, the Board granted a stay to consider a Petition for Reconsideration. Respondent's Petition for Reconsideration was denied on March 28, 2022.

Respondent filed a Petition for Writ of Administrative Mandate with the San Francisco County Superior Court. On September 7, 2022, the Superior Court granted Respondent's Petition for Writ of Administrative Mandate, finding that license revocation was not supported by the evidence, and remanding the matter back to the Board for reconsideration of the penalty.

Following the Superior Court remand, oral argument on the matter was heard via WebEx by Panel A on January 4, 2023, with ALJ Marcie Larson presiding. DAG Greg Chambers represented Complainant. Respondent was present and was represented by Attorney Marvin Firestone. Panel A, having read and considered the entire record, including the transcript and the exhibits, the Superior Court's Order, and the written and oral arguments, hereby enters this Decision After Superior Court Remand.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 11, 2016, the Board issued Physician's and Surgeon's Certificate No. C 143701 (Certificate) to Respondent Roozbeh Badii, M.D. The Certificate was in full force and effect at all times relevant to the charges in the

First Amended Accusation. The Certificate will expire on September 30, 2023, unless renewed.

2. On April 30, 2021, complainant William Prasifka filed the First Amended Accusation solely in his official capacity as the Board's Executive Director. Complainant seeks to discipline Respondent's Certificate based on discipline imposed on his medical licenses in Maryland and Connecticut, and for mental impairment.

Maryland Discipline

3. On April 20, 2020, the Maryland State Board of Physicians (Maryland Board) issued a Final Decision and Order suspending Respondent's Maryland license to practice medicine for a minimum of one year, based on mental incompetence and Respondent's failure to cooperate with a Maryland Board investigation into a complaint of over-prescribing high-cost prescription medications. The Maryland Board found that Respondent failed to respond to letters, telephone calls and subpoenas during the investigation and failed to appear for an interview, and that these actions resulted in the Maryland Board being unable to complete its investigation. The Maryland Board further noted that an independent evaluator found Respondent was not competent to practice safely due to anger, irritability, impulsivity, and poor insight and judgment. The Maryland Board concluded that Respondent is incompetent, and suspended his license for a minimum of one year and until he is determined to be safe to return to practice. Respondent was directed to attend the Maryland Professional Rehabilitation Program.

Respondent petitioned for judicial review of the Maryland Board's Final Decision and Order in the Circuit Court for Baltimore City. The Circuit Court affirmed, and Respondent then appealed in the Court of Special Appeals of Maryland. His appeal was denied on August 13, 2021. Respondent filed a petition for writ of certiorari, which was denied on November 22, 2021.

Connecticut Discipline

4. On February 16, 2021, the Connecticut Medical Examining Board (Connecticut Board) issued a Consent Order restricting Respondent from providing in-person clinical care in Connecticut without first notifying the Connecticut Board and only after he has been evaluated and found safe to provide clinical care. Respondent's Connecticut license was placed on probation for two years on conditions including retaining a practice supervisor. By agreeing to the Consent Order, Respondent waived his right to contest allegations that he has mental health conditions that, if not appropriately managed, do and/or may affect his practice as a physician and surgeon.

Prior Board Discipline

5. On June 8, 2018, the Board issued a Public Letter of Reprimand to Respondent, arising from a November 1, 2016, Consent Order issued by the Maryland Board in which Respondent was reprimanded for pre-signing prescription forms and authorizing a nurse to complete them. Respondent's actions constituted violations of Business and Professions Code sections 141, subdivision (a), 2234, and 2305.

Expert Report and Testimony

6. In light of the Maryland Board's disciplinary action, the Board directed Respondent to submit to a psychiatric evaluation. The evaluation was performed by psychiatrist Nicholas Badre, M.D., on October 30, 2020. Dr. Badre wrote a report and testified at the hearing.

7. Dr. Badre noted that during his interview of Respondent, Respondent expressed many conspiratorial and unusual beliefs, but ultimately Dr. Badre concluded that these beliefs were not delusional. He found Respondent's insight and judgment were reasonable.

Respondent revealed to Dr. Badre a history of medication non-compliance, admitting that he had ordered medication from abroad and did not notify his treating psychiatrist. Dr. Badre believed that Respondent was compliant with treatment at the time of his interview. He noted that Respondent was taking Lamotrigine (frequently prescribed for bipolar disorder) and Wellbutrin (an antidepressant). Dr. Badre performed a urine drug screen, and Respondent tested positive for these substances and not for any other substances. Respondent reported that he had previously taken Zyprexa (an antipsychotic medication commonly prescribed for bipolar disorder) for many years.

Dr. Badre diagnosed Respondent with unspecified depression and adjustment disorder. At hearing, he described Respondent's mental illness as "severe," and he agreed that his findings were not inconsistent with

Respondent's treating physician's diagnoses of seasonal affective disorder and probable bipolar disorder.

Dr. Badre wrote that Respondent does not have a mental illness which impairs his ability to practice safely, as long as the Board ensures that Respondent continues to seek psychiatric treatment and follow treatment recommendations. At hearing, Dr. Badre reiterated that treatment is necessary for Respondent to be safe to practice, regardless of whether he has depression or bipolar disorder. Dr. Badre believes that Respondent is willing to comply with Board oversight. He does not believe that Respondent is capable of consistently monitoring his own condition without oversight.

Respondent's Evidence

8. Respondent was born in Iran where his parents were prominent computer science professors. The family immigrated to the United States in 1987, when Respondent was 12 years old. Respondent graduated from medical school in January 2003. He was treated at a psychiatric hospital during medical school. Respondent testified that he suffered depression after the death of family members in Iran, and sought advice from a "nobel laureate" at the medical school. When he asked to take time off from school, the dean insisted that he seek psychiatric hospitalization because there had recently been a tragic incident involving a medical student with schizophrenia. In his interview with Dr. Badre, Respondent stated that he was asked to seek psychiatric care while in medical school because he appeared depressed and had sought career guidance from faculty members after not enjoying his

clinical rotations. Respondent reported to Dr. Badre that he was diagnosed as bipolar during this hospitalization. Respondent questions the bipolar diagnosis and asserted that he has never experienced a manic episode.

9. Respondent reported that he achieved high grades in surgery, but wanted to pursue a specialty that would enable him to have a family life so he "settled" on internal medicine. He completed a residency in internal medicine in 2007. Respondent became board certified in internal medicine in 2007 and he recertified in 2019.

10. Respondent stated that he worked as a hospitalist in Connecticut from 2007 through 2011, and that he earned a good reputation for "diagnosing diseases nobody else could." In 2011, he went to work at a hospital in Massachusetts. He reported that he left this position because the facility's elevators were always broken and he injured his calf walking up and down stairs. He also reported that while living in Massachusetts, he began to feel depressed during the winter months and wanted to move to a sunnier climate.

11. Respondent then moved to Virginia where he worked as a hospitalist until 2016. He reported that he was named "doctor of the year" during his tenure. He also began working in telemedicine in approximately 2012.

12. In 2016, Respondent had a business dispute with his partner and there was a 28-day-long period of rain which made him suffer from depression. He sought psychiatric help and was diagnosed with seasonal affective disorder. His physician prescribed Lamotrigine. Respondent

explained that the physician decided it was best "to assume the worst diagnosis," namely bipolar disorder, when deciding what to prescribe. Respondent added that Lamotrigine is sometimes prescribed off-label to treat depression.

13. Respondent moved to San Diego in 2016. He works in telemedicine and reported that he is the medical director of three entities. Respondent became estranged from his wife and reported that he would soon be awarded full custody of his three children.

14. Respondent believes that he suffers from seasonal affective disorder and is not otherwise mentally impaired. He reported that he becomes depressed after three days of poor weather, and that he will not work beginning on the fourth day until the weather improves. He stated that it is "risky" for him to work on the fourth day, and that he will stay home and drink coffee. He stated that he moved to San Diego due to his condition, and that he now only has debilitating episodes about once a year due to the favorable weather conditions. Respondent reported that he and his psychiatrist check the weather every day. Pursuant to his psychiatrist's advice, he takes an extra Wellbutrin when the forecast is for more than three consecutive cloudy days. Respondent stated that taking time off from work when there are more than three consecutive days of poor weather is not disruptive to patient care because he is only involved in low acuity urgent care and not with chronic care and there are other physicians who can see his patients. Respondent believes he can manage his condition and does not believe he needs oversight to practice safely. Respondent disputes the Maryland Board's discipline, alleging that it is

based on "false information."

15. Respondent has been treated by psychiatrist Barbara Smith, M.D., Ph.D., since at least 2018. He asserted that he is in compliance with her recommendations and that he intends to continue treatment with her. Respondent did not provide corroboration for this testimony.

16. Respondent reported that as a result of the Maryland Board's suspension, his Virginia medical license was automatically suspended. Because his DEA license was registered in Virginia it was also automatically revoked. Respondent reported that a federal judge ruled against his application for a DEA permit, but that he was eventually successful in obtaining an unrestricted DEA permit. Respondent did not corroborate this testimony.

17. Respondent made a number of implausible statements during his testimony. He stated that his wife falsified his personal medical records and sent them to his former business partner who sold them for $250,000. He asserted that his records were worth this sum because he is the plaintiff in an antitrust action against a former employer. He also asserted that he had been interviewed by FBI agents who advised him not to make a report to the local police, and that the FBI matter is still pending.

18. Respondent's demeanor during the hearing and his tangential, hyperbolic, and at times implausible testimony severely undermined his credibility and highlighted the need for Board monitoring to ensure that Respondent remains compliant with treatment and is safe to practice.

LEGAL CONCLUSIONS

1. It is Complainant's burden to demonstrate the truth of the allegations by "clear and convincing evidence to a reasonable certainty," and that the allegations constitute cause for discipline of Respondent's Certificate. *(Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. Business and Professions Code sections 2305 and 141 provide that the Board may discipline the certificate of a physician who has been disciplined by another state for conduct which would be cause for discipline in California. Respondent's discipline in Maryland involved conduct which would be cause for discipline in California under Business and Professions Code sections 2234 (unprofessional conduct), 2234, subdivision (h) (failing to attend a Board interview), 2225 (failure to comply with a Board subpoena), and 822 (mental impairment). Cause for discipline based on the Maryland Final Decision and Order was established, in light of the matters set forth in Factual Finding 3. Respondent's discipline in Connecticut involved impairment due to mental illness, which would be cause for discipline in California under Business and Professions Code section 822. Cause for discipline based on the Connecticut Consent Order was established in light of the matters set forth in Factual Finding 4.

3. Business and Professions Code sections 2227 and 822 provide that the Board may take action against a licensee whose ability to practice

medicine safely is impaired by mental or physical illness. The evidence established that Respondent suffers from mental impairment that if not appropriately treated impairs his ability to practice safely. Cause for discipline was established in light of the matters set forth in Factual Finding 7.

4. In exercising its disciplinary functions, protection of the public is the Board's highest priority. (Bus. & Prof. Code, § 2229, subd. (a).) The Board is also required to take disciplinary action that is calculated to aid the rehabilitation of the physician whenever possible, as long as the Board's action is not inconsistent with public safety. (Bus. & Prof. Code, § 2229, subds. (b), (c).)

5. The Board's Manual of Disciplinary Orders and Disciplinary Guidelines (12th ed., 2016; Cal. Code Regs., tit. 16, § 1361) provide for a minimum discipline of five years' probation and a maximum discipline of revocation for licensees who have been impaired by mental illness or who have committed unprofessional conduct. Complainant recommends a five-year period of probation with several special conditions to provide rehabilitation and monitoring of Respondent's practice. Respondent believes no discipline is warranted.

6. Respondent has suffered from mental illness since medical school that has at times impaired his ability to practice medicine safely. He has a history of prior non-compliance with treatment. He unconvincingly asserts that he is only minimally impaired by seasonal affective disorder and that he is capable of managing his condition. Respondent's presentation at

hearing did not allay concerns about his mental condition and fitness to practice safely. There was no evidence that he complied with the Maryland Board's order directing him to attend a physician rehabilitation program. He continues to challenge the validity of the Maryland Board's discipline. Respondent asserts that he is in compliance with psychiatric treatment, but did not provide testimony or a letter from his treating physician. Nor did Respondent submit any letters from physicians attesting to his competence. He has a history of prior Board discipline consisting of a public letter of reprimand. Under these circumstances, a five-year period of probation consistent with the Disciplinary Guidelines with terms and conditions, including a psychiatric evaluation, psychotherapy, practice monitoring through a Board-approved professional enhancement program, no solo practice, and standard terms and conditions, is necessary to ensure public protection and provide an opportunity for Respondent to demonstrate that he is safe to practice and will remain compliant with treatment for a sustained length of time.

ORDER

Physician's and Surgeon's Certificate No. C 143701, issued to Respondent Roozbeh Badii, M.D., is revoked. However, revocation is stayed, and Respondent is placed on probation for five (5) years on the following terms and conditions:

1. Psychiatric Evaluation

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

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

2. Psychotherapy

Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary. Respondent shall be permitted to comply with this condition by continuing psychotherapy with his current psychiatrist, Barbara Smith, M.D., Ph.D., so long as the other requirements of this condition are met.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and

shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

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

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

3. <u>Professional Enhancement Program</u>

Within 60 calendar days of the effective date of this Decision, Respondent shall participate in a professional enhancement program (PEP) approved in advance by the Board or its designee, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

If Respondent fails to enroll in a professional enhancement program within 60 calendar days of the effective date of this Decision, 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 he is enrolled in an approved program.

If Respondent leaves the program for any reason, 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 he is again enrolled in an approved program.

4. Solo Practice Prohibition

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

If Respondent 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, 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. The Respondent shall not resume practice until an appropriate practice setting is established.

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

5. Notification

Within seven (7) days of the effective date of this Decision, Respondent 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 Respondent, at any other facility where Respondent 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 Respondent. Respondent 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.

6. Supervision of Physician Assistants and Advanced Practice Nurses

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

7. Obey All Laws

Respondent 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.

8. Quarterly Declarations

Respondent 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.

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

9. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is

contemplated to last, more than thirty (30) calendar days.

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

10. Interview with the Board or its Designee

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

11. Non-practice While on Probation

Respondent 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 Respondent's return to practice. Non-practice is defined as any period of time Respondent 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 Respondent resides in California and is considered to be in non-practice, Respondent 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 Respondent 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 Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent 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.

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

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

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

12. <u>Completion of Probation</u>

Respondent 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, Respondent's certificate shall be fully restored.

13. Violation of Probation

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

14. License Surrender

Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent'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, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

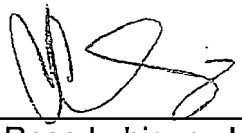
15. Probation Monitoring Costs

Respondent 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 February 27, 2023.

IT IS SO ORDERED this 27th day of January, 2023.



Laurie Rose Lubiano, J.D.
Chair, Panel A
Medical Board of California