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

In the Matter of the First Amended Accusation Against: Vladimir B. Fiks, M.D. Physician's and Surgeon's Certificate No. A 55514 Respondent.	Case No.: 800-2021-080255

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 March 10, 2023.

IT IS SO ORDERED: February 8, 2023.

MEDICAL BOARD OF CALIFORNIA

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

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

In the Matter of the First Amended Accusation Against:

VLADIMIR B. FIKS, M.D.,

Physician's and Surgeon's Certificate No. A 55514

Respondent.

Agency Case No. 800-2021-080255

OAH No. 2022080921

PROPOSED DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on November 28, 2022, via videoconference.

Deputy Attorney General Harriet Newman represented complainant William Prasifka, Executive Director, Medical Board of California, Department of Consumer Affairs.

Attorney Vincent A. Maeder represented respondent Vladimir B. Fiks, M.D., who was present.

The matter was submitted on November 28, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent Vladimir B. Fiks, M.D., holds California Physician's and Surgeon's Certificate No. A 55514. The Medical Board of California (CA Board) issued this certificate (CA Certificate) to respondent on January 10, 1996. The certificate expired on January 31, 2022, and has not been renewed.

2. Acting in his official capacity as Executive Director of the CA Board, complainant William Prasifka signed an accusation and later the operative first amended accusation against respondent. Complainant alleges that the Oregon Medical Board (OR Board) issued an order disciplining respondent's Oregon medical license (OR License), and that the CA Board likewise should revoke or restrict respondent's authority to practice medicine in California. Respondent requested a hearing and this proceeding followed.

The OR Board's July 1, 2021, Disciplinary Order

3. On May 28, 2020, the OR Board issued a Complaint and Notice of Proposed Disciplinary Action (May 28, 2020, Notice) to respondent, who is a licensed physician in Oregon. The May 28, 2020, Notice alleged that respondent violated numerous sections of the Oregon Medical Practice Act, including unprofessional or dishonorable conduct, specifically conduct contrary to recognized standards of medical ethics or which might constitute a risk to a patient or the public; willful performance of any surgical or medical treatment which is contrary to acceptable

medical standard; willful and repeated ordering or performance of unnecessary laboratory tests, administration of unnecessary treatment, employment of outmoded, unproved, or unscientific treatments or otherwise utilizing medical services for diagnosis which is or may be considered inappropriate or unnecessary; and repeated acts of negligence; by engaging in a pattern and practice of directing patients who sought treatment for chronic pain to undergo allergy testing, using a panel of 80 potential allergens; determining that each patient suffered from multiple allergies that required ongoing immunotherapy, and directing the patients to self-inject allergy shots at home, despite the risk of adverse reaction; and relying on his staff to make critical decisions on his behalf in the work-up and treatment of his patients for allergies. The OR Board alleged five specific incidents of this behavior.

4. The May 28, 2020, Notice also alleged that the OR Board reviewed respondent's use of vestibular testing of five patients and discovered that he violated these same sections of the Oregon Medical Practice Act, as well as the American Medical Association (AMA) Code of Ethics Principles 1.1.1 and 11.1.2, because he employed a patient questionnaire that deviated from CDC (Center for Disease Control) STEDI (Stopping Elderly Accidents, Deaths & Injuries) guidelines by using a 16 instead of 12 question form, thereby increasing the likelihood of a positive score for the risk of falling; had an employee administer vestibular testing who was not qualified to competently do so; relied on an expensive test to screen for fall risk instead of the cheaper CDC algorithm that does not require specialized equipment and training, which resulted in inaccurate and misleading conclusions regarding fall risks; and failed to document whether patients complied with physical therapy (PT) referrals or document notes from a physical therapist regarding patient response to PT.

5. Effective July 1, 2021, the OR Board issued a stipulated order of discipline (July 1, 2021, OR Board Order). Pursuant to this order, the OR Board found that respondent's conduct, as alleged in the May 28, 2020, Notice, violated the Oregon Medical Practice Act as described in Factual Finding 3. Respondent acknowledged that the order is a public record and a disciplinary action reportable to the National Practitioner Data Bank and the Federation of State Medical Boards. Respondent further agreed to conditions, including that he: pay a $7,500 civil penalty; refrain from obtaining, purchasing, leasing, or using any equipment used for the sole purpose of vestibular testing; and refrain from performing allergy testing for any patient or treating chronic environmental allergies via desensitization injections.

Prior License Discipline

6. Respondent's physician licenses were previously disciplined by the Oregon and California Boards. On April 12, 2006, the respondent entered into a stipulated order with the OR Board, pursuant to which he agreed to meet with a practice monitor for a minimum of two years, undergo a billing audit, and complete a medical ethics course, based upon the OR Board's findings of numerous violations of the Oregon Medical Practice Act, involving insufficient supervision of his staff and patients and billing under codes that suggested he was more directly involved in patient care than was the case. This stipulated order was terminated on July 9, 2009.

7. On September 23, 2008, the CA Board issued a decision publicly reprimanding respondent's CA Certificate due to the OR Board discipline described in Factual Finding 6.

Respondent's Evidence

8. Respondent attended medical school in Russia and then he and his family immigrated to California in 1989. He has resided and practiced medicine in Oregon since 1993. He became licensed in California in 1996 because he thought he might move to be close to his parents, but then they passed away. He has never practiced medicine in California and has no plans to do so.

9. Respondent credibly reports that he paid the $7,500 civil penalty and is also in compliance with all the other terms of the July 1, 2021, OR Board Order. He has received no other complaint or disciplinary action since July 2021. Respondent did not express remorse for his misconduct and submitted no other evidence of rehabilitation.

Costs

10. In connection with the investigation and enforcement of this accusation, complainant requests an award of costs in the total amount of $8,446.25 for attorney and paralegal services provided by the Department of Justice and billed to the CA Board from March 21 through October 27, 2022, including two hours of estimated attorney time for further hearing preparation after that date. That request is supported by a declaration that complies with the requirements of California Code of Regulations, title 1, section 1042. Those costs are found to be reasonable.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant is required to prove cause for discipline of a physician's and surgeon's certificate by "clear and convincing proof to a reasonable certainty."

(*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; see Bus. & Prof. Code, § 23.7 [all statutory references are to the Business and Professions Code, unless otherwise stated].) Clear and convincing evidence supports the factual findings above.

Cause for Discipline/Denial

2. The CA Board may discipline a licensee whose license to practice medicine in another jurisdiction is disciplined by the licensing authority of that jurisdiction, if the discipline was based upon an act substantially related to the practice of medicine or if the grounds for that discipline would have been grounds for discipline under the Medical Practice Act (§ 2000 et seq.). (§§ 141, 2035.)

3. Section 141, subdivision (a), states:

> For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

4. Section 2035 states:

> The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter [Chapter 5, the Medical Practice Act], shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

5. Respondent does not deny that the conduct underlying the July 1, 2021, OR Board Order would have been grounds for discipline in California. He does not contend that he asked complainant to specify which sections of the act it would have violated. Instead, he contends that the First Amended Accusation is impermissibly vague as to which sections of the Medical Practice Act his Oregon misconduct would have violated and therefore the CA Board does not have jurisdiction to discipline him. He also argues that the CA Board lacks jurisdiction because his CA Certificate expired and has not been renewed.

6. The latter contention is expressly rejected by section 118, subdivision (b). The CA Board retains jurisdiction to discipline a medical license "during any period in which it may be renewed, restored, reissued, or reinstated." (*Ibid.*)

7. As to the former contention, respondent cites *Wheeler v. State Bd. of Forestry* (1983) 144 Cal.App.3d 522, 527. In *Wheeler*, the State Board of Forestry revoked the license of a registered "professional forester" based upon a finding that an

estimation error constituted gross incompetence. (*Id.* at 525.) The court found that the accusation did not charge the licensee with incompetence for the estimation error, rather the error was charged as "'deceit, misrepresentation, or fraud in his practice,'" separate grounds under the same subdivision that lists incompetence as grounds for discipline. The court held that the charging error was fatal to discipline on that basis because Government Code section 11503 requires an accusation to specify the statutes and rules which a respondent is alleged to have violated. Essentially the court held that a complainant cannot specify one ground for discipline and then base discipline on a different ground that was not specified.

8. Here, unlike in *Wheeler*, complainant alleged facts (discipline by the OR Board) that provide grounds for discipline of respondent's Certificate under two enumerated statutes. *Wheeler* is inapposite. The essence of respondent's argument is that, because section 2035 requires the grounds of out of state discipline to be grounds that would violate the Medical Practice Act, the accusation must specify which provision of the Medical Practice Act the out of state conduct would have violated. *Wheeler* does not address that contention or strongly support respondent's argument.

9. Moreover:

> A variance between the allegations of a pleading and the proof will not be deemed material unless it has actually misled the adverse party to his prejudice in maintaining his action or defense on the merits, and a variance may be disregarded when the action has been as fully and fairly tried on the merits as though the variance had not existed.

(*Cooper v. Bd. Medical Examiners* (1952) 49 Cal.App.3d 931, 942 [quoting *Hayes v. Richfield Oil Corp.* (1952) 38 Cal.2d 375, 382].) Respondent articulates no prejudice that would support deeming the accusation impermissibly vague. Accordingly, any variance between the pleading and the proof may be disregarded. (*Ibid.*)

10. Regardless, section 141 contains no such reference to violating California law and instead only requires the underlying basis of the out of state discipline to be related to the practice regulated by the California license. Here, that is the practice of medicine and the July 1, 2021, OR Board Order was so founded.

11. The accusation alleges cause for discipline under sections 141, subdivision (a), and 2035 with sufficient specificity. Cause for discipline of respondent's CA Certificate exists, in light of the matters stated in Factual Findings 3 through 5.

Determination of Discipline

12. Cause for discipline having been established, the next issue is what discipline is required to protect the public. Respondent has practiced medicine since 1996, but has been disciplined twice by each board, related to two separate findings of misconduct, each related to multiple patients. He did not express remorse for his misconduct and proved minimal rehabilitation.

13. Complainant argued that a five-year term of probation, with probation terms including assessment of clinical competence, educational courses, and a prohibition against allergy testing and treatment and vestibular testing, is appropriate. Respondent argued for dismissal of the accusation but did not argue in the alternative regarding the appropriate level of discipline.

14. The CA Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th ed. 2016) (Guidelines, Cal. Code Regs., tit. 16, § 1361) recommend a minimum probation term of five years for a physician who uses excessive treatments or who commits repeated negligent acts with multiple patients in the practice of medicine. (Guidelines, at pp. 22, 24.) In this matter, a five-year probation period is appropriate, with some additional terms of probation.

15. Before respondent begins practicing in California, he should undergo an assessment of his clinical competence, with the corresponding obligation to undertake any remedial education the assessment shows to be necessary. He should undertake ongoing additional continuing medical education, and should take courses in professional ethics and medical record keeping.

16. Finally, respondent should be subject to the same prohibitions imposed by the OR Board, specifically be prohibited from obtaining, purchasing, leasing, or using any equipment used for the sole purpose of vestibular testing; and from performing allergy testing for any patient or treating chronic environmental allergies via desensitization injections, except under appropriate supervision.

Costs

17. A physician found to have committed a violation of the laws governing medical practice in California may be required to pay the CA Board the reasonable costs of the investigation and enforcement of the case, but only as incurred on and after January 1, 2022. (Bus. & Prof. Code, § 125.3.) The reasonable costs for this matter total $8,446.25. (Factual Finding 10.)

18. Cost awards must not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. (*Zuckerman v. State Board of*

Chiropractic Examiners (2002) 29 Cal.4th 32, 45.) Cost awards must be reduced where a licensee has been successful at hearing in getting the charges dismissed or reduced; a licensee is unable to pay; or where the scope of the investigation was disproportionate to the alleged misconduct. (*Ibid.*) The agency must also consider whether the licensee has raised a colorable challenge to the proposed discipline, and a licensee's good faith belief in the merits of his or her position. (*Ibid.*) No basis to reduce the cost award in this matter was established.

ORDER

Physician's and Surgeon's Certificate No. A 55514, issued to respondent Vladimir B. Fiks, M.D., is revoked. The revocation is stayed, however, and respondent is placed on probation for five years upon the following terms and conditions.

1. Clinical Competence Assessment Program

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

The program shall consist of a comprehensive assessment of respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties (ABMS) pertaining to respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the decision(s), accusation(s), and

any other information that the CA Board or its designee deems relevant. The program shall require respondent's on-site participation for a minimum of three and no more than five days as determined by the program for the assessment and clinical education evaluation. Respondent 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 CA Board or its designee that states unequivocally whether respondent has demonstrated the ability to practice safely and independently. Based on respondent's performance on the clinical competence assessment, the program will advise the CA 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 respondent's practice of medicine. Respondent shall comply with the program's recommendations.

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

Respondent shall not practice medicine in California until respondent has successfully completed the program and has been so notified by the CA Board or its designee in writing.

2. Education

Within 60 calendar days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the CA Board or its designee, for its prior approval, educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category

I certified. The educational program(s) or course(s) shall be at respondent'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 CA Board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

3. Medical Record Keeping Course

Within 60 calendar days of the effective date of this decision, respondent shall enroll in a course in medical record keeping approved in advance by the CA Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one year of enrollment. The medical record keeping course shall be at respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

A medical record keeping course 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 CA Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the CA Board or its designee had the course been taken after the effective date of this decision.

Respondent shall submit a certification of successful completion to the CA Board or its designee not later than 15 calendar days after successfully completing the

course, or not later than 15 calendar days after the effective date of the decision, whichever is later.

4. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this decision, respondent shall enroll in a professionalism program, that meets the requirements of California Code of Regulations, title 16, section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after respondent'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 respondent's expense and shall be in addition to the 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 CA Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the CA Board or its designee had the program been taken after the effective date of this decision.

Respondent shall submit a certification of successful completion to the CA 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.

5. Practice Restriction

During probation, respondent is prohibited from obtaining, purchasing, leasing, or using any equipment used for the sole purpose of vestibular testing; and from performing allergy testing for any patient or treating chronic environmental allergies via desensitization injections; except under direct supervision by another physician or within the course of a formal training program approved in advance by the CA Board or its designee. Respondent must notify any patient whom he diagnoses as having, or for whom he proposes to treat for, allergies or fall risk, at the time of the initial diagnosis or consultation.

Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address, and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the CA Board or its designee, and shall retain the log for the entire term of probation.

6. Notification

Within seven days of the effective date of this decision, respondent shall provide a true copy of the decision and the accusation in this matter 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 CA Board or its designee within 15 calendar days.

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

7. Supervision of Physician Assistants and Advanced Practice Nurses

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

8. Obey All Laws

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

9. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the CA 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.

10. General Probation Requirements

Compliance with Probation Unit: Respondent shall comply with the CA Board's probation unit and all terms and conditions of this decision.

Address Changes: Respondent shall, at all times, keep the CA Board informed of respondent's business and residence addresses, email address, and telephone number. Changes of such addresses shall be immediately communicated in writing to the CA 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: 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 CA 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 CA Board or its designee in writing 30 calendar days prior to the dates of departure and return.

11. Interview with the CA 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.

12. Non-Practice While on Probation

Respondent shall notify the CA 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 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 CA Board. All time spent in an intensive training program which has been approved by the CA 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 CA 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 a clinical training program that meets the criteria of Condition 18 of the current version of the CA 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 years.

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

Periods of non-practice 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, Quarterly Declarations, and General Probation Requirements.

13. Completion of Probation

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.

14. 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 CA 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 CA Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

15. 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 license. The CA 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 CA 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.

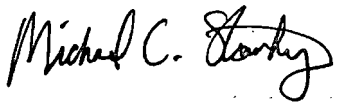
16. Cost Recovery

Respondent is hereby ordered to reimburse the Medical Board of California the amount of $8,446.25 for its enforcement costs. Respondent shall complete this reimbursement within 90 days from the effective date of this decision.

17. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the CA Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the CA Board or its designee no later than January 31 of each calendar year.

DATE: 12/21/2022



MICHAEL C. STARKEY
Administrative Law Judge
Office of Administrative Hearings