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

In the Matter of the Accusation Against: Lynn Ann Bagge, M.D. Physician's & Surgeon's Certificate No. A 67930 Respondent.	Case No. 800-2020-072633

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 October 11, 2024.

IT IS SO ORDERED: September 13, 2024.

MEDICAL BOARD OF CALIFORNIA

Michelle A. Bholat, MD
Michelle A. Bholat, M.D., Interim-Chair
Panel A

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

In the Matter of the Accusation Against:

LYNN ANN BAGGE, M.D., Respondent

Case No. 800-2020-072633

OAH No. 2022010737

DECISION AFTER SUPERIOR COURT REMAND

Marcie Larson, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 9 and 10, 2023, in Sacramento, California.

John S. Gatschet, Deputy Attorney General (DAG), represented Complainant William Prasifka, the former Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

Bradley Wishek, Attorney at Law, represented Respondent Lynn Ann Bagge, M.D., (Respondent) who appeared at the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on January 10, 2023.

ALJ Larson issued a proposed decision on February 7, 2023. Panel A of the Board issued an Order of Non-Adoption of Proposed decision on May 18, 2023. The Board heard oral arguments on November 29, 2023, and issued a Decision After Non-

Adoption on December 14, 2023, placing Respondent on three (3) years' probation with terms and conditions.

On January 8, 2024, Respondent filed a Petition for Writ of Administrative Mandate with the Sacramento County Superior Court. On January 9, 2024, Respondent filed a request for a stay of the Boad's Decision and Order and the Superior Court granted the Respondent's request for a stay. On April 22, 2024, the Superior Court granted Respondent's request for a Writ of Administrative Mandate and vacated the Board's Decision and Order placing Respondent on probation. On April 29, 2024, the Superior Court issued a Judgment Granting Peremptory Writ of Mandamus and ordered the Board to issue a new Decision and Order.

On August 21, 2024, the Board heard oral arguments following the Superior Court Remand with ALJ Wim van Rooyen presiding. Deputy Attorney General John S. Gatschet appeared on behalf of the Complainant. Respondent was present and was represented by Bradley Wishek, Attorney at Law.

Respondent requested and was granted authorization to present post-hearing evidence of mitigation to advise the Board of Respondent's professional work, good conduct, and continued rehabilitation since her hearing at OAH in January 2023.

Panel A, having read and considered the entire record, including Respondent's post-hearing evidence of mitigation, the transcript, the exhibits, and the Superior Court's decision, and having considered the written and oral arguments, hereby enters this Decision After Superior Court Remand.

FACTUAL FINDINGS

Background and Procedural History

1. On April 2, 1999, the Board issued Respondent Physician's and Surgeon's Certificate Number A 67930 (certificate). Respondent's certificate will expire on December 31, 2024, unless renewed or revoked.

2. On December 13, 2021, Complainant, in his official capacity, filed an Accusation[1] against Respondent alleging that cause exists to discipline her certificate based on a criminal conviction for driving a vehicle with a blood alcohol concentration (BAC) above 0.15 percent, using alcohol in a dangerous manner, and lying to a police officer concerning how much alcohol she consumed. Complainant alleged Respondent's conduct constitutes violations of Business and Professions Code sections 2234, subdivision (a), 2236, and 2239. Complainant also seeks an award of the Board's enforcement costs.

3. Respondent timely filed a Notice of Defense. The matter was set for an evidentiary hearing before an AU of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Respondent's Criminal Conviction

4. On April 21, 2021, in the Superior Court of California, County of Sacramento, Respondent was convicted on her plea of no contest of driving with a BAC of 0.08 percent or more, a violation of Vehicle Code section 23152, subdivision (b), a misdemeanor, with an admission of a special allegation pursuant to Vehicle Code section 23578 that she drove with a BAC of 0.15 percent or greater. Respondent was ordered to serve 18 days in jail, was placed on three years of

[1] At hearing, Complainant amended the Accusation at page 4, line 22, changing the date to November 11, 2020.

informal probation, ordered to complete a First Offender Driving Under the Influence (DUI) program and pay various fines and fees. Respondent completed her jail sentence through home detention.

Respondent complied with the terms of her probation. On or about September 22, 2022, Respondent's probation was terminated early, and her conviction was dismissed pursuant to Penal Code section 1203.4.

5. The circumstances underlying Respondent's conviction occurred on November 11, 2020, at approximately 6:45 p.m. Officers from the Sacramento Police Department were dispatched to the scene of a two-vehicle accident. The driver who contacted emergency services to report the accident stated that the driver who hit her vehicle, later identified as Respondent, smelled of alcohol.

6. When the officers arrived at the scene, they spoke to the drivers of the vehicles. The drivers reported Respondent's vehicle rear-ended a vehicle that was stopped at an intersection making a left turn. There were no injuries and minor damage to the vehicles. Respondent explained she was driving a rental car that had transmission and brake issues. When speaking to Respondent, the officers observed objective signs of intoxication including "slurred speech, staggered gait and unsteady footing." When asked if she had consumed alcohol before driving, Respondent stated she had one glass of Sauvignon Blanc white wine at approximately 5:30 p.m.

7. Respondent submitted to a series of Field Sobriety Tests, which she failed to adequately perform. Respondent reported she had ankle and knee injuries that affected her ability to complete some of the tests. Respondent submitted to Preliminary Alcohol Screening, which registered her BAC at 0.189 and 0.184 percent. She was placed under arrest for DUI and transported to jail where she submitted to a blood test, which registered her BAC at 0.197 percent.

Board's Investigation

8. On or about May 10, 2021, Respondent submitted to the Board a completed "Criminal Action Reporting Form." Respondent notified the Board of her conviction. Respondent also submitted a May 20, 2021 letter to the Board explaining the circumstances underlying her conviction. Respondent admitted to drinking "a few drinks" while waiting for her boyfriend to arrive at her home for dinner the evening of her arrest. He called Respondent and asked her to come to his home instead, which was five miles away. She agreed and was not feeling impaired.

9. Flor Flatley, Special Investigator for the Board, was assigned to investigate Respondent's arrest and conviction. Investigator Flatley prepared a report concerning the investigation. On September 28, 2021, Investigator Flatley interviewed Respondent. Respondent provided an overview of her background, training, and experience. Concerning the events leading to her DUI arrest, Respondent explained she arrived home from work at approximately 5:30 p.m. While waiting for her boyfriend to arrive at her home for dinner, she "probably had" three gin drinks. Respondent's boyfriend was making the food at his home and planned to bring it to her home. The food was not ready, so he asked her to come to his home. At approximately 6:30 p.m. she drove to her boyfriend's home. Respondent explained the circumstances of the accident, her arrest, and events since her arrest, which was consistent with her testimony at hearing.

Respondent's Evidence

10. When Respondent began medical school in 1994 at the George Washington University School of Medicine and Health Sciences, she planned to become a surgeon. However, Respondent soon realized her calling was pediatrics.

She excelled in her program and was awarded the Department of Pediatrics Senior Award, for outstanding ability in pediatrics upon graduation from medical school in May 1997.

In June 1997, Respondent began her internship at Children's Hospital in Los Angeles, California (Children's Hospital). When she completed her internship, she was awarded the Frances Nunnally Winzer Scholar Award for outstanding medical service as a pediatric intern. Respondent stayed at Children's Hospital to complete her residency and was chosen to serve as the Chief Resident. In 1999, she obtained her certificate and in 2000, Respondent became certified by the American Board of Pediatrics.

11. In August 2001, after completing her residency, Respondent joined the Permanente Medical Group (Kaiser), as a staff pediatrician at the Sacramento Point West (Point West) location in Sacramento, California. Respondent treated children ages 0 to 18, in an outpatient setting. She found great joy in the "daily dose of magic and joy that comes from being part of the growth of wonderful little creatures into wonderful adults."

In 2002 and 2005, she was awarded the Kaiser Permanente Capital Service Area Extra Mile Hero Award, which is a recognition of individuals who go the extra mile in caring for members during the year. In 2003, she was awarded the Kaiser Permanente Department of Pediatrics Award for Extraordinary Patient Service. She was also consistently rated as a top physician in northern California for patient satisfaction. Respondent served on many committees and task forces to improve patient care and satisfaction.

12. From 2006 until 2011, Respondent served as the Assistant Chief of the Point West location for pediatrics. Her duties included serving as the lead and managing the operations of an outpatient pediatrics clinic comprised of 23 physicians

and 65 staff members. Thereafter, for one year she served as the Chief of Outpatient Pediatrics in the North Valley. She managed 70 pediatricians and their support staff occupying six facilities.

13. Since 2012, Respondent has served as the Assistant Physician in Chief. Her responsibilities from 2012 until 2015 included oversight of Pediatrics (Outpatient, Inpatient, Specialty, NICU, Newborn), Obstetrics and Gynecology, Women's and Children's Hospital, Adult and Family Medicine, and Chronic Conditions Management. From 2015 until 2019, her responsibilities included oversight of Adult and Family Medicine, Chronic Conditions Management, Outpatient Quality, Outpatient Pharmacy, Mental Health and Wellness, Addiction Medicine and Recovery Services, Health Education, Corporate Health Promotion, Diversity, and Transgender Care.

Since 2019, Respondent's duties include oversight of Adult and Family Medicine, Chronic Conditions Management, Outpatient Pharmacy, Mental Health and Wellness, Health Education, and Corporate Health Promotion. Respondent is responsible for oversight of approximately 40 percent of the physicians in the medical group. Respondent also continues to care for her patients. She spends 40 percent of her time seeing patients. The remainder of her time is spent on her administrative and management duties.

14. Respondent has received regular performance evaluations while working for Kaiser. In her most recent evaluation in July 2021, she received high rating in all areas. The concluding comments stated that Respondent is a "valued member of our group. Despite extensive administrative duties, she remains committed to her patients and their care." Additionally, her 2021 through 2022 patient satisfaction score, which relates to issues of timeliness, thoroughness, and communication skills, demonstrates she ranks in the top 99th percentile of her specialty. Respondent has also received numerous letters, pictures and artwork from her patients sharing their love and

appreciation for her and the care she provides.

15. In addition to duties at Kaiser, Respondent serves as a Women Health Care Executives Mentor to help promote women in health care. Respondent is paired with women in the program, and they meet twice per month to discuss various health care related issues. Since 2016, Respondent has also served as a Thomas Edison Language Institute Mentor. She is paired with a sixth-grade student at a local school with a Spanish program. They exchange emails and the student asks questions about Respondent's profession. At the end of the semester the student comes to her office for lunch.

16. Respondent takes pride in the care she provides her patients, her leadership role at Kaiser and her commitment to her community. Respondent understands she is a role model and must always demonstrate integrity and good judgment. Respondent failed to do so on November 11, 2020. She has profound regret for her decision to drink alcohol and drive her vehicle.

17. Respondent explained that for most of her life she has been a "light social drinker." She *very* rarely drank alcohol in college and medical school. After medical school she would occasionally have wine with dinner and wine or a cocktail on the weekends, In 2008, her husband was diagnosed with an "advanced and complicated cancerous brain tumor." Respondent did not know if he would survive. She was with him throughout his chemotherapy and radiation treatment. When her husband recovered, Respondent learned he was having an affair and they divorced. Respondent was devastated.

18. Respondent became depressed, For the three-to-five months after learning of her husband's affair, Respondent drank alcohol more often. Respondent's friends became concerned about her wellbeing and noticed her increased drinking. Respondent realized she needed help dealing with the trauma she suffered because of

the break-up of her marriage. She sought therapy and worked through those issues. Respondent had no issues with occasional alcohol consumption.

19. Respondent lost her mother in 2018. Respondent was very close to her mother and struggled with the loss. Respondent did not use alcohol to cope, In October 2019, she began seeing Katie Hodgson, Licensed Clinical Social Worker, to process her grief in a healthy manner and address anxiety she was feeling. Ms. Hodgson wrote a letter confirming her treatment of Respondent and explaining the efforts she has made to process her grief. Respondent continues to see Ms. Hodgson on a regular basis.

20. Respondent explained the circumstances surrounding her arrest on November 11, 2020, Respondent returned to her home at 5:30 p.m. after a full day of work. It was "date night" and her boyfriend was bringing dinner to her home. Respondent was excited to see her boyfriend and was busying getting ready for his arrival. For approximately one hour while she waited for her boyfriend, Respondent poured herself gin and tonic drinks with ice. She does not have a specific memory of how many, but thinks it was three. She did not measure the amount of alcohol or tonic she poured in each drink. Respondent explained that it was not typical for her to drink three gin and tonics in one hour. She typically does not have more than one drink.

At approximately 6:30 p.m. her boyfriend called and told her that dinner was still in the oven cooking. He asked her to come to his home which was five miles away. Respondent grabbed her coat and left her home. She was in such a hurry she forgot her cellphone. Respondent did not feel the effects of the alcohol she drank and did not feel impaired. Respondent explained that she would never have driven her vehicle if she felt impaired.

Respondent was driving a rental car because her vehicle was at a shop having a bike rack installed. Respondent drove approximately halfway to her boyfriend's house. Respondent was behind another driver waiting for her to complete a left-hand turn. Respondent accelerated and hit the other car's bumper. Respondent and the driver of the other vehicle completed the left-hand turn, found a safe place to pull over, and exchanged information. When the police arrived at the scene, Respondent realized she was impaired. Respondent was "terrified" when the police arrived. Respondent admitted her statement to the police that she had only consumed one glass of wine was false.

21. Respondent was transported to jail and spent many hours in a holding cell. Respondent was "distraught" and "in shock." Respondent explained that she has always been a rule follower. She realized she would have to tell her boyfriend, friends, family, and colleagues what she had done. Respondent did not know if she would lose her job and license. She was completely overwhelmed and frightened.

22. Respondent accepted full responsibility for her conduct. She pled no contest to the criminal charges and completed all the requirements of her probation, including completing home detention and having an interlock device in her vehicle to ensure she was not driving with any measurable alcohol in her system. She completed a six-month first offender DUI program, which consisted of group and individual meetings one to two times per week. As a result of her efforts, her probation was terminated early, and her conviction was dismissed.

23. Respondent informed Kaiser of her conviction. She met with Kaiser leadership, Human Resources, and her supervisor, Physician in Chief Rob Azevedo. Respondent was referred to the Kaiser Physician Wellness Program. Respondent spoke to the leaders of the program about her arrest and conviction. Respondent was informed that Kaiser leadership needed to ensure that she was safe to practice and did

not have an alcohol abuse issue. Respondent met with the Wellness Program leadership one to two times per month for several months, until she was released from the program. There was no personnel action taken against her by Kaiser and no restrictions were placed on her ability to practice.

24. Respondent also continued treatment with Ms. Hodgson. Respondent agreed she would stop consuming alcohol for a period. Respondent was so traumatized by her conduct and conviction that she had no desire to drink alcohol. She did not drink alcohol for a year. Respondent has processed the ramifications of her conduct and her trauma. Respondent slowly and thoughtfully began drinking alcohol on occasion. For example, in October 2022, Respondent and her boyfriend took a vacation to Mexico, and she drank one margarita. Respondent had a glass of wine with Thanksgiving dinner, and one cocktail in December 2022, for her birthday. When Respondent hosts dinners at her home she never allows anyone who has been drinking to drive. Respondent also explained that she would never again drive a vehicle after consuming alcohol.

25. Respondent also attended the University of California, Irvine School of Medicine Western Institute of Legal Medicine Physician Assessment & Clinical Quality Improvement Program Practical Medical Ethics and Professionalism and Medical-Legal Implications of Ethics for Practicing Physicians course (Ethics Course) on June 16 and 17, 2022, and completed a six-month follow-up in December 2022. Respondent knew it was important to demonstrate to the Board her commitment to ensure that she does not repeat her past mistake.

Respondent learned through the Ethics Course that medical ethics is a very distinct area of learning. Respondent gained a greater appreciation of how her outside conduct can affect her practice. She learned the difference between medical ethics and professional ethics. She understands that her conduct was medically unethical because

she put her own health at risk and professionally unethical because she put others at risk. As a result of this course, she has a heightened understanding that her conduct and behavior socially and professionally are not separate, and she must hold herself to those high standards. Respondent must complete a six-month follow-up by July 2023 to complete the course. She intends to do so.

26. Respondent believes her "terrible mistake" has made her a better physician. She has gained great insight. She truly understands the importance of facing her mistakes and being a role model in the lives of her patients and their families. She also has a newfound empathy for her patients and their families who struggle with issues such as substance abuse and trouble "with the law." Respondent feels that she is more supportive and nonjudgmental.

27. Respondent assures the Board she will never repeat her past mistake. She will never drink alcohol and drive a vehicle. Respondent also assures the Board that she does not abuse alcohol and as a result, no conditions of probation are necessary to ensure she is safe to practice. In fact, terms of probation would likely affect her practice negatively. For example, Respondent's certification from the American Board of Pediatrics could be revoked if probation is imposed. Respondent understands the Board's obligation to ensure public protection. Respondent believes she has taken the important and necessary steps to demonstrate she is a dedicated physician who does not pose a risk to her patients or the public.

EXPERT TESTIMONY

28. On April 21, 2022, Richard Sandor, M.D., conducted an addiction and psychiatric evaluation of Respondent to determine whether she suffers from a substance use disorder and if her continued practice represents a danger to the public. Dr. Sandor prepared a report of his findings and testified at hearing consistent with his report.

29. Dr. Sandor graduated from University of Southern California, School of Medicine in 1972, and became licensed to practice medicine in California the following year. He then completed a medicine internship and pathology residency. From 1977 until 1980, Dr. Sandor completed a psychiatry residency at the Neuropsychiatric Institute, University of California at Los Angeles, The Center for the Health Sciences. In 1985, Dr. Sandor became a Diplomate of the American Board of Psychiatry and Neurology. In 1986, he became certified in alcoholism and other drug dependencies by examination by the American Medical Society on Alcoholism and Other Drug Dependencies, now called the American Society of Addiction Medicine.

Dr. Sandor operated a private psychiatry practice for over 30 years. He has worked in the field of Addiction Medicine for more than 40 years. During that time, he also served as the Medical Director of several drug and alcohol treatment facilities. He has conducted *over* 200 fitness-to-practice evaluations for health care providers. He has also served as a consultant and expert reviewer for several organizations and government entitles including Major League Baseball and the California Board of Registered Nursing.

30. Dr. Sandor's evaluation of Respondent included a 60-minute interview, which included a mental status examination, obtaining a medical and psychiatric history, reviewing Respondent's CURES report[2] for the past 12 months, the Accusation, the police report concerning her November 2020 arrest, Respondent's performance evaluations, and letters of support.

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[2] CURES is the Controlled Substance Utilization Review and Evaluation System maintained by the California Department of Justice which tracks all Schedule II through V controlled substances dispensed to patients in California.

31. Dr. Sandor utilized the Diagnostic and Statistical Manual of Mental Disorders version 5 (DSM-V), to determine if Respondent meets the criteria for a substance use disorder. Dr. Sandor explained the diagnosis of a substance use disorder as defined by the DSM-V:

> [R]equires evidence of "a problematic pattern of substance use which results in clinical significant impairment or distress." The DSM then lists 11 such problems and indicates that for the diagnosis to be made, two or more of these problems must be present within a 12-month period.

32. Dr. Sandor found no evidence that Respondent has "experienced any of the problems listed in the DSM-V criteria for a substance use disorder" and that there is "no pattern and therefore also no diagnosis of an alcohol use disorder." Dr. Sandor explained:

> [Respondent] is appropriately remorseful over the poor judgement that led to her drinking and driving. It appears to me to have been an isolated and aberrant experience for her - a brief, if unfortunate, lapse for a person who otherwise has been a fully responsible member of society and a highly regarded and productive professional.

33. Additionally, Dr. Sandor spoke with Respondent about her decision to resume drinking alcohol. Dr. Sandor is not concerned about her decision because she does not suffer from a substance use disorder. Dr. Sandor opined that what distinguishes an alcoholic from a person who consumes alcohol in a responsible manner is the "all or nothing" approach. An alcoholic consumes alcohol in excess or completely abstains. Respondent's behavior, which includes drinking alcohol

occasionally and experiencing no problems with moderation, further confirms she does not have an alcohol use disorder.

34. Dr. Sandor concluded that based on his evaluation that Respondent is "entirely safe to practice medicine" without restrictions.

CHARACTER WITNESSES

35. Several character witnesses testified at hearing and wrote letters on Respondent's behalf. Robert Azevedo, M.D. has known Respondent for over 15 years. He was her direct supervisor for nine of those years. Dr. Azevedo was the Physician in Chief at Kaiser for nine years and the Assistant Physician in Chief for eight years. During that time, he worked closely with Respondent. He described Respondent as a "doctor's doctor." Many physicians send their children to Respondent because of her skills and the care she provides her patients. In fact, Dr, Azevedo referred a local "VIP" who has two children to Respondent because he knew she would provide outstanding care. Dr. Azevedo also explained that Respondent is in the top one-half percent of physicians for patient satisfaction.

In addition to working closely with Respondent for many years, he has interacted with her in social situations at off-site Kaiser leadership events. He has never seen her intoxicated or had an occasion to question her integrity. Respondent informed Dr. Azevedo of her conviction. He also reviewed the Accusation. Dr, Azevedo explained that Respondent "was quite shaken up" and "embarrassed, ashamed and remorseful" for her conduct. Despite her conduct, Dr. Azevedo believes Respondent's "reputation in the medical field and community is beyond reproach and [her] conviction does not change [his] confidence" in Respondent.

36. Yvonne S. Otani, M.D. is a pediatrician at Kaiser who has been friends and colleagues with Respondent for over two decades. Dr. Otani and Respondent have

worked closely together in leadership roles and communicate daily. Dr. Otani described Respondent as one of the best pedestrians she has ever known. It was not uncommon for patients Respondent treated in Kaiser urgent care to ask Respondent to be their regular doctor. Dr. Otani described Respondent as "super smart" and "spot on" with her patient care.

Dr. Otani and Respondent also socialize outside work. They became especially close when Dr. Otani's husband was battling cancer and then passed away in 2015. Respondent helped Dr. Otani with her grieving process and stresses associated with being a single parent of two teenagers. Dr. Otani explained that she does not know how she would have managed without Respondent's love and support.

Respondent told Dr. Otani about her conviction during their monthly dinner date. Respondent was "mortified and embarrassed about what happened." Dr. Otani had never seen Respondent with such "sorrow and remorse." Dr. Otani has shared many dinners and social events with Respondent. She has never seen Respondent intoxicated or consume too much alcohol. Dr. Otani is confident Respondent will never make the same mistake.

37. Andrew McDaniel, M.D. is a pediatrician at Kaiser and the Chief of Outpatient Pediatrics in Northern California. Dr. McDaniel has known Respondent since he joined Kaiser in 2014. For approximately the last four years, Dr. McDaniel and Respondent have worked out of adjoining offices in the Kaiser Sacramento pediatric facility. They see each other daily. They are each other's clinical consultants and often cover each other's panels when one is out of the office.

Dr. McDaniel described Respondent as an excellent physician and clinician. Her patients "adore her" and she is very dedicated to her patients. She also has the highest standards of integrity. Respondent disclosed to Dr. McDaniel her conviction. He explained that as "pediatricians, we preach preventative care, addressing potentially·

dangerous behaviors in our adolescent patients." Respondent's "choice was not a good one and she felt great guilt in the mistake she had made." Dr. McDaniel has never had any concern about Respondent's "performance in her clinical and leadership roles before or after this event." Her conviction has not changed his opinion of her skill and dedication to her practice.

38. Laura Tinti is an executive leader for Kaiser. She oversees outpatient operations and supervises over 500 people. Ms. Tinti first met Respondent in 2016, when she moved to Sacramento. Since that time, she sees Respondent most workdays. Their offices are adjacent in the same medical building. They also share responsibilities for some of the same departments. Ms. Tinti explained that Respondent's "commitment to balancing her clinical practice with administrative duties is admirable, always placing patient care first to meet the needs of families she serves while never skirting out on administrative duties."

Respondent informed Ms. Tinti about her conviction and the Accusation filed by the Board. Ms. Tinti wrote in her letter of support that she was "impressed with how [Respondent] took complete responsibility for her actions and how it has impacted her social and familial interactions." She further explained that Respondent "never allowed the impact to change or influence her dedication to serving patients and their families." Ms. Tinti believes Respondent "remains completely committed to her profession as a physician and administrative leader, and to improving lives through her service to others."

LETTERS OF SUPPORT

39. Respondent submitted several additional letters of support from colleagues and friends. Richard Florio, M.D., a Vascular Surgeon at Kaiser, has known Respondent for two decades. Beginning in 2016, they both served as Assistant

Physician in Chief and worked together in leadership groups. Dr. Florio described Respondent as a "completely trustworthy physician" and leader who has "consistently shown and commented by her patients, colleagues, and leaders." Respondent informed Dr. Florio of her conviction. He explained that "[w]hen she shared the details of the incident with me, she also shared her sense of shame and sincere remorse paired with a vigor in commitment."

40. Eric Hansen, Respondent's boyfriend, wrote two letters of support. He has known Respondent for 15 years. Mr. Hansen is aware of the circumstances underlying her arrest and conviction. He explained that it was a "lapse judgment that is entirely out of character for her" and that prior to this incident, he never saw her drive while under the influence of alcohol. He described Respondent as "cautious, detail oriented, responsible, thoughtful, and careful by nature and [he] consider[s] the DUI incident to be a one-off event that in no way reflects upon how she conducts her professional or personal life."

41. Kelly Fong Rivas, Chief of Staff for the Office of Mayor Darrell Steinberg, has been friends with Respondent since 2010. Ms. Rivas explained that as her career progressed, Respondent "has been a positive and powerful guide and inspiration on how to consistently grow and balance opportunities and responsibilities." Respondent informed Ms. Rivas of her conviction. Ms. Rivas believes "[w]e are all human and we all make mistakes" and that Respondent "has learned from her mistake and accepted her considerable punishments with grace, patience, humility, and wisdom."

42. Nichelle Swinney has been friends with Respondent for 10 years. Ms. Swinney looks up to Respondent "as a role model, a career woman and as a person." She admires Respondent "not only for her achievements as a professional, but also for the love and care she has for her patients, her family, and her friends." Respondent told Ms. Swinney of her conviction. Ms. Swinney has never seen

Respondent abuse alcohol and believes this was a one-time mistake that she deeply regrets.

43. Roderick Vitangcol, M.D., is a primary care physician at Kaiser. He has been "practicing partners" with Respondent for over 20 years. He described Respondent as an "exceptional physician, collaborative leader, loving family member and committed friend." Respondent informed Dr. Vitangcol of her conviction. Dr. Vitangcol explained that he has never been concerned that Respondent suffered from substance abuse. He believes her conduct was an "isolated incident and will never recur."

44. Christopher Zegers, M.D., served as the Chief of Addiction Medicine for the Sacramento and the Northern California Kaiser. He first met Respondent in 2011, and in 2013, she became his supervisor. Dr. Zegers explained that Respondent had "actual interest, compassion and caring for our patients who suffer from alcohol and chemical addictions." Respondent informed Dr. Zegers about her conviction. She discussed with him "how she is helping others take seriously the risks associated with alcohol" and is sharing this information with "patients, colleagues, and personal friends in her life." He has seen her "using this as a huge call to learn from this and make positive changes for the rest of her life."

Additional Mitigating Evidence

45. At the hearing on August 21, 2024, Respondent requested and was permitted to submit new evidence relating to mitigation for the Board's consideration as it determined the appropriate penalty to impose following the Superior Court Remand. The new evidence admitted and considered included the following:

(1) Declaration of Respondent, dated July 30, 2024, Exhibit V.

(2) Declaration of Richard Florio, M.D., FACS, Physician-in-Chief, Roseville, California, dated July 29, 2024, Exhibit W.

(3) Declaration of Yvonne S. Otani, M.D., FAAP, dated July 19, 2024, Exhibit X.

(4) Declaration of Katie Hodgson, LCSW, dated July 29, 2024, Exhibit Y.

(5) Declaration of Eric Hansen, dated July 30, 3024, Exhibit Z.

46. The declarations indicate that Respondent has been tested with serious personal and family health issues, but that she has navigated these challenges without using alcohol. Respondent's declaration stated that following the review of the Board's Decision After Non-Adoption, she decided to abstain from consuming alcohol out of respect for the Board's concern.

47. Dr. Florio's July 29, 2024 declaration indicated that he meets regularly with Respondent and reviewed her clinical practice. He stated that since January 2023, Respondent had been dealing with three significant personal issues, yet continued her professional work to bring about "demonstrable improvements in quality, service, and access and leading the implementation of a transformational change in one of her departments." Dr. Florio further indicated that during this time, Respondent's clinical care remained exceptional.

48. Dr. Otani's July 19, 2024 declaration stated that since the hearing in 2023, Respondent "has continued to perform at her previous top level" and "continues to command the respect she has always had for her guidance and wisdom in her administrative role."

Analysis

49. In addition to the *Manual of Model Disciplinary Orders and Disciplinary Guidelines,* 12th Edition, 2016, (Cal. Code Regs., tit. 16, § 1361, subd. (a)), the Board has developed criteria to consider when determining the appropriate level of discipline to impose on a licensee convicted of a crime. Specifically, California Code of Regulations, title 16, section 1360.1 provides:

> When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:
>
> (1) The nature and severity of the act(s) or offense(s).
>
> (2) The total criminal record.
>
> (3) The time that has elapsed since commission of the act(s) or offense(s).
>
> (4) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
>
> (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
>
> (6) Evidence, if any, of rehabilitation submitted by the

licensee, certificate or permit holder.

50. Additionally, Complainant contends the Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees set forth in California Code of Regulations, title 16, section 1361, apply to this matter, which provides in pertinent part:

> (a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the Medical Board of California shall consider the disciplinary guidelines entitled "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (12th Edition/2016) which are hereby incorporated by reference.
>
> Deviation from these orders and guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines by adoption of a proposed decision or stipulation that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.
>
> (b) Notwithstanding subsection (a), the Board shall use the Uniform Standards for Substance-Abusing Licensees as provided in section 1361.5, without deviation, for each individual determined to be a substance-abusing licensee.

51. The Uniform Standards for Substance-Abusing Licensees set forth in California Code of Regulations, title 16, section 1361.5, provides in pertinent part:

(a) If the licensee is to be disciplined for unprofessional conduct involving the use of illegal drugs, the abuse of drugs and/or alcohol, or the use of another prohibited substance as defined herein, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code.

52. Applying the Board's criteria, Respondent's lapse in judgment which resulted in her conviction was serious. She drank alcohol, drove a vehicle with a BAC over twice the legal limit, and hit another vehicle. When asked, she told police officers that she had one glass of wine before driving. This was false. Respondent demonstrated incredibly poor judgment. Although she did not feel intoxicated when she made the decision to drive her vehicle, she should have been aware that the amount alcohol she consumed made it unsafe for her to drive.

53. However, the evidence demonstrates that Respondent's conduct was an isolated incident of poor judgment for which she is deeply remorseful. When faced with the gravity of her conduct, Respondent took full responsibility and clearly dedicated herself to facing the consequences of her actions, gaining insight, and making amends. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. *(Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) As a result of her efforts, she was released from criminal probation almost two years early and her conviction was dismissed pursuant to Penal Code section 1203.4.

54. Respondent has continued counseling to ensure that her mental health is strong so that she can provide the best care for her patients. She submitted to an evaluation with Dr. Sandor to assure the Board that she does not suffer from a substance use disorder. She is also mindful about consuming alcohol and has committed to never again drinking alcohol and driving a vehicle. Respondent has also been forthcoming to her colleagues and friends about her mistake. Her character

witnesses and authors of her letters of support all attest to the deep remorse they observed in Respondent while she shared her conviction. Her willingness to disclose to others her mistake further demonstrates her commitment to be accountable.

55. Most notably was the overwhelming evidence presented through Respondent's witnesses and character letters, that for over two decades Respondent has served as an exceptional physician and leader. The testimony and letters are further supported by Respondent's performance evaluations and patient satisfaction reports which demonstrate Respondent cares deeply for her patients and strives to provide the best care. Her clinical judgment and competency have never been questioned.

56. Complainant contends a single DUI establishes Respondent is a substance abusing licensee, which requires the imposition of probation with terms to monitor substance abuse. However, Respondent convincingly rebutted the presumption that she is a substance abusing licensee. Dr. Sandor was the only expert to testify and offer an opinion concerning this issue. He persuasively opined that Respondent does not meet any of the criteria for a substance use disorder as defined by the DSM-V. Rather, his opinion is consistent with the evidence presented that Respondent's conduct was an isolated incident and that she does not pose a risk to the public or her patients.

57. Additionally, Complainant's contention that Respondent's false statement to the police that she drank one glass of wine before driving, constitutes unprofessional conduct was also not established. She was intoxicated and scared. Her judgment was poor. However, her false statement does not demonstrate that she is unfit to practice medicine.

58. Respondent has a 24-year history as a remarkable physician, leader, colleague, and friend. She is adored by her patients. She is admired and respected by

her friends and colleagues. She has lived a life of service and leadership. Respondent made a single, isolated mistake that she will not repeat. When all the evidence, including the additional mitigating evidence that Respondent was permitted to present on August 21, 2024, and Board's Disciplinary Guidelines are considered, protection of the public does not require that Respondent be placed on probation. Respondent does not need monitoring and no benefit would be gained by requiring Respondent to serve a period of probation. Therefore, the most appropriate discipline to be imposed in this case is a public reprimand, with a requirement that she complete the six-month Ethics Course follow-up and pay the Board's costs.

Costs

59. Pursuant to Business and Professions Code section 125.3, Complainant requested that Respondent be ordered to reimburse the Board for the reasonable costs of the investigation and adjudication of the case. Complainant submitted a Declaration of the Deputy Attorney General with an attached computer printout that lists the amounts charged by the Attorney General's Office by time, date, and task. The Declaration and computer printout show that the Attorney General's Office billed the Board $11,645 for prosecuting the case. These costs are reasonable in light of the allegations in this matter.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. Complainant bears the burden of proving each of the grounds for discipline alleged in the Accusation and must do so by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. *(In re Marriage of Weaver*(1990) 224 Cal.App.3d 478, 487.)

Applicable Law

2. Business and Professions Code section 2227 provides in pertinent part that a licensee who has been found "guilty" of violations of the Medical Practices Act, shall:

> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

3. Business and Professions Code section 2234, requires the Board to "take action against any licensee who is charged with unprofessional conduct." Unprofessional conduct includes but is not limited to: "Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter." (Bus & Prof. Code, § 2234, subd. (a).)

4. Business and Professions Code section 2236, subdivision (a), provides:

> The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

5. Business and Professions Code section 2239, subdivision (a) provides:

> The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

6. California Code of Regulations, title 16, section 1360, provides, in relevant part:

> [A] crime, professional misconduct, or act shall be considered to be substantially related to the qualifications,

functions or duties of a person holding a license if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Such crimes, professional misconduct, or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of state or federal law governing the applicant's or licensee's professional practice.

7. Unprofessional conduct includes conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. *(Shea v. Bd. of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

Cause for Discipline

8. Cause exists for discipline under Business and Professions Code sections 2234, subdivision (a) and 2236, subdivision (a), by reason of the matters set forth in Factual Findings 4 through 7. Respondent's criminal conviction for driving under the influence of alcohol with a BAC more than twice legal limit is substantially related to the qualifications, functions and duties of a physician.

9. Cause exists for discipline under Business and Professions Code sections 2234, subdivision (a) and 2239, subdivision (a), by reason of the matters set forth in Factual Findings 4 through 7. Respondent used alcoholic beverages to the extent, or in such manner as to be dangerous or injurious to herself and to the public.

10. Complainant alleged Respondent is subject to discipline for unprofessional conduct under Business and Professions Code sections 2234, subdivision (a), based on her statement to police officers that she consumed one glass of wine before driving her vehicle on November 11, 2020. However, Complainant failed to establish how Respondent's conduct violated any provision of the Medical Practices Act or demonstrates unfitness to practice as a physician. Therefore, no cause for discipline was established.

Cost Recovery

11. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

12. Here, the scope of the investigation was appropriate to the alleged misconduct. Respondent did not establish a basis to reduce or eliminate the costs in this matter. As a result, Respondent shall pay the Board's cost totaling $11,645.

Conclusion

13. The objective of an administrative proceeding relating to licensing is to protect the public. Such proceedings are not for the primary purpose of punishment.

(See *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) In light of Respondent's post hearing evidence of mitigation presented to the Board following the Superior Court Remand, the Board is satisfied that Respondent takes this matter seriously and is unlikely to reoffend and put the public or herself at risk again. When all the evidence is considered, revocation, suspension, or probation are not necessary to protect the public in this case. Rather, Respondent should be publicly reprimanded pursuant to Business and Professions Code section 2227, subdivision (a)(4), submit proof of competition of the Medical Ethics and Professionalism Course, and pay the Board's enforcement costs.

ORDER

1. Respondent Lynn Ann Bagge, M.D., is publicly reprimanded by the Board within the meaning of Business and Professions Code 2227, subdivision (a)(4).

2. Within six months of the effective date of this decision, Respondent shall submit proof to the Board of completion of the University of California, Irvine School of Medicine Western Institute of Legal Medicine Physician Assessment & Clinical Quality Improvement Program Practical Medical Ethics and Professionalism and Medical-Legal Implications of Ethics for Practicing Physicians.

3. Respondent shall pay the Board $11,645 for the enforcement costs in this matter, within 60 days of the effective date of this decision.

The Decision shall become effective at 5:00 p.m. on October 11, 2024.

IT IS SO ORDERED this __13th__ day of September, 2024.

Michelle A. Bholat, MD

Michelle A. Bholat, M.D., MPH
Interim Chair, Panel A
Medical Board of California