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

In the Matter of the Petition for Reinstatement for: Hugo Estefano Altamirano Physician's and Surgeon's Certificate No. A 121792 Respondent.	Case No.: 800-2022-094314

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 5, 2024.

IT IS SO ORDERED: December 7, 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 Petition for Reinstatement by:

HUGO E. ALTAMIRANO, Petitioner.

Agency Case No. 800-2022-094314

OAH No. 2023080245

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on October 2, 2023, by videoconference.

Attorney Scott J. Harris represented petitioner Hugo E. Altamirano, who was present throughout the hearing.

Deputy Attorney General Kendra S. Rivas represented the Department of Justice, Office of the Attorney General.

The matter was submitted for decision on October 2, 2023.

FACTUAL FINDINGS

1. On June 22, 2012, the Medical Board of California issued Physician's and Surgeon's Certificate No. A 121792 to petitioner Hugo E. Altamirano. The Board accepted petitioner's surrender of this certificate effective August 21, 2017, after disciplinary proceedings described in more detail in Finding 10, below.

2. By petition dated November 16, 2022, petitioner seeks reinstatement to licensure. This petition is his first.

Education and Professional Experience

3. Petitioner graduated from medical school in 2010. He completed a one-year surgery internship in 2011, followed by a three-year anesthesiology residency in 2014. Petitioner obtained his California physician's and surgeon's certificate during his residency.

4. Petitioner took and passed the written examination for board certification in anesthesiology in 2015. He did not take the oral examination, and never became board-certified, because of the mental health challenges summarized below in Findings 12 and 13.

5. After completing his residency, petitioner joined the anesthesiology staff at Doctors' Medical Center in San Pablo. When that hospital closed in 2015, petitioner moved to Contra Costa Regional Medical Center (CCRMC) in Martinez. He served as anesthesiology department chair at CCRMC between January 2015 and October 2016.

6. Petitioner stopped practicing medicine abruptly in October 2016, after the incident summarized below in Finding 9. He worked in roles unrelated to medicine during 2017 and 2018.

7. Since mid-2019, petitioner has worked as a medical technology patent consultant, and also has worked for a business that is developing medical software.

8. Petitioner has attended conferences and continuing medical education events in anesthesia and general medicine. He also reads medical literature regularly. If the Board reinstates him to licensure, he hopes to resume practicing anesthesiology.

Disciplinary History

9. On October 29, 2016, petitioner was on duty at CCRMC, providing anesthesia services to labor and delivery patients. He failed to respond when staff members paged him to attend to a patient, because he had administered anesthetic medication to himself and was nearly unconscious in the physicians' call room. The colleague who found petitioner sent him to the emergency department, and he never returned to duty at CCRMC.

10. The Board suspended petitioner from medical practice effective January 31, 2017. On March 2, 2017, acting in her official capacity, the former Executive Director of the Board filed an accusation against petitioner, alleging that the incident summarized in Finding 9 and the substance use disorder that had provoked it were cause to suspend or revoke petitioner's physician's and surgeon's certificate. Petitioner resolved this disciplinary matter by surrendering his certificate, as stated above in Finding 1.

Substance Use Disorder and Recovery

11. In high school, college, and medical school, petitioner occasionally abused alcohol by binge drinking. This behavior did not interfere with petitioner's education or training. It did cause some difficulty in personal relationships, and it established habits from which petitioner's later substance use disorder grew.

12. Soon after petitioner began working at Doctors' Medical Center, he began socializing with people who enjoyed using drugs recreationally. Petitioner worked extremely long hours (sometimes as many as 100 hours per week) and partied with his friends when he was not working.

13. Petitioner began diverting anesthetic drugs from CCRMC in approximately January 2016. At first, he took home fentanyl that had been prepared but not used for patients, and used it at home. Eventually, he began taking both fentanyl and propofol for himself (rather than relying on patient discards), and using both drugs at CCRMC.

14. After the incident summarized in Finding 9, petitioner entered a residential substance use disorder treatment program in California. He spent about four months in that program, followed by about six more weeks at a similar program in Tennessee.

15. Residential treatment introduced petitioner to a 12-step program, and to both individual and group psychotherapy. After leaving residential treatment, petitioner enrolled in an outpatient counseling and monitoring program through Pacific Assistance Group (PAG). He continued to attend Alcoholics Anonymous (AA) meetings, to engage in individual psychotherapy, and to attend a facilitated group therapy program for medical professionals in recovery from substance use disorders.

16. Petitioner remained abstinent from alcohol and unprescribed drugs for more than two years, until December 2018. In that month, after discontinuing individual psychotherapy and experiencing considerable emotional stress, he resumed drinking alcohol and using opioid drugs (orally, not intravenously) and cannabis.

17. For about two months in late 2018 and early 2019, petitioner used subterfuge to submit urine drug screening samples for his PAG monitoring that he believed would not reveal his relapse. His subterfuge succeeded; the testing laboratory did not report any positive samples.

18. Beginning again on February 9, 2019, and continuing since then, petitioner has abstained from alcohol and unprescribed drugs.

19. Even during his relapse, petitioner continued attending AA meetings. He testified credibly and without contradiction that he attends at least one 12-step meeting every day, sometimes in person and sometimes by videoconference. Petitioner has worked through the 12 steps more than once, and has sponsored several other men.

20. Petitioner attended group psychotherapy meetings through PAG between April 2017 and September 2021, and participated in PAG's bodily fluid testing program to confirm abstinence from alcohol and unprescribed drugs. In mid-2021, he revealed to his group and his PAG monitor that he had relapsed two years earlier, as described in Finding 16, and had concealed his relapse as described in Finding 17. PAG terminated his participation in its program because of this information.

21. After PAG, petitioner enrolled in a similar counseling and monitoring program (Flying Knee, Inc.), supervised by Helene O'Mahoney, Ph.D. His monitoring protocol with Flying Knee involves more frequent, but random, bodily fluid testing

than he had been undergoing with PAG, as well as quarterly hair testing. Petitioner has not missed any test check-ins or tests, or given any samples that have tested positive for alcohol or unprescribed drugs, since joining Flying Knee.

22. Petitioner resumed individual psychotherapy in February 2019 and continues to see a psychotherapist approximately weekly. He also participates in a weekly physicians' counseling group through Flying Knee and has not missed any meetings.

23. To keep his substance use disorder in remission, petitioner relies on routine and peer support, in addition to the professional psychotherapy described in Finding 22. He prays and meditates every morning, a practice that he believes helps him manage his emotions throughout the day. He attends regular 12-step meetings, as described in Finding 19, and engages in service activities, primarily through his home AA group. Petitioner exercises regularly (and had knee surgery in October 2022 to address a sports injury). He no longer socializes with the same people with whom he socialized early in his licensed medical career, preferring to emphasize sober friends and activities that do not involve alcohol or drugs.

24. Petitioner intends to continue all the relapse prevention activities described in Findings 21 through 23 if he returns to medical practice. He believes that the support and monitoring he receives through Flying Knee will be critical for his transition back into medical practice. He also has contemplated using extended-release naltrexone to blunt any potential craving for opioid drugs, and would do so if a physician prescribed it to him.

25. Dr. O'Mahoney testified regarding petitioner's participation in the Flying Knee program since September 2021. She confirmed the matters stated in Findings 21

and 22, and described petitioner as participating consistently and actively in the program. Dr. O'Mahoney considers petitioner "highly motivated" to maintain sobriety, with "very good insight" into his substance use disorder and his recovery. She believes him to have a good prognosis for "ongoing success," and thinks that he is ready to test his new emotional skills against the stress of medical practice. Dr. O'Mahoney recommends petitioner's reinstatement, with an initial period of probation to reinforce abstinence and to confirm his ability to practice safely.

26. Gregory Skipper, M.D., evaluated petitioner's suitability for reinstatement to medical practice. Dr. Skipper is an addiction medicine specialist. He has served as the medical director of an inpatient treatment program that treats primarily medical professionals, and conducts regular fitness-for-duty evaluations of such professionals. After meeting with and examining petitioner, and evaluating petitioner's treatment and recovery history, Dr. Skipper concluded that petitioner is ready to return to medical practice, with probationary monitoring to reinforce abstinence and to confirm that petitioner's relapse prevention plan is adequate for the stress he will encounter in practice. Dr. Skipper routinely recommends extended-release naltrexone to anesthesiologists with substance use disorders who return to practice using the drugs they formerly abused, and he recommends it for petitioner.

References

27. Petitioner's AA sponsor, Stephen Hankins, testified to support petitioner's reinstatement. Hankins met petitioner in 2018, and has sponsored him since February 2019. They speak with each other once or twice each week, either in person or by videoconference, and exchange text messages more frequently. Hankins believes that the "turnaround" in petitioner's life during their five-year relationship has been "phenomenal." Petitioner is "extremely serious about his sobriety," and is

"well-equipped to deal with the professional and personal pressures that he will face if his license is reinstated." Hankins respects petitioner's "personal and authentic" interest in caregiving through medical practice and believes he can practice medicine again safely.

28. Veda Bhatt, M.D., one of petitioner's former colleagues at CCRMC, testified to support his reinstatement. Dr. Bhatt is an obstetrician and gynecologist who currently chairs CCRMC's Medical Staff Assistance Committee (for CCRMC physicians facing mental or physical health challenges that potentially impair their ability to practice safely). Before the incident summarized in Finding 9, Dr. Bhatt worked regularly with petitioner in labor and delivery, and believed him to provide effective, compassionate service to her patients. Since that incident, petitioner has kept the CCRMC Medical Staff Assistance Committee up to date on his recovery. Dr. Bhatt and her colleagues on the committee would like petitioner to return to medical practice at CCRMC, and believe the Medical Staff Assistance Committee could support him effectively if the Board reinstates him to licensure.

29. Ali Sina Bari, M.D., is the Director of Medical Artificial Intelligence at iMerit, the software business described in Finding 7. Dr. Bari met petitioner through their PAG physicians' support group. He believes petitioner to be kind, dependable, honest, and in stable recovery. Dr. Bari is familiar with the Board's usual probation requirements for physicians returning to practice after recovery from substance use disorders, because Dr. Bari himself currently is on such probation. He has discussed his own probation experience with petitioner and believes petitioner can practice safely and successfully on probation if the Board reinstates him.

30. Petitioner submitted letters from several other people supporting his reinstatement.

a. Five of the authors know petitioner through 12-step activities. They attest to petitioner's honesty, and to his commitment to sobriety and service.

b. Two of the authors are physicians who have not practiced with petitioner, but who have known him for many years. Both are aware of petitioner's substance use disorder and recovery, and believe him capable now of safe medical practice.

c. One of the authors is petitioner's primary care physician, who has followed petitioner's recovery and "look[s] forward to him practicing medicine soon."

LEGAL CONCLUSIONS

1. The matters stated in Findings 1 and 2 establish petitioner's eligibility to apply for reinstatement. (Bus. & Prof. Code, § 2307, subds. (b)(1), (g).) Petitioner bears the burden of proving, using clear and convincing evidence, that the public interest favors the Board's permitting him to resume medical practice in California.

2. In determining whether to grant the petition, the Board may consider all of petitioner's activities before and since his license revocation, as well as the reasons for revocation, his rehabilitative efforts, and his professional ability. (Bus. & Prof. Code, § 2307, subd. (e).)

3. Clear and convincing evidence, as summarized in Findings 19 through 27, demonstrates that petitioner has attained stable remission from his substance use disorder. Moreover, the evidence summarized in Findings 3 through 5 and 28 demonstrates clearly and convincingly that aside from this disorder, petitioner was a

competent physician, and that colleagues who practiced with him will welcome his return to practice as long as his substance use disorder remains in remission. Public safety no longer requires that the Board forbid petitioner to practice medicine.

4. The Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines, 12th Edition 2016 (Disciplinary Guidelines, Cal. Code Regs., tit. 16, § 1361, subd. (a)), recommends at least five years' probation for licensees who have committed unprofessional conduct involving substance abuse, on conditions including abstinence from alcohol and from unprescribed psychoactive drugs. (Disciplinary Guidelines, at p. 26.) In light of the matters stated in Findings 11 through 17 and 24 through 26, this period of probation is appropriate in this matter to permit the Board to confirm petitioner's ability to maintain sobriety.

5. The matters stated in Findings 9 and 10 call for the Board to treat petitioner as a "substance-abusing licensee" in evaluating appropriate probation conditions. (Cal. Code Regs., tit. 16, § 1361.5, subd. (a).) The Board has adopted Uniform Standards for Substance-Abusing Licensees that include optional and standard probation terms for such matters. (*Id.*, § 1361, subd. (b).)

a. A clinical diagnostic evaluation is optional. (Cal. Code Regs., tit. 16, § 1361.5, subd. (c)(1)(A).) Because of the matters stated in Findings 25 and 26 and in Legal Conclusion 6, no such evaluation is necessary as a prerequisite to petitioner's resuming medical practice. In the future, however, the Board reasonably may require petitioner to undergo a further mental health evaluation, and to follow any therapeutic recommendations that arise from that evaluation.

b. Communication with petitioner's employer and supervisor is a standard term. (Cal. Code Regs., tit. 16, § 1361.5, subd. (c)(2).)

c. Biological fluid testing to confirm abstinence from alcohol and from unprescribed psychoactive drugs is a standard term. (Cal. Code Regs., tit. 16, § 1361.5, subd. (c)(3)(A).)

d. Group support meetings are optional (Cal. Code Regs., tit. 16, § 1361.5, subd. (c)(4)), but are appropriate in this matter.

e. A worksite monitor also is optional (Cal. Code Regs., tit. 16, § 1361.5, subd. (c)(5)(A)), but is appropriate for petitioner.

f. A term defining "major" and "minor" violations, and describing penalties for such violations, is standard. (Cal. Code Regs., tit. 16, §§ 1361.5, subd. (c)(6), 1361.52.)

6. In addition to probation conditions reflecting petitioner's substance abuse history, the Board should impose a condition in this matter reflecting the fact that petitioner has not practiced medicine in seven years, as summarized in Finding 6. A clinical competence assessment will permit the Board as well as any hospital or surgery center in which he may practice to confirm that petitioner's anesthesiology knowledge and skills are current if and when he returns to work.

ORDER

Physician's and Surgeon's Certificate No. A 121792, issued to petitioner Hugo E. Altamirano, M.D., is reinstated. The certificate is immediately revoked; the revocation is stayed; and petitioner is placed on probation for five years upon the following terms and conditions.

1. Clinical Competence Assessment

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

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

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

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

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

2. Clinical Diagnostic Evaluations and Reports

Subsequent to the clinical competence assessment described in Condition 1, and if directed by the Board or its designee, petitioner shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a board-certified physician and surgeon appointed by the Board. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

Any clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three years' experience in providing evaluations of physicians and surgeons with substance use disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with petitioner within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether petitioner has an active substance use disorder, whether petitioner is a threat to himself or others, and recommendations for substance abuse treatment,

practice restrictions, or other recommendations related to petitioner's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that petitioner is a threat to himself or others, the evaluator shall notify the Board within 24 hours of such a determination.

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

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

The Board shall review the clinical diagnostic evaluation report within five business days of receipt to determine whether petitioner is safe for either part time or full time practice and what restrictions or recommendations shall be imposed on petitioner based on the recommendations made by the evaluator. If removed from practice following a clinical diagnostic evaluation, petitioner shall not be returned to practice until he has at least 30 days of negative biological fluid tests or biological fluid tests indicating that he has not used, consumed, ingested, or administered to

himself a prohibited substance, as defined in section 1361.51, subdivision (e), of title 16 of the California Code of Regulations.

The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by petitioner.

Upon satisfying Condition 1, above, petitioner may engage in the practice of medicine unless and until notified by the Board or its designee that he is unfit to practice medicine safely. Any period of time that petitioner is not practicing medicine shall not be counted toward completion of the term of probation. Petitioner shall undergo biological fluid testing as required in this decision while awaiting the results of any clinical diagnostic evaluation.

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

3. Controlled Substances: Abstain From Use

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

Within 15 calendar days of receiving any lawfully prescribed medications, petitioner shall notify the Board or its designee of the: issuing practitioner's name,

address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If petitioner has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. 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. 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.

5. Biological Fluid Testing

Petitioner shall immediately submit to biological fluid testing, at petitioner's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. 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 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. The cost of biological fluid testing shall be borne by 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. If, but only if, there have been no positive biological fluid tests in the previous three consecutive years of probation, testing may 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.

Before 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 conform to the current United States Department of Transportation Specimen Collection Guidelines.

(c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.

(d) Its specimen collectors observe the collection of testing specimens.

(e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.

(f) Its testing locations shall submit a specimen to a laboratory within one 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 possess all the materials, equipment, and technical expertise necessary in order to test petitioner on any day of the week.

(h) Its testing locations are 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 on line 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 use 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 rehabilitation.

6. 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.

7. 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.

8. 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.

9. Supervision of Physician Assistants and Advanced Practice Nurses

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

10. 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.

11. 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.

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

Place of Practice: Petitioner shall not engage in the practice of medicine in petitioner's or a 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 that 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.

13. 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.

14. 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 that 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" before 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 while residing outside of California will relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

15. 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.

16. Violation of Probation

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

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

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

(2) Increase the frequency of biological fluid testing.

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

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

(1) Issue a cease practice order;

(2) Order practice limitations;

(3) Order or increase supervision of petitioner;

(4) Order increased documentation;

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

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

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

C. Nothing in this decision shall be considered a limitation on the Board's authority to revoke petitioner's probation if he has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) 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.

17. 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.

18. 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: 10/26/2023

Juliet E. Cox

JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings