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

In the Matter of the Accusation: Wojciech Zolcik, M.D. Physician's and Surgeon's Certificate No. C 146992 Respondent.	Case No.: 800-2022-092720

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 November 1, 2024.

IT IS SO ORDERED: October 3, 2024.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, Chair
Panel B

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

In the Matter of the Accusation Against:

WOJCIECH ZOLCIK, M.D.,

Physician's and Surgeon's Certificate No. C 146992

Respondent.

Agency Case No. 800-2022-092720

OAH No. 2024050122

PROPOSED DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on August 26 and 27, 2024, via videoconference.

Supervising Deputy Attorney General Greg W. Chambers represented complainant Reji Varghese, Executive Director, Medical Board of California, Department of Consumer Affairs.

Attorneys Marvin Firestone, M.D., and Jeffery T. Hammerschmidt represented respondent Wojciech Zolcik, M.D., who was present.

The matter was submitted on August 27, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 12, 2017, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. C 146992 to respondent Wojciech Zolcik, M.D. This certificate was in full force and effect at all relevant times and is scheduled to expire on April 30, 2026, unless renewed.

2. On May 22, 2023, acting in his official capacity as Executive Director of the Board, complainant Reji Varghese issued an accusation against respondent. Complainant alleges that respondent was convicted of an alcohol-related driving offense, and that this fact establishes cause to discipline his California physician's and surgeon's certificate. Complainant also seeks costs.

3. Respondent timely filed a notice of defense and this proceeding followed.

Criminal Convictions

4. On June 28, 2022, respondent was convicted in the District Court of Colorado, Clear Creek County, upon his plea of guilty, of violating Colorado Revised Statutes section 42-4-1301, subdivision (2)(a) (driving a vehicle with "blood or breath alcohol content" (BAC) greater than 0.08 percent), a misdemeanor. Respondent was ordered to pay $1,970.50 in fines and fees and sentenced to 12 months of supervised probation on terms including that he not consume alcohol or scheduled substances.

5. The facts and circumstances leading to this conviction are that, on Easter Sunday, April 17, 2022, at approximately 2:25 p.m., an Empire Police Department

officer was dispatched to assist a motorist who had lost a tire and was on the side of Highway 40. Shortly thereafter, the officer observed respondent's pickup truck travelling approximately 65 miles per hour on the highway with no front or back rear tires on the right side. The officer activated his emergency lights and sirens, but respondent continued to drive, at times swerving into lanes marked for traffic in the opposite direction. More than four minutes later, respondent finally stopped his vehicle on the side of the road. Respondent denied drinking alcohol that day, but the officer suspected respondent was impaired and asked him to perform field sobriety tests. Respondent agreed. He was unstable on his feet and performed poorly. After a few attempts to conduct the tests, the officer stopped due to concerns that respondent would fall and injure himself. The officer then conducted a preliminary alcohol screening (PAS) breath test. Respondent was initially unable or unwilling to provide a sufficient breath sample, but eventually he provided a sample that yielded a result of 0.179 percent BAC. The officer placed respondent under arrest for driving under the influence of alcohol and he was transported to the Clear Creek County Jail. The officer later found an open bottle of vodka on the driver's side floorboard of respondent's vehicle, near the gas and brake pedals. At approximately 3:12 p.m. another PAS breath test was administered to respondent and the result was 0.331 percent BAC. He was then tested on an "Intoxilizer" device and the result was 0.269 percent BAC. At 4:00 p.m., respondent was released to his wife.

6. As part of his plea of guilty, respondent agreed that his BAC was greater than 0.20 percent; specifically, that it was 0.269 percent.

Board Investigation and Interview of Respondent

7. In a November 29, 2022, interview of respondent by a Board investigator, respondent reported the following about the April 17, 2022, incident:

- he drank at least half of the bottle of vodka found by the police officer in his truck that weekend;
- he drank vodka the night before and into the early the morning of April 17, 2022, because he was attending via videoconference the funeral of an uncle who had helped raise him (taking place in Poland but respondent was unable to attend in person);
- on the morning of the incident "I was by myself. I was enjoying my time off";
- he went to brunch mid-morning and drank additional alcohol;
- "for some reason [he] decided . . . to drive to Denver [102 miles away]";
- he hit a rock or boulder on the drive and lost a tire; however, he decided to drive to Empire, the next town, even though he was missing a tire, because he had previously been stuck in the cold for many hours on Highway 40 after a vehicle breakdown in a similar area, which was near an 11,000 foot overpass;
- he drank alcohol rarely in the years prior to this incident, primarily due to several serious medical problems;
- he does not always turn to alcohol in response to tragic or stressful life events and has learned different coping mechanisms;
- he had not consumed alcohol since the incident;
- as of the date of the interview he had not notified his primary employer of his April 17, 2022, arrest;

- he was then-currently undergoing random biological fluid testing for alcohol as part of his criminal probation; and

- he had learned much and been humbled by the process.

Respondent's Evidence

8. Respondent testified at hearing.

9. Respondent is 57 years old. He is married and apparently has one or more adult children.

10. Respondent was born and spent most of his youth in Poland. He received his medical degree from a university in Prague, Czech Republic. He completed a psychiatry residency at Beth Israel Medical Center teaching hospital in Manhattan, New York, and served an additional year there as chief resident. He is board-certified in general psychiatry by the American Board of Psychiatry and Neurology and in addiction medicine by the American Board of Addiction Medicine.

11. Respondent worked for 11 years in Wyoming. Approximately 14 years ago, he moved to the greater Denver area of Colorado. There, he served as the chief medical officer for a 500-employee outpatient mental health center for four years, then worked as the medical director for the geriatric unit of a hospital. For many years, respondent was also practicing telemedicine for a company now known as Amwell, which contracts with numerous hospitals and health systems. Much of respondent's work for this company involved treatment via telemedicine of patients in California, primarily performing psychiatric assessments for patients in emergency departments to form an opinion whether they are safe to be released home or need to be admitted.

Until recently scaling back his hours, respondent performed this work approximately 15 hours per week, in addition to his full-time jobs.

12. In 2018 or 2019, for health reasons, respondent began working remotely full time for the United States Veterans Affairs (VA), Salt Lake City Health Care System. He provides care remotely to veterans in the Ogden Community Based Outpatient Clinic. He also continues to practice telemedicine for Amwell.

13. Respondent has never practiced medicine while he was physically in California, only via telemedicine.

14. Due to his residence in several states and longstanding telemedicine practice, respondent is licensed in 20 states, including California, and Colorado.

15. Respondent did not have health concerns until he was approximately 40 years old. At that time, he experienced acute kidney failure. Eventually, it was determined that the cause was an autoimmune disease. He was placed on a transplant list. In 2017 he was diagnosed with prostate cancer, which was successfully treated with radiation therapy. Shortly thereafter he was diagnosed with a rare genetic disease that causes maladaptive growth in the heart muscle, preventing proper blood flow through the left ventricle. This condition was successfully treated via surgery in November 2019, but the surgery caused respondent's kidneys to fail completely and he successfully underwent a kidney transplant in early 2021. He has since had two surgeries to treat an irregular heart rhythm. Due to the kidney transplant, he must take immunosuppressant medications for the rest of his life, making him vulnerable to infection.

16. Respondent provided an account of his April 17, 2022, alcohol-related driving offense to an expert witness whose opinions are discussed in Factual Findings

29 through 33. At hearing, respondent testified that this account was accurate. The expert reported the following:

> [Respondent] stated that he occasionally drank alcohol before these medical issues. After 2017 to 2018, with further medical problems, he seldom drank. He approximated that he drank four times in the four years before his DUI. He drank less for the sake of his health. He stated that it was not difficult to drink infrequently and otherwise abstain. He stated that the last time he drank before his DUI was many months before. He stated that he would drink between three to five shots each of the above times. He stated that his tolerance was generally high (of note, individuals have differing levels of tolerance to the effects of alcohol, and this form of baseline tolerance is different from tolerance as an AUD [alcohol use disorder] criterion, which is the result of consistent/heavy alcohol use).
>
> [Respondent] stated that, to this day, he asks himself how he let this DUI happen. He stated that he thinks several factors contributed to the events of April 17, 2022. He had many sources of stress including his medical problems, a recent kidney transplant, and work-related stress. He was recovering from a bout of influenza. An uncle who raised him and was like a father-figure fell ill and died. [Respondent] could not fly back to Poland to see his uncle before he died. [Respondent] was impacted by the

COVID-19 pandemic and the risk of infection from his transplant medications and immunosuppression. He could not attend the funeral. He decided to drive to a condominium that he owns in the mountains of Grand Lake, Colorado, to virtually attend the funeral.

On Saturday, April 16, 2022, [respondent] virtually attended his uncle's Catholic funeral service. He had bought a 750 mL bottle of vodka. He described the role that vodka and alcohol in general plays in Polish culture. He consumed between two-thirds and three-quarters of the bottle that night. Due to the time difference between Colorado and Poland, he drank and watched the service until 4 or 5am on April 17, 2022. He slept until 8 or 8:30am. On the morning of Sunday, April 17, 2022, [respondent] stated that he went to get brunch. With food, he ordered three to four "double screwdrivers." He understood that each of these drinks contained two shots of vodka. I asked why he had ordered these drinks given his medical knowledge of alcohol and consumption amounts that could lead to a DUI. [Respondent] responded that he did not have a good explanation other than that he was physically and psychologically unwell due to the stressors above, particularly with his uncle quickly becoming ill, dying, and then being unable to attend the funeral. He stated that his rational self would have not drunk and driven. He stated that, at that time, he was irrational.

> I asked [respondent] what he recalls after he started driving. He stated that he was driving on a winding road on the way back to Denver. Boulders rolled down a hill and onto the road. These boulders hit and damaged his truck's right side including his right front tire. He stated that he knew that there was some damage and was trying to get to a safe place to get help. He stated that he called his wife so she could meet him wherever he could stop. He stated that he did not have a good explanation for not recognizing the police vehicle behind him. He did not recall swerving into the opposite lane. [Respondent] recalled three instances of breath alcohol testing. He was unsure why these tests produced different results. He did not recall officers retesting in shorter intervals to mitigate effects from any mouth alcohol. I asked [respondent] why he had initially denied consuming alcohol to officers. [Respondent] stated that he had no good explanation other than that he was scared.

17. Respondent reports that he has not consumed alcohol since this incident.

18. Respondent pled guilty and was convicted and sentenced less than two and one-half months after the April 17, 2022, offense.

19. Respondent reports that he promptly notified the licensing authorities in all (more than 20) states in which he is licensed, including Colorado.

20. The Colorado Medical Board works closely with the Colorado Physician Health Program (CPHP), a nonprofit entity dedicated to helping medical practitioners with medical and psychiatric conditions, including alcohol and substance abuse. Notably, in the November 29, 2022, interview, respondent told the Board investigator that he was formerly the director of the CPHP. Respondent contacted the CPHP and was advised to cease practicing temporarily, and given a referral for a comprehensive evaluation. He scheduled an evaluation with a longstanding program Sierra Tucson, in Arizona. Respondent's expert summarized the medical records from this evaluation as follows:

> [Respondent] was admitted to the Sierra Tucson's Comprehensive Assessment Program. He was admitted on November 27, 2022. He was discharged on December 2, 2022. On November 28, 2022, [respondent] underwent a history and physical examination by Dr. Walter Goodwillie, M.D. His complicated medical and surgical history are documented. A urine drug screen and blood alcohol level were completed on November 27, 2022. Drug and alcohol testing are documented as negative. [Respondent] was medically cleared for residential admission. On November 28, 2022, [respondent] underwent a psychiatric evaluation by Dr. Jennifer Bao, M.D. His wife was contacted for collateral information. Diagnoses are documented as Major Depressive Disorder with seasonal pattern, Generalized Anxiety Disorder, Panic Disorder, Unspecified Trauma and Stressor-Related Disorder, and Unspecified Alcohol Related Disorder (of note, this diagnosis may be used as a

placeholder when one is undergoing an AUD evaluation). He is recommended to continue his antidepressant at the time (escitalopram 20 mg daily).

On December 1, 2022, [respondent] [underwent] a psychological evaluation by Dr. Edmund Nadolny, Ph.D., including psychological testing. Dr. Nadolny documents that there is no evidence of overreporting or underreporting of symptoms. Clinical scales and tests, including those related to alcohol and drug use, do not rise to the level of concern. Testing does not indicate a personality disorder. Dr. Nadolny documents that the normal testing results in the context of a history of anxious and depressive disorders is due to effective treatment and good symptom control. Cognitive testing results indicate intact cognition.

On December 2, 2022, [respondent] [underwent] an addiction-focused evaluation by Dr. Donnie Sansom, D.O. Dr. Sansom identified only one potential DSM-5 AUD criterion, specifically, that [respondent] had engaged in one instance of high-risk behavior with his April 2022 DUI. Dr. Sansom documents that [respondent] does not meet any other AUD criteria. Dr. Sansom documents that [respondent] is fit to work without restrictions. They document that [respondent] "does not meet ASAM criteria for Substance Use specific treatment recommendations."

> They document that [respondent] is "deemed low risk at current time and appears to be a benefit to the patients he serves."
>
> A letter by Dr. Eric Hansen, M.D., is included. Dr. Hansen and his team at Sierra Tucson conclude that there is no need for further residential admission, evaluation, or intensive outpatient treatment. The team concludes that [respondent] does not meet criteria for AUD. Dr. Hansen documents that [respondent]'s alcohol use on the day of DUI "had unique situational, social, and cultural overtones." No new medications were indicated or started.
>
> Dr. Hansen documents that [respondent] does not require additional substance-related monitoring or counseling and treatment beyond what is already court-ordered. Dr. Hansen opines that [respondent] can "return to full-time work with no restrictions, and this includes returning to practice medicine."

(Citations omitted.) Most of the Sierra Tucson records were not submitted in this proceeding. However, respondent submitted a letter from Dr. Hansen dated December 2, 2022, which is accurately summarized in the last paragraph of the quoted material directly above.

21. Respondent reports that during this week-long evaluation at Sierra Tucson, he was evaluated by a psychiatrist each day, administered numerous

psychological tests, including the Minnesota Multiphasic Personality Inventory, which tests for malingering, and also received numerous types of therapy.

22. The CPHP then released respondent back to work. Apparently, respondent was placed on probation by the Colorado Medical Board and the Arizona Medical Board, and respondent reports that both of these authorities relied on the CPHP to conduct monitoring. However, the terms and conditions of these probations were not established by official records in this proceeding.

23. Respondent reports that as part of his criminal probation he completed a 24-hour alcohol education classes and 52 hours of alcohol therapy. He also reports that an Interlock device was installed on his vehicle for nine months and he was subject to random testing for alcohol, which occurred sometimes multiple times per week, but seemed less frequent later. The court terminated his probation after approximately nine months.

24. Respondent submitted one quarterly report from the CPHP to the Arizona Medical Board, dated May 1, 2024, stating:

> [Respondent] was evaluated by the undersigned, Doris C. Gundersen, MD and Quinn Montgomery, LPC. The Clinician/Case Manager now assigned to the case is the undersigned, Sheryl Slankard, LCSW. The virtual re-intake appointment was conducted on November 15, 2022. [Respondent's] previous involvement with CPHP is detailed in previous correspondence.
>
> As noted in our previous correspondence, CPHP has concluded his re-evaluation and we provided our clinical

opinion to the Colorado Medical Board (CMB) in an Evaluation report dated July 3, 2023, in which we opined that [respondent] does not suffer from a Substance Use Disorder, is now engaged in trauma-informed care, is receiving appropriate treatment for PTSD, and in this context, he has had no difficulty abstaining from alcohol. We did not recommend mandatory ongoing monitoring with CPHP, although he has elected to voluntarily remain involved with CPHP at this time. He takes no medication at this point and his anxiety and depression are in remission.

His psychiatrist has retired.

In a recent appointment with him, he relayed his health problems are largely stabilized although he was recently diagnosed with a parathyroid adenoma and three of four glands were removed. This was complicated by a thyrotoxicosis which has resolved.

In summary, from a medical and psychiatric perspective, it is our opinion that [respondent] is safe to practice medicine with reasonable skill and safety to patients.

25. Respondent submitted letters of support from two of his supervisors at the Salt Lake City VA, two other physician colleagues, the CEO of another of respondent's employers, and a fellow officer of respondent's residential homeowner's association in Grand Lake. It is not clear from the letters whether these authors are

aware of respondent's 2022 alcohol-related driving conviction or this proceeding. The authors describe respondent as conscientious, honest, kind, and trustworthy.

26. Respondent submitted a performance evaluation of his work for Cleveland Clinic for the first half of 2023, which indicated "[n]o potential problems with performance or trends that would impact quality of care or patient safety."

27. Respondent submitted a letter dated February 9, 2024, reappointing him to the Department of Medicine, with psychiatry privileges, at El Camino Health, in Santa Clara County.

28. Respondent submitted documents from the licensing authorities of the states of Pennsylvania, Arkansas, Oregon, Nevada, Washington, and New York, indicating that these authorities had, after consideration of his 2022 criminal conviction, decided either not to discipline respondent or to resolve the matter via informal stipulation (Washington), or reprimand with a fine (New York).

DR. TOYOSHIMA'S EXPERT OPINIONS

29. Respondent engaged Takeo Toyoshima, M.D., to conduct an independent psychiatric evaluation. Dr. Toyoshima interviewed respondent on May 14, 2024, reviewed relevant records (largely identical to the documents submitted in this proceeding), issued a report dated May 22, 2024, and testified at hearing. Dr. Toyoshima also interviewed respondent's treating psychiatrist.

30. Dr. Toyoshima is a highly qualified addition medicine specialist. He earned a medical degree in 2014, completed a residency in psychiatry in 2018, completed an addition psychiatry fellowship in 2019, and completed a forensic psychiatry fellowship in 2020. He is currently the medical director for the San Fracisco

VA drug and alcohol treatment clinic, an associate director of the Addiction Psychiatry Fellowship at the University of California San Francisco (UCSF), an assistant clinical professor in the in UCSF's Department of Psychiatry, as well as a forensic psychiatrist for Forensic Psychiatric Associates Medical Corporation. He also has a private practice providing general, addiction, and forensic psychiatric treatment and services, and works as an outpatient, inpatient, and emergency psychiatrist in multiple San Francisco Bay Area hospitals. He is licensed to practice medicine in California. He is board certified in forensic psychiatry, addiction psychiatry, and psychiatry.

31. Dr. Toyoshima reports that respondent has a history of generalized anxiety disorder, panic disorder, and major depressive disorder, but he opines that "these diagnoses are well-controlled with treatment," corroborated by respondent's medical records and information provided to Dr. Toyoshima by respondent's treating psychiatrist.

32. Dr. Toyoshima opines that respondent does not meet the diagnostic criteria for any substance use disorder, including alcohol use disorder. In his report he explained:

> [Respondent] does not meet the DSM-5 diagnostic criteria for any SUD including Alcohol Use Disorder (AUD). [Respondent] pled guilty for a misdemeanor DUI charge. However, this incident was an anomaly in [respondent's] pattern of alcohol use. [Respondent's] typical pattern of alcohol use did not affect his personal and professional obligations, especially since he began to have health problems in his forties. Since 2017 to 2018, his alcohol use was of limited quantity and frequency. There was no other

> evidence of persistent or recurrent negative consequences, cravings, or problems in controlling the use of alcohol within a 12-month period. There was no consistent pattern that spanned months to years of alcohol-related problems during [respondent's] time in school, postgraduate training, or as an attending physician. He has abstained from alcohol since April 2022 without issue. His abstinence is corroborated by monitoring including urine and blood testing completed by state probation and CPHP. The opinion that [respondent] does not suffer from AUD is further corroborated by evaluations completed by other healthcare professionals including those at Sierra Tucson and CPHP as well as his outpatient psychiatrist.

33. Dr. Toyoshima opines that respondent demonstrates good insight into his own mental health, does not require additional psychiatric treatment or further monitoring, and is fit to practice because his risk to abuse alcohol in the future is no greater than that of the general population.

Ultimate Findings

34. It is undisputed that on June 28, 2022, respondent was convicted of driving under the influence of alcohol and as part of his plea agreed that his BAC was 0.269 percent. Respondent was severely impaired while driving 65 miles per hour on a mountain highway, with two missing tires, and swerving into lanes reserved for oncoming traffic. It is undisputed that in committing the underlying offense, respondent used alcoholic beverages in a manner dangerous to himself and the public.

35. The disputed issue is to what extent respondent has proved mitigation and rehabilitation sufficient to assure the Board that respondent is safe to practice without monitoring by the Board.

36. Respondent testified that the April 2022 incident was a reaction to an unusual emotional stressor and an aberration in his history of alcohol consumption. He provided evidence that shows that the Sierra Tucson team and the CPHP have opined that he is safe to practice without monitoring at this time. Respondent's expert witness, Dr. Toyoshima, is highly qualified and also opines that respondent is safe to practice without monitoring. However, conspicuously absent from the evidentiary record is direct documentary evidence supporting respondent's claims that he has been subject to biological fluid testing other than during the one-week evaluation at Sierra Tucson in late 2022. Dr. Toyoshima's report reflects his review of a signed "monitoring agreement, dated December 13, 2022," between respondent and the CPHP in which respondent agreed to "adhere to random testing" but that document was not submitted, nor were the disciplinary orders from the Colorado or Arizona medical boards, which presumably would have specified terms for random biological fluid testing if such terms were imposed. The lack of this evidence, or any explanation for its absence, significantly undermines the persuasiveness of Dr. Toyoshima's opinion, which assumes the truth of respondent's self-reports regarding his use of alcohol. Considering the extreme nature of respondent's abuse of alcohol on April 17, 2022, his evidence is insufficient to show that this was a one-time anomaly or that he is not a substance-abusing practitioner.

Costs

37. In connection with the investigation and enforcement of this accusation, complainant requests an award of costs in the total amount of $12,583.75, comprising

$1,118 in investigative services and $11,465.75 in attorney and paralegal services provided by the Department of Justice and billed to the Board. That request is supported by declarations that comply with the requirements of California Code of Regulations, title 1, section 1042. These costs are found to be reasonable.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant is required to prove cause for discipline of a professional license, permit, or registration by "clear and convincing proof to a reasonable certainty." (Cf. *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) To the extent respondent contends mitigation or rehabilitation, it is his burden to prove those contentions by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

First Cause for Discipline (Dangerous Use of Alcohol/Unprofessional Conduct)

2. The Board may discipline the physician's and surgeon's certificate of a licensee who commits unprofessional conduct. (Bus. & Prof. Code, § 2234 [all further statutory references are to the Business and Professions Code unless stated otherwise].) Use of alcoholic beverages to such an extent, or in a manner, as to be dangerous or injurious to oneself, others, or the public constitutes unprofessional conduct. (§ 2239, subd. (a).) Cause exists to discipline respondent's physician's and surgeon's certificate under sections 2234 and 2239, subdivision (a), for dangerous use of alcohol, in light of the matters set forth in Factual Finding 34.

Second Cause for Discipline (Unprofessional Conduct: Criminal Conviction)

3. Conviction of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon also constitutes unprofessional conduct. (§ 2236, subd. (a).) A criminal offense is substantially related to the qualifications, functions, or duties of a physician and surgeon "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." (Cal. Code Regs., tit. 16, § 1360.) Respondent's June 2022 criminal conviction for driving a vehicle with BAC greater than 0.08 percent suggests potential unfitness to perform his licensed functions safely and is substantially related to his physician's and surgeon's certificate. (Factual Findings 4 & 5.) Cause exists to discipline respondent's physician's and surgeon's certificate under sections 2234 and 2236, subdivision (a), and California Code of Regulations, title 16, section 1360.

Determination of Discipline

4. Cause for discipline having been established, the next issue is what discipline is appropriate. The Board's highest priority is protection of the public. (§ 2229.) However, "to the extent not inconsistent with public protection, disciplinary actions shall be calculated to aid in the rehabilitation of licensees." (Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines ("Guidelines") (12th ed. 2016), at p. 2; see Cal. Code Regs., tit. 16, § 1361.) If the licensee is disciplined for unprofessional conduct involving the abuse of alcohol, the licensee is "presumed to be a substance-abusing licensee." (Cal. Code Regs., tit. 16, § 1361.5, subdivision (a).) The Board may consider a respondent's attitude toward his offense and his character, as

evidenced by his behavior and demeanor at hearing. (*Yellen v. Board of Medical Quality Assurance* (1985) 174 Cal.App.3d 1040, 1059–1060.) The Guidelines expressly provide for disciplinary orders that deviate from the recommended discipline, in appropriate circumstances where the departures and supporting facts are identified.

5. For conviction of a misdemeanor not arising from patient care, treatment, management, or billing, the Guidelines recommend a minimum disciplinary order of a five-year period of probation, with standard conditions of probation plus (1) community service; (2) professionalism program; (3) psychiatric evaluation; (4) medical evaluation and training; and (5) victim restitution. (Guidelines, at p. 25.) For dangerous use of alcohol, the Guidelines also recommend substance abuse conditions. Complainant argues for the recommended discipline. Respondent argues that monitoring is not necessary and that a letter of reprimand is sufficient.

6. Respondent's alcohol-related driving offense was especially dangerous, involving severe intoxication during an attempt to drive more than 100 miles. Respondent presented significant evidence of mitigation but it was not sufficient to rebut the presumption that he is a substance-abusing licensee. Public protection requires the imposition of probation with substance abuse conditions (including abstaining from alcohol and controlled substances, and biological fluid testing). However, respondent's evidence of mitigation and rehabilitation was sufficient to warrant a deviation from the Guidelines from a five-year term of probation to a three-year term. Nor is it necessary to impose medical or psychiatric evaluations, practice monitoring or restrictions, restrictions on his prescribing, or mandatory education, treatment, or psychotherapy.

Costs

7. A licensee who is found to have committed a violation of the licensing act may be ordered to pay a sum not to exceed the reasonable costs of investigation and enforcement. (§ 125.3.) Cause exists to order respondent to pay the Board's costs in the amount of $12,583.75. (Factual Finding 37 & Legal Conclusions 2 & 3.)

8. Cost awards must not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) Cost awards must be reduced where a licensee has been successful at hearing in getting the charges dismissed or reduced; a licensee is unable to pay; or where the scope of the investigation was disproportionate to the alleged misconduct. (*Ibid.*) The agency must also consider whether the licensee has raised a colorable challenge to the proposed discipline, and a licensee's good faith belief in the merits of his or her position. (*Ibid.*) Respondent conceded cause for discipline and successfully proved mitigation and rehabilitation sufficient to warrant a deviation from the discipline recommended by the Guidelines. Accordingly, pursuant to *Zuckerman*, the award of costs will be reduced from $12,583.75 to $9,000.

ORDER

Physician's and Surgeon's Certificate No. C 146992, issued to respondent Wojciech Zolcik, M.D., is revoked; however, revocation is stayed, and respondent is placed on probation for three years under the following terms and conditions:

1. Controlled Substances - Abstain from Use

Respondent 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 respondent by another practitioner for a bona fide illness or condition. Within 15 calendar days of receiving any lawfully prescribed medications, respondent 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 respondent 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, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent 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 respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide respondent with a hearing within 30 days of the request, unless respondent 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 respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

2. Alcohol - Abstain from Use

Respondent shall abstain completely from the use of products or beverages containing alcohol. If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent 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 the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent 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, nonadoption 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 respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

3. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, or hair follicle testing, or similar drug screening approved by the Board or its designee.

Prior to practicing medicine, respondent 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. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Respondent 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 respondent. If respondent fails to cooperate in a random biological fluid testing program within the specified time frame, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent 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 respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless respondent 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 respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

4. Notification

Within seven days of the effective date of this Decision, respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice

insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

5. Supervision of Physician Assistants and Advanced Practice Nurses

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

6. Obey All Laws

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

7. Quarterly Declarations

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

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

8. General Probation Requirements

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

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

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

License Renewal: respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California: respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

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

9. Interview with the Board or its Designee

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

10. Non-Practice While on Probation

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

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

Respondent's period of non-practice while on probation shall not exceed two years. Periods of nonpractice will not apply to the reduction of the probationary term.

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

11. Completion of Probation

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

12. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

13. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his or her license. The

Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

14. Cost Recovery

Respondent is hereby ordered to reimburse the Medical Board of California the amount of $9,000 for its enforcement costs, pursuant to Business and Professions Code section 125.3. Respondent shall complete this reimbursement within 90 days from the effective date of this decision, or pursuant to a payment plan authorized by the Board.

15. Probation Monitoring Costs

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

DATE: 09/24/2024

Michael C. Starkey

MICHAEL C. STARKEY
Administrative Law Judge
Office of Administrative Hearings