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

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| In the Matter of the Petition for Reinstatement of Revoked Certificate of:<br><br>CRAIG JAMES BALL,<br><br>Physician's and Surgeon's Certificate No. A 38467<br>Petitioner. | Case No. 800-2015-016570<br><br>OAH No. 2016050926 |

## DECISION AFTER NON-ADOPTION

Laurie R. Pearlman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on June 20, 2016, in Los Angeles, California.

Pursuant to the provisions of Government Code section 11522, the Attorney General of the State of California was represented by Deputy Attorney General Wendy Widlus.

Peter R. Osinoff, Attorney at Law, represented Craig James Ball (Petitioner).

Oral and documentary evidence was received and the matter was submitted for decision on June 20, 2016.

A Proposed Decision was issued on July 19, 2016. On November 3, 2016, Panel A of the Medical Board of California (Board) issued an Order of Non-Adoption of Proposed Decision. Oral argument on the matter was heard by the Panel on January 25, 2017, with ALJ Erin R. Koch-Goodman presiding. The Attorney General of the State of California was represented by Deputy Attorney General Claudia Ramirez. Petitioner was present and was represented by Peter R. Osinoff. Panel A, having read and considered the entire record, including the transcripts and the exhibits, and having considered the written and oral arguments presented by the parties, hereby makes and enters this decision on the matter.

## FACTUAL FINDINGS

1. On November 20, 1978, the Board issued Physician's and Surgeon's Certificate Number G 38467 (certificate) to Petitioner.

2. In response to an August 2006 accusation and petition to revoke probation (2006 Accusation), Petitioner stipulated to the surrender of his certificate, effective December 31, 2007. By a petition dated June 18, 2011, Petitioner unsuccessfully sought reinstatement of his certificate. In

its decision, effective November 9, 2012, the Board found that with regard to honesty, Petitioner had not made substantial progress toward rehabilitation, and denied the petition on that basis.

3. On May 10, 2015, Petitioner signed and subsequently filed a Petition for Reinstatement of Revoked/Surrendered Certificate. This matter ensued.

*1999 Accusation*

4. From June 1982 through October 1999, Petitioner was employed by the Serra Community Medical Clinic (SCMC) in the city of Sun Valley. Petitioner and other physicians who worked at SCMC were covered by a master liability insurance policy. The policy had a five-year tail. If a physician left SCMC and, within five years after leaving, was sued for an incident that had occurred at SCMC, the tail provided coverage. The certificate of insurance stated that the policy provided no coverage for private practice.

5. In an accusation dated March 29, 1999 (1999 Accusation), the executive director of the Board alleged that, with regard to Petitioner's treatment of two patients, he engaged in gross negligence, demonstrated incompetence, and engaged in repeated negligent acts.

6. The parties entered into a stipulation to resolve the 1999 Accusation. The terms of the stipulation provided for Petitioner to complete certain parts of the Physician Assessment and Clinical Education Program at the University of California, San Diego (PACE). The stipulation also called for Petitioner to reimburse the Board for certain costs and provided that the Board would issue a public letter of reprimand to Petitioner. Petitioner complied with the terms of the settlement agreement, and the Board issued a public letter of reprimand dated October 17, 2000.

*2001 Accusation*

7. In an accusation dated August 27, 2001 (2001 Accusation), the executive director of the Board alleged that, with regard to Petitioner's treatment of one patient, he had engaged in gross negligence, demonstrated incompetence, engaged in repeated negligent acts, and failed to maintain adequate and accurate records. The parties entered into a stipulated settlement for issuance of a disciplinary order. The stipulated settlement became effective June 2, 2003. Pursuant to the stipulation, the Board revoked Petitioner's license but stayed the revocation and placed Petitioner on probation for seven years, subject to certain terms and conditions. The conditions included requirements that Petitioner complete an educational program, complete certain parts of the PACE program, and refrain from performing laryngeal laser surgery. The agreement also called for Petitioner to reimburse the Board for certain costs.

*Cosmetic Surgery Institute*

8. In January 2003, Petitioner opened an outpatient cosmetic surgery clinic, the Cosmetic Surgery Institute (CSI), in Palm Desert, California. Petitioner applied for and obtained accreditation by the Accreditation Association for Ambulatory Health Care (AAAHC). Six months after granting

Petitioner's application for accreditation, AAAHC canceled the accreditation because the certificate of medical malpractice insurance that had been filed as part of the application for accreditation had been falsified.

9. Petitioner's sister-in-law, Maggie Ralph (Ralph), was Petitioner's office manager at the Cosmetic Surgery Institute. Although she had only recently been through a drug recovery program, Petitioner believed she was in recovery and hired her in a position of trust because she was his wife's sister. As the office manager, Ralph managed business affairs, including insurance and accreditation. After Petitioner hired Ralph, she had a drug relapse. Petitioner was not involved in and did not pay close attention to office business affairs. Ralph began stealing from the office in February 2004, but Petitioner did not discover this until October 2004. When Petitioner learned that Ralph had embezzled $300,000 from the clinic to support a drug and gambling habit, he dismissed her from her position as office manager.

10. After Petitioner dismissed her, Ralph spoke with a Board investigator and retaliated against Petitioner by making numerous allegations against him. Ralph told the investigator that Petitioner had instructed her to falsify the SCMC certificate of insurance and submit it in support of Petitioner's application for AAAHC accreditation.

*2006 Accusation and Petition to Revoke Probation*

11a. The probation granted pursuant to the 2001 Accusation was scheduled to terminate on June 2, 2010. However, pursuant to the 2006 Accusation, the Board's executive director sought to discipline Petitioner's license and revoke his probation.

11b. Many of the allegations in the 2006 Accusation were based on Ralph's accusations. In the 2006 Accusation, the Board's executive director alleged that Petitioner had engaged in dishonesty or corruption by causing a fraudulent and false certificate of insurance to be submitted to AAAHC, and by altering medical records to conceal the fact that surgeries involving general anesthesia had been performed at his clinic after AAAHC canceled the accreditation. In addition to those allegations of dishonesty, the Board's executive director alleged a failure to provide liability coverage, unprofessional conduct, and making a false document.

11c. The Board's executive director also made numerous allegations in the 2006 Accusation regarding Petitioner's treatment of a patient. It was alleged that, in connection with Petitioner's treatment of that patient, he engaged in gross negligence, demonstrated incompetence, engaged in repeated negligent acts, violated professional confidence, engaged in unprofessional conduct, and failed to provide liability coverage. Further, the executive director alleged that, in an interview with a Board investigator, Petitioner made numerous dishonest statements.

12. In response to the 2006 Accusation, Petitioner stipulated to surrender his certificate effective December 31, 2007. In the stipulation, Petitioner acknowledged his understanding that, if he ever filed a petition for reinstatement of his certificate, "all of the charges and allegations contained in [the] Accusation and Petition to Revoke . . . shall be deemed to be true and correct when

the Division determines whether to grant or deny the petition."

13. The following charges and allegations in the 2006 Accusation concern dishonesty regarding the submission of a certificate of insurance in connection with the application for accreditation. Pursuant to Petitioner's acknowledgment in his stipulation to surrender his certificate, these charges and allegations are deemed to be true and correct.

a. Petitioner committed acts of dishonesty or corruption.

b. While Petitioner was employed by SCMC, he was covered under a master liability policy. Petitioner was given a copy of the certificate of insurance, which provided that there was, "no coverage for private practice."

c. On January 16, 2003, Petitioner signed an application for AAAHC accreditation for his surgery clinic, the Cosmetic Surgery Institute in Palm Desert. In order to obtain accreditation, a physician must have adequate malpractice insurance coverage.

d. On February 26, 2003, the surveyor for AAAHC surveyed Petitioner's surgery clinic and interviewed Petitioner. The surveyor asked Petitioner for proof of malpractice coverage, which was required by law for accreditation. The surveyor informed Petitioner that the proof of insurance was the only thing remaining for completion of the survey. Petitioner was reluctant to provide such proof and said he did not have it with him. The surveyor went back to her hotel room where she waited for the certificate of insurance. The next morning, the surveyor called Petitioner's office, spoke with one of his employees, and again requested proof of insurance coverage. That day, the surveyor received a faxed certificate of insurance. Later, it was discovered that it was a false and fraudulent document.

e. On February 27, 2003, Petitioner caused a fraudulent and false certificate of insurance to be submitted to the AAAHC surveyor. The certificate of insurance was false in the following ways: It represented that Petitioner was insured regarding his practice at his address in Palm Desert with coverage from January 1, 2003 to January 1, 2004, in the amount of $1,000,000 per occurrence with no annual aggregate. The certificate also falsely stated that the policy had been in place since July of 1998 without any incidents or claims.

f. On July 29, 2003, Petitioner received a letter from AAAHC requesting proof of malpractice insurance coverage.

*Petitioner's Testimony*

14. Petitioner is 67 years old and married. He has one adult son. Petitioner practiced medicine from June 1982 to December 2007, when his certificate was surrendered.

15. Petitioner graduated from the University of Texas, Health Science School of Medicine in June 1977. He did a rotating internship at Valley Medical Center in Fresno, followed by a year of general surgery residency. Petitioner finished an ENT, Head & Neck Facial Cosmetic surgery

residency at the White Memorial Medical Center (WMMC) in June 1982. He practiced at WMMC and taught residents for approximately four or five years, until the teaching program was terminated. In June 1982, Petitioner began working with Sierra Medical Center (SMC) in Sun Valley, California, as well as part time in Marina del Rey. After he married, in 1999 he joined the practice of another ENT physician in Palm Desert, where he specialized in cosmetic surgery.

16. Petitioner wanted to start his own practice in his own office. He opened CSI on February 1, 2003. Petitioner applied for accreditation by the AAAHC for his surgery center at the CSI. In February 2003, the AAAHC surveyor had completed her entire survey, including the offices, charts, equipment and medications. She lacked only the certificate of malpractice insurance. Petitioner admits that there was no way he could reasonably have believed he had malpractice insurance. He acknowledges that he was not simply dishonest in directing his sister-in-law, Ralph (whom he had hired as his office manager), to provide a certificate of insurance. He was more concerned about the ends (the goal of obtaining accreditation, which required insurance) than the proper means to accomplish the goal. He told Ralph to "take care of it." Petitioner admits that his actions were dishonest, reckless, and unprofessional.

17. Since Petitioner relinquished his certificate in December 2007, he has kept busy with projects, tasks, and hobbies, but misses the practice of medicine. Petitioner spends time with his adult son who is disabled with Crohn's disease, and with his 94 year old father. Although he terminated Ralph, Petitioner invited her oldest son to live with him and his wife after he graduated from high school in 2012. His nephew lived with them for two years, and they helped him to improve his health, get into college, and find employment.

18. Since losing his certificate, Petitioner has worked in landscaping design and installation. Petitioner has performed over 500 hours of volunteer service in the last few years. He donated a great deal of time and money to help a friend turn a failing restaurant into a thriving business. He also assists with a ranch for abused boys, Father's Heart Ranch in Desert Hot Springs. It is home to up to 24 boys at a time, ages 8 through 12. Petitioner personally managed the acquisition and installation of 72 palm trees around the property perimeter of the boys' ranch. He paid for and built four raised vegetable gardens for the boys to plant and nurture, and added 10 mesquite trees for shade and 25 citrus trees for future harvest. Petitioner does not delegate this work. He dug the trenches and set PVC pipes, timers, and lighting for these landscape jobs, leading a crew. Petitioner's goal was to set a good example for the boys.

19. On August 14, 2014, Petitioner underwent a full psychiatric evaluation by Dominick Addario, M.D. Dr. Addario concluded that Petitioner is cognitively intact, with no evidence of any psychiatric disorder. Dr. Addario stated, "Based on a stellar history, except for the single event of misrepresentation of his malpractice insurance, there is virtually no evidence that Dr. Ball would represent a risk factor to the public or demonstrate any level of psychopathology or sociopathic behavior that would prevent him from appropriately and reasonably practicing medicine." (Exhibit 1-F.)

20. It is Petitioner's desire to return to the practice of medicine, specifically cosmetic surgery. He regrets that he has let down his family, his colleagues, and the medical profession.

Petitioner would like to make amends to his profession and contribute to society by doing what he has been trained to do. His wife has continued to work hard as a real estate broker since the end of 2007. He would very much like to become a breadwinner for the family once again. Petitioner is committed to doing so in an entirely ethical manner, and he realizes that it is important for physicians to set the highest ethical standards.

21. If he is granted reinstatement, Petitioner would offer his surgical abilities to treat disadvantaged children who need facial reconstruction. Dr. Mohammed Zakhireh, M.D., is the current owner and medical director of the CSI. He has offered to have Petitioner work at the CSI as a surgeon, if his certificate were reinstated by the Board.

22. In his testimony, Petitioner expressed sincere remorse and took full responsibility for his dishonesty in connection with the use of the SCMC certificate of insurance, which occurred 13 years ago. Petitioner acknowledges that, at the time he hired Ralph, he had reason to know he should supervise her carefully. He acknowledges that, instead of supervising her carefully, he hardly supervised her at all. According to Petitioner, Ralph is a brilliant person and very capable, and he trusted her with managing the office. Petitioner admits that he was aware that the SCMC certificate of insurance did not provide coverage for him in private practice, but used it anyway because, at that time, he was not financially able to purchase the required coverage. Petitioner did subsequently obtain coverage. Petitioner acknowledges that malpractice insurance provides for a monetary recovery to compensate a person who has suffered physical injury as a consequence of someone's negligence. Malpractice insurance reduces the risk that a patient who has been injured as a result of medical malpractice will go uncompensated because the doctor does not have assets from which to pay compensation. Petitioner admitted that by using the SCMC certificate of insurance as evidence that he had insurance in his private practice, he wrongfully thwarted a condition that was in place for protection of his patients.

23. Petitioner has pursued rehabilitation with regard to his dishonesty. In May 2007, he completed a professional boundaries program provided by PACE. In February 2012, he also attended a California Medical Association's Institute for Medical Quality (IMQ) professionalism program. Petitioner completed the Medical Ethics and Professionalism course in May 2014 at University of California, Irvine (UCI), as well as six-month and 12-month follow-ups. The course was devoted to ethical issues involving physicians. Petitioner stays current in medicine by observing surgeries at the CSI, and keeping abreast of new modalities by reading medical journals. He spent nearly six weeks in November 2012 at Drexel University in Philadelphia, taking their Physician Refresher Re-Entry course. Petitioner missed being around other physicians and dealing with medical issues on a daily basis. The course included hands-on physical exams, observing surgeries, and case preparations. In the past few months, he has observed surgeries being performed.

24. From 2003 to approximately 2014, Petitioner was in a state of denial about his conduct in 2003, and the role he had played in causing a false certificate of insurance to be created. Throughout 2013 and 2014, he talked frankly to his pastor about the events which led to the revocation of his certificate, and about honesty and forgiveness. While attending UCI's Medical Ethics and Professionalism course in May 2014, Petitioner met other physicians who had accepted

responsibility for their actions and had successfully put their wrongdoing behind them. When Petitioner was finally able to "confess [his] sins and move on," he felt that "a great burden had been lifted off of [him]." He is deeply ashamed of his conduct, and acknowledges that it was clearly unacceptable behavior for a physician. Petitioner emphasized that if his certificate were reinstated, there is no way he would ever put anything ahead of professional ethics, based on his years of reflection about his conduct, the Board's strong message to him, his discussions with his pastor, the ethics courses he has taken, and the psychological evaluation he has undergone.

*Testimony of Thomas M. Gill*

25. Thomas M. Gill, CRNA, is certified as a nurse anesthesiologist. Gill was an impressive and very credible witness. His testimony was careful and measured. He worked as a nurse in the United States Air Force and completed an anesthesia residency while in the service. After leaving the Air Force, Gill located in Palm Desert and set up a private practice. In private practice, he has worked with more than five surgeons, including Petitioner.

26. Gill testified about the allegation in the 2006 Accusation that Petitioner had altered medical records to conceal the fact that surgeries involving general anesthesia had been performed at Petitioner's clinic after AAAHC had canceled the accreditation. Gill stated that after AAAHC notified Petitioner that his accreditation had been canceled, Petitioner and his staff stopped doing surgeries at the CSI. Until Petitioner obtained insurance and AAAHC reinstated the accreditation, all procedures were performed at a surgery center down the street. Gill testified that, after the allegation regarding altered medical records as to whether surgeries had been performed at the CSI, he and the charge nurse reviewed the narcotics log and the surgery log and concluded that there had been no alterations.

27. Gill testified that Petitioner has a very good reputation in the community for honesty. Petitioner has been candid with Gill, and has admitted that his actions in 2003 were wrong. He has taken responsibility for, and ownership of, his mistakes.

28. Gill testified that he did approximately 835 surgeries with Petitioner and that Petitioner's surgical skills were well above average. He rarely had a surgical complication, and when he did, Petitioner would address it immediately. Gil would not hesitate to refer family members and friends to Petitioner. In 2005 or 2006, he underwent surgery by Petitioner with positive results.

*Testimony of Mohammed Zakhireh, M.D.*

29. Dr. Zakhireh is a board certified plastic and reconstructive surgeon who testified credibly, and submitted a letter in support of, Petitioner's request that his certificate be reinstated. Dr. Zakhireh began working with Petitioner at the CSI in June 2005, and worked with him until Petitioner surrendered his license in December 2007. When Petitioner surrendered his certificate, Dr. Zakhireh bought Petitioner's practice, and he continues there as the medical director. Dr. Zakhireh would like to have Petitioner return to work at the CSI, and Petitioner would like to do so. At the CSI, Petitioner would have no involvement in, and no responsibility for, business matters.

Dr. Zakhireh would continue to own and operate the clinic. Petitioner would function only as a surgeon.

30. Dr. Zakhireh emphasized that Petitioner is an excellent surgeon who has inherent good character and a good heart. Petitioner is sincerely remorseful about his actions in 2003. If his certificate were reinstated by the Board, Petitioner would be an asset to the medical community and the community at large.

*Character Reference Letter from Mark Berman, M.D.*

31. Mark Berman, M. D., wrote a letter dated July 23, 2015, in support of Petitioner's request that his certificate be reinstated. Dr. Berman has been in private practice since 1983, practicing in the field of cosmetic surgery and otolaryngology. He has known Petitioner since 1979, and had the opportunity to consult with him as to many of his patients. Dr. Berman states that Petitioner's patients "all loved him" and he built an "outstanding practice." He strongly believes that Petitioner is "a fundamentally honest person" who is very remorseful and "has completely rehabilitated from his ethical lapses." (Exhibit 1-C.)

*Payment Probation Monitoring Costs*

32. Petitioner is prepared to reimburse the Board for probation monitoring costs which are owing, in the amount of $3,173.

## LEGAL CONCLUSIONS

1. It is Petitioner's burden to prove both his rehabilitation and his fitness to practice medicine. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.) Petitioner's burden requires a showing that he was no longer deserving of the adverse character judgment associated with the discipline imposed against his certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395.)

2. Protection of the public is the Board's highest priority (Business and Professions Code sections 2001.1 and 2229.)

3. The purpose of the Medical Practice Act is to assure the high quality of medical practice. In furtherance of that goal, the Board seeks to keep unqualified and undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.)

4. The purpose of administrative discipline is not to punish licensees but to protect the public by eliminating those practitioners who are dishonest, immoral, disreputable, or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

5. California Code of Regulations, title 16, section 1360.2, lists the criteria for rehabilitation to be examined in evaluating the merits of a petition for reinstatement of a revoked license. That regulation provides:

> When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the Petitioner considering the following criteria:
>
> (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
>
> (b) Evidence of any act(s) or crime(s) committed subsequent to act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Code Section 480.
>
> (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (a) or (b) above.
>
> (d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).
>
> (e) Evidence, if any, of rehabilitation submitted by the applicant.

6. It is well-established that remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) 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.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) Finally, the evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

7. Cause exists to grant the Petition pursuant to the provisions of Business and Professions Code section 2307 by reason of Findings 11 through 24, provided the newly reinstated certificate is accompanied by a probationary Order requiring satisfaction of specific terms and conditions.

8. It is undisputed that the allegations regarding Petitioner's dishonest conduct in 2003 were extremely serious. However, his actions are remote in time: the conduct regarding falsification of the insurance document occurred more than 13 years ago. Petitioner has gained insight into the reasons behind the problems and errors that led to the 2006 accusation and petition to revoke probation.

9. With regard to Petitioner's dishonesty, Petitioner established by clear and convincing evidence that his efforts toward rehabilitation have been successful. Petitioner attended the PACE professional boundaries program, a Medical Ethics and Professionalism Program at University of California, Irvine, and an IMQ professionalism program. Petitioner is remorseful and has taken full responsibility for his dishonest conduct in connection with the SCMC certificate of insurance.

10. Petitioner has not practiced medicine for more than nine years. When he was in practice, between 1999 and 2006, Petitioner had three accusations/petitions to revoke filed against his certificate for multiple causes of action, including, but not limited to, gross negligence, repeated negligent acts, and incompetence, in addition to the dishonesty charges discussed above. Given the lengthy passage of time since he has practiced medicine or participated in a formal evaluation of his medical knowledge and competence, a clinical competence assessment program, as a condition precedent, is warranted to ensure he has the current medical knowledge, skills, and readiness to return to practice safely. Moreover, the requirement for a surgical proctor, practice monitor, and additional education courses will serve to protect the public and rehabilitate Petitioner.

## ORDER

The Petition of Craig James Ball for reinstatement of his revoked Physician's and Surgeon's Certificate No. G 38467 is granted, subject to the following:

The newly reinstated certificate is hereby revoked. However, the revocation is stayed and Petitioner is placed on probation for five (5) years upon the following terms and conditions:

### 1. Clinical Competence Assessment Program – Condition Precedent

Within 60 calendar days of the effective date of this Decision, Petitioner shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Petitioner shall successfully complete the program not later than six (6) months after Petitioner's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Petitioner's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Petitioner's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Petitioner's on-site participation for a minimum of 3 and no more than 5 days as determined by the program for the assessment and clinical education evaluation. Petitioner shall pay all expenses associated with the clinical competence assessment program.

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

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

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

**2. Surgical Proctor**

Within 30 calendar days of the effective date of this Decision, Petitioner shall submit to the Board or its designee for prior approval as a surgical proctor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A surgical proctor shall have no prior or current business or personal relationship with Petitioner, or other relationship that could reasonably be expected to compromise the ability of the surgical proctor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Petitioner's field of practice, and must agree to serve as Petitioner's surgical proctor. As an exception to the requirement for having no prior or current business or personal relationship, the Board will consider approving Mohammed Zakhireh, M.D., as Petitioner's surgical proctor, provided all other requirements of this condition are met.

The Board or its designee shall provide the proctor(s) with a copy of this Decision After Non-Adoption (Decision). Within fifteen (15) calendar days of receipt, the proctor shall submit a signed statement that he or she has read the Decision and understands the role of the proctor. The proctor must be approved by the Board or its designee prior to Petitioner performing any surgeries.

The approved proctor(s) shall document in a log the procedures in which Petitioner participated as the assistant physician and surgeon and as the primary physician and surgeon. The log shall contain: a) the patient's name or the patient's medical record number; b) the date the procedure was performed; c) the type of procedure performed; and d) whether Petitioner was the assistant or primary physician and surgeon performing the procedure. Petitioner shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

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The approved proctor(s) shall submit a quarterly report to the Board or its designee which includes an evaluation of Petitioner's performance, indicating, at a minimum, the following: a) the total procedures performed; b) the types of procedures performed; c) whether Petitioner was the assistant or primary physician and surgeon performing the procedure; d) surgical skill observations; and e) complications, if any. It shall be the sole responsibility of Petitioner to ensure that the proctor submits the quarterly written reports to the Board or its designee within ten (10) calendar days after the end of the preceding quarter.

The Petitioner shall not perform any liposuction or surgical procedures without the presence of the approved proctor until all of the following conditions are met:

1) Petitioner completes a minimum of 30 proctored cases as the primary physician and surgeon, to include liposuction and simple and complex facial plastic/cosmetic surgical procedures.

2) The proctor deems the Petitioner competent to perform liposuction and simple and complex facial plastic/cosmetic surgical procedures independently;

3) The proctor sends a report to the Board or its designee in writing which includes the following information: a) total and types of cases completed as the primary physician and surgeon; b) surgical skill observations; c) complications, if any; and d) a statement confirming that the proctor has determined that Petitioner is safe to perform liposuction and simple and complex facial plastic/cosmetic surgical procedures independently; and

4) The Board or its designee notifies Petitioner in writing that this condition has been satisfied and is terminated.

At the Board's or its designee's discretion, the proctor(s)'s report(s) may be reviewed by a Board expert.

Petitioner shall be responsible for any costs associated with the required proctoring and this condition.

### 3. Monitoring – Practice

Within 30 calendar days of the effective date of this Decision, Petitioner shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Petitioner, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Petitioner's field of practice, and must agree to serve as Petitioner's monitor. Petitioner shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Petitioner's practice shall be monitored by the approved monitor. Petitioner shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Petitioner fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Petitioner's performance, indicating whether Petitioner's practices are within the standards of practice of medicine, and whether Petitioner is practicing medicine safely. It shall be the sole responsibility of Petitioner to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Petitioner shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Petitioner fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified Petitioner shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Petitioner may participate in a professional enhancement program approved in advance by the Board or its designee, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Petitioner shall participate in the professional enhancement program at Petitioner's expense during the term of probation.

**4. Education Course**

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Petitioner shall submit to the Board or its designee for its prior approval educational

program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting areas of deficiency or knowledge as to refreshment of surgical techniques and/or medical practice management/financial management, and shall be Category I certified. The educational program(s) or course(s) shall be at Petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Petitioner's knowledge of the course. Petitioner shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

**5. Solo Practice Prohibition**

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

If Petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, Petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Petitioner shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the Petitioner's practice setting changes and the Petitioner is no longer practicing in a setting in compliance with this Decision, the Petitioner shall notify the Board or its designee within 5 calendar days of the practice setting change. If Petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, Petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Petitioner shall not resume practice until an appropriate practice setting is established.

**6. Notification**

Within seven (7) days of the effective date of this Decision, the Petitioner 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 Petitioner, at any other facility where Petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Petitioner. Petitioner shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

## 7. Supervision of Physician Assistants and Advanced Practice Nurses

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

## 8. Obey All Laws

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

## 9. Quarterly Declarations

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

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

## 10. General Probation Requirements

Compliance with Probation Unit:

Petitioner shall comply with the Board's probation unit.

Address Changes:

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

Place of Practice:

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

License Renewal:

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

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Travel or Residence Outside California:

Petitioner shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

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

**11. Interview with the Board or its Designee**

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

**12. Non-practice While on Probation**

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

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

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

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

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

**13. Completion of Probation**

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

**14. Violation of Probation**

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

**15. License Surrender**

Following the effective date of this Decision, if Petitioner ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Petitioner may request to surrender his or her license. The Board reserves the right to evaluate Petitioner's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Petitioner shall within 15 calendar days deliver Petitioner's wallet and wall certificate to the Board or its designee and Petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If Petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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## 16. Probation Monitoring Costs

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

This Decision shall become effective at 5:00 p.m. on March 10, 2017.

IT IS SO ORDERED February 10, 2017.

Jamie Wright, J.D., Vice Chair
Panel A

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

| | | |
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| In the Matter of the Petition for Reinstatement of Revoked Certificate of: | ) | |
| Craig James Ball | ) | Case No.: 800-2015-016570 |
| Physician's & Surgeon's Certificate No: G 38467 | ) | OAH No.: 2016050926 |
| Petitioner | ) | |

## ORDER OF NON-ADOPTION OF PROPOSED DECISION

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted.** A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit directed to the question of whether the proposed decision should be modified, and what if any limitations should be placed on respondent's ability to practice medicine. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Kennedy Court Reporters, 920 W. 17th Street, Second Floor, Santa Ana, CA 92706. The telephone number is 714-835-0366.

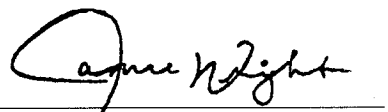
To order a copy of the exhibits, please submit a written request to this Board.

**In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice.** If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
916-263-2451
Attention: Dianne Richards

Date: November 3, 2016



Jamie Wright, Chair
Panel A

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

| | |
|---|---|
| In the Matter of the Petition for Reinstatement of Revoked Certificate of:<br><br>CRAIG JAMES BALL,<br><br>Petitioner. | Case No. 800-2015-016570<br><br>OAH No. 2016050926 |

# PROPOSED DECISION

Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 20, 2016, in Los Angeles, California.

Pursuant to the provisions of Government Code section 11522, the Attorney General of the State of California was represented by Deputy Attorney General Wendy Widlus.

Peter R. Osinoff, Attorney at Law, represented Craig James Ball (petitioner).

Oral and documentary evidence was received and the matter was submitted for decision on June 20, 2016.

## FACTUAL FINDINGS

1. On November 20, 1978, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number G 38467 (certificate) to petitioner.

2. In response to an August 2006 accusation and petition to revoke probation (2006 Accusation), petitioner stipulated to the surrender of his certificate, effective December 31, 2007. By a petition dated June 18, 2011, petitioner unsuccessfully sought reinstatement of his certificate. In its decision, effective November 9, 2012, the Board found that with regard to honesty, petitioner had not made substantial progress toward rehabilitation, and denied the petition on that basis. [1]

[1] With regard to any lack of professional competence as a surgeon, the Board found that petitioner had established by clear and convincing evidence that his efforts toward

3. On May 10, 2015, Petitioner signed and subsequently filed a Petition for Reinstatement of Revoked/Surrendered Certificate. This matter ensued.

*1999 Accusation*

4. From June of 1982 through October of 1999, petitioner was employed by the Serra Community Medical Clinic (SCMC) in the city of Sun Valley. Petitioner and other physicians who worked at SCMC were covered by a master liability insurance policy. The policy had a five-year tail. If a physician left SCMC and, within five years after leaving, was sued for an incident that had occurred at SCMC, the tail provided coverage. The certificate of insurance stated that the policy provided no coverage for private practice.

5. In an accusation dated March 29, 1999 (1999 Accusation), the executive director of the Board alleged that, with regard to petitioner's treatment of two patients, he engaged in gross negligence, demonstrated incompetence, and engaged in repeated negligent acts.

6. The parties entered into a stipulation to resolve the 1999 Accusation. The terms of the stipulation provided for petitioner to complete certain parts of the Physician Assessment and Clinical Education Program at the University of California, San Diego (PACE). The stipulation also called for petitioner to reimburse the board for certain costs and provided that the board would issue a public letter of reprimand to petitioner. Petitioner complied with the terms of the settlement agreement, and the board issued a public letter of reprimand dated October 17, 2000.

*2001 Accusation*

7. In an accusation dated August 27, 2001 (2001 Accusation), the executive director of the Board alleged that, with regard to petitioner's treatment of one patient, he had engaged in gross negligence, demonstrated incompetence, engaged in repeated negligent acts, and failed to maintain adequate and accurate records. The parties entered into a stipulated settlement for issuance of a disciplinary order. The stipulated settlement became effective June 2, 2003. Pursuant to the stipulation, the board revoked petitioner's license but stayed the revocation and placed petitioner on probation for seven years, subject to certain terms and conditions. The conditions included requirements that petitioner complete an educational program, complete certain parts of the PACE program, and refrain from performing laryngeal laser surgery. The agreement also called for petitioner to reimburse the Board for certain costs.

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rehabilitation have been successful. The parties stated that they considered that issue to be res judicata and agreed that petitioner's surgical competence is not at issue in this matter.

*Cosmetic Surgery Institute*

8. In January of 2003, petitioner opened an outpatient cosmetic surgery clinic, the Cosmetic Surgery Institute (CSI), in Palm Desert, California. Petitioner applied for and obtained accreditation by the Accreditation Association for Ambulatory Health Care (AAAHC). Six months after granting petitioner's application for accreditation, AAAHC canceled the accreditation because the certificate of medical malpractice insurance that had been filed as part of the application for accreditation had been falsified.

9. Petitioner's sister-in-law, Maggie Ralph (Ralph), was petitioner's office manager at the Cosmetic Surgery Institute. Although she had only recently been through a drug recovery program, petitioner believed she was in recovery and hired her in a position of trust because she was his wife's sister. As the office manager, Ralph managed business affairs, including insurance and accreditation. After petitioner hired Ralph, she had a drug relapse. Petitioner was not involved in and did not pay close attention to office business affairs. Ralph began stealing from the office in February of 2004, but petitioner did not discover this until October of 2004. When petitioner learned that Ralph had embezzled $300,000 from the clinic to support a drug and gambling habit, he dismissed her from her position as office manager.

10. After petitioner dismissed her, Ralph spoke with a Board investigator and retaliated against petitioner by making numerous allegations against him. Ralph told the investigator that petitioner had instructed her to falsify the SCMC certificate of insurance and submit it in support of petitioner's application for AAAHC accreditation.

*2006 Accusation and Petition to Revoke Probation*

11a. The probation granted pursuant to the 2001 Accusation was scheduled to terminate on June 2, 2010. However, pursuant to the 2006 Accusation, the Board's executive director sought to discipline petitioner's license and revoke his probation.

11b. Many of the allegations in the 2006 Accusation were based on Ralph's accusations. In the 2006 Accusation, the Board's executive director alleged that petitioner had engaged in dishonesty or corruption by causing a fraudulent and false certificate of insurance to be submitted to AAAHC, and by altering medical records to conceal the fact that surgeries involving general anesthesia had been performed at his clinic after AAAHC canceled the accreditation. In addition to those allegations of dishonesty, the Board's executive director alleged a failure to provide liability coverage, unprofessional conduct, and making a false document.

11c. The Board's executive director also made numerous allegations in the 2006 Accusation regarding petitioner's treatment of a patient. It was alleged that, in connection with petitioner's treatment of that patient, he engaged in gross negligence, demonstrated incompetence, engaged in repeated negligent acts, violated professional confidence, engaged in unprofessional conduct, and failed to provide liability coverage. Further, the executive

director alleged that, in an interview with a Board investigator, petitioner made numerous dishonest statements.

12. In response to the 2006 Accusation, petitioner stipulated to surrender his license effective December 31, 2007. In the stipulation, petitioner acknowledged his understanding that, if he ever filed a petition for reinstatement of his license, "all of the charges and allegations contained in [the] Accusation and Petition to Revoke . . . shall be deemed to be true and correct when the Division determines whether to grant or deny the petition."

13. The following charges and allegations in the 2006 Accusation concern dishonesty regarding the submission of a certificate of insurance in connection with the application for accreditation. Pursuant to petitioner's acknowledgment in his stipulation to surrender his license, these charges and allegations are deemed to be true and correct.

a. Petitioner committed acts of dishonesty or corruption.

b. While petitioner was employed by SCMC, he was covered under a master liability policy. Petitioner was given a copy of the certificate of insurance, which provided that there was, "no coverage for private practice."

c. On January 16, 2003, petitioner signed an application for AAAHC accreditation for his surgery clinic, the Cosmetic Surgery Institute in Palm Desert. In order to obtain accreditation, a physician must have adequate malpractice insurance coverage.

d. On February 26, 2003, the surveyor for AAAHC surveyed petitioner's surgery clinic and interviewed petitioner. The surveyor asked petitioner for proof of malpractice coverage, which was required by law for accreditation. The surveyor informed petitioner that the proof of insurance was the only thing remaining for completion of the survey. Petitioner was reluctant to provide such proof and said he did not have it with him. The surveyor went back to her hotel room where she waited for the certificate of insurance. The next morning, the surveyor called petitioner's office, spoke with one of his employees, and again requested proof of insurance coverage. That day, the surveyor received a faxed certificate of insurance. Later, it was discovered that it was a false and fraudulent document.

e. On February 27, 2003, petitioner caused a fraudulent and false certificate of insurance to be submitted to the AAAHC surveyor. The certificate of insurance was false in the following ways: It represented that petitioner was insured regarding his practice at his address in Palm Desert with coverage from January 1, 2003 to January 1, 2004, in the amount of $1,000,000 per occurrence with no annual aggregate. The certificate also falsely stated that the policy had been in place since July of 1998 without any incidents or claims.

f. On July 29, 2003, petitioner received a letter from AAAHC requesting proof of malpractice insurance coverage.

*Petitioner's Testimony*

14. Petitioner is 67 years old and married. He has one adult son. Petitioner practiced medicine from June 1982 to December 2007, when his certificate was revoked.

15. Petitioner graduated from the University of Texas, Health Science School of Medicine in June of 1977. He did a rotating internship at Valley Medical Center in Fresno, followed by a year of general surgery residency. Petitioner finished an ENT, Head & Neck Facial Cosmetic surgery residency at the White Memorial Medical Center (WMMC) in June of 1982. He practiced at WMMC and taught residents for approximately 4 or 5 years, until the teaching program was terminated. In June 1982, petitioner began working with Sierra Medical Center (SMC) in Sun Valley, California, as well as part time in Marina del Rey. After he married, in 1999 he joined the practice of another ENT physician in Palm Desert, where he specialized in cosmetic surgery.

16. Petitioner wanted to start his own practice in his own office. He opened CSI on February 1, 2003. Petitioner applied for accreditation by the AAAHC for his surgery center at the CSI. In February 2003, the AAAHC surveyor had completed her entire survey, including the offices, charts, equipment and medications. She lacked only the certificate of malpractice insurance. Petitioner admits that there was no way he could reasonably have believed he had malpractice insurance. He acknowledges that he was not simply dishonest in directing his sister-in-law, Ralph (whom he had hired as his office manager), to provide a certificate of insurance. He was more concerned about the ends (the goal of obtaining accreditation, which required insurance) than the proper means to accomplish the goal. He told Ralph to "take care of it." Petitioner admits that his actions were dishonest, reckless, and unprofessional.

17. Since petitioner relinquished his certificate in December 2007, he has kept busy with projects, tasks, and hobbies, but misses the practice of medicine. Petitioner spends time with his adult son who is disabled with Crohn's disease, and with his 94 year old father. Although he terminated Ralph, petitioner invited her oldest son to live with him and his wife after he graduated from high school in 2012. His nephew lived with them for two years, and they helped him to improve his health, get into college, and find employment.

18. Since losing his certificate, petitioner has worked in landscaping design and installation. Petitioner has performed over 500 hours of volunteer service in the last few years. He donated a great deal of time and money to help a friend turn a failing restaurant into a thriving business. He also assists with a ranch for abused boys, Father's Heart Ranch in Desert Hot Springs. It is home to up to 24 boys at a time, ages 8 through 12. Petitioner personally managed the acquisition and installation of 72 palm trees around the property perimeter of the boys' ranch. He paid for and built four raised vegetable gardens for the boys to plant and nurture, and added 10 mesquite trees for shade and 25 citrus trees for future harvest. Petitioner does not delegate this work. He dug the trenches and set PVC pipes, timers, and lighting for these landscape jobs, leading a crew. Petitioner's goal was to set a good example for the boys.

19. On August 14, 2014, petitioner underwent a full psychiatric evaluation by Dominick Addario, M.D. Dr. Addario concluded that petitioner is cognitively intact, with no evidence of any psychiatric disorder. Dr. Addario stated, "Based on a stellar history, except for the single event of misrepresentation of his malpractice insurance, there is virtually no evidence that Dr. Ball would represent a risk factor to the public or demonstrate any level of psychopathology or sociopathic behavior that would prevent him from appropriately and reasonably practicing medicine." (Exhibit 1-F.)

20. It is petitioner's desire to return to the practice of medicine, specifically cosmetic surgery. He regrets that he has let down his family, his colleagues, and the medical profession. Petitioner would like to make amends to his profession and contribute to society by doing what he has been trained to do. His wife has continued to work hard as a real estate broker since the end of 2007. He would very much like to become a breadwinner for the family once again. Petitioner is committed to doing so in an entirely ethical manner, and he realizes that it is important for physicians to set the highest ethical standards.

21. If he is granted reinstatement, petitioner would offer his surgical abilities to treat disadvantaged children who need facial reconstruction. Dr. Mohammed Zakhireh, M.D., is the current owner and medical director of the CSI. He has offered to have petitioner work at the CSI as a surgeon, if his certificate were reinstated by the Board.

22. In his testimony, petitioner expressed sincere remorse and took full responsibility for his dishonesty in connection with the use of the SCMC certificate of insurance, which occurred 13 years ago. Petitioner acknowledges that, at the time he hired Ralph, he had reason to know he should supervise her carefully. He acknowledges that, instead of supervising her carefully, he hardly supervised her at all. According to petitioner, Ralph is a brilliant person and very capable, and he trusted her with managing the office. Petitioner admits that he was aware that the SCMC certificate of insurance did not provide coverage for him in private practice, but used it anyway because, at that time, he was not financially able to purchase the required coverage. Petitioner did subsequently obtain coverage. Petitioner acknowledges that malpractice insurance provides for a monetary recovery to compensate a person who has suffered physical injury as a consequence of someone's negligence. Malpractice insurance reduces the risk that a patient who has been injured as a result of medical malpractice will go uncompensated because the doctor does not have assets from which to pay compensation. Petitioner admitted that by using the SCMC certificate of insurance as evidence that he had insurance in his private practice, he wrongfully thwarted a condition that was in place for protection of his patients.

23. Petitioner has pursued rehabilitation with regard to his dishonesty. In May 2007, he completed a professional boundaries program provided by PACE. In February 2012, he also attended a California Medical Association's Institute for Medical Quality (IMQ) professionalism program. Petitioner completed the Medical Ethics and Professionalism course in May 2014 at University of California, Irvine (UCI), as well as six-month and 12-month follow-ups. The course was devoted to ethical issues involving physicians. Petitioner stays current in medicine by observing surgeries at the CSI, and

keeping abreast of new modalities by reading medical journals. He spent nearly six weeks in November 2012 at Drexel University in Philadelphia, taking their Physician Refresher Re-Entry course. Petitioner missed being around other physicians and dealing with medical issues on a daily basis. The course included hands-on physical exams, observing surgeries, and case preparations. In the past few months, he has observed surgeries being performed.

24. From 2003 to approximately 2014, petitioner was in a state of denial about his conduct in 2003, and the role he had played in causing a false certificate of insurance to be created. Throughout 2013 and 2014, he talked frankly to his pastor about the events which led to the revocation of his certificate, and about honesty and forgiveness. While attending UCI's Medical Ethics and Professionalism course in May 2014, petitioner met other physicians who had accepted responsibility for their actions and had successfully put their wrongdoing behind them. When petitioner was finally able to "confess [his] sins and move on," he felt that "a great burden had been lifted off of [him]." He is deeply ashamed of his conduct, and acknowledges that it was clearly unacceptable behavior for a physician. Petitioner emphasized that if his certificate were reinstated, there is no way he would ever put anything ahead of professional ethics, based on his years of reflection about his conduct, the Board's strong message to him, his discussions with his pastor, the ethics courses he has taken, and the psychological evaluation he has undergone.

*Testimony of Thomas M. Gill*

25. Thomas M. Gill, CRNA, is certified as a nurse anesthesiologist. Gill was an impressive and very credible witness. His testimony was careful and measured. He worked as a nurse in the United States Air Force and completed an anesthesia residency while in the service. After leaving the Air Force, Gill located in Palm Desert and set up a private practice. In private practice, he has worked with more than five surgeons, including petitioner.

26. Gill testified about the allegation in the 2006 Accusation that petitioner had altered medical records to conceal the fact that surgeries involving general anesthesia had been performed at petitioner's clinic after AAAHC had canceled the accreditation. Gill stated that after AAAHC notified petitioner that his accreditation had been canceled, petitioner and his staff stopped doing surgeries at the CSI. Until petitioner obtained insurance and AAAHC reinstated the accreditation, all procedures were performed at a surgery center down the street. Gill testified that, after the allegation regarding altered medical records as to whether surgeries had been performed at the CSI, he and the charge nurse reviewed the narcotics log and the surgery log and concluded that there had been no alterations.

27. Gill testified that petitioner has a very good reputation in the community for honesty. Petitioner has been candid with Gill, and has admitted that his actions in 2003 were wrong. He has taken responsibility for, and ownership of, his mistakes.

28. Gill testified that he did approximately 835 surgeries with petitioner and that petitioner's surgical skills were well above average. He rarely had a surgical complication, and when he did, petitioner would address it immediately. Gil would not hesitate to refer

family members and friends to petitioner. In 2005 or 2006, he underwent surgery by petitioner with positive results.

*Testimony of Mohammed Zakhireh, M.D.*

29. Dr. Zakhireh is a board certified plastic and reconstructive surgeon who testified credibly, and submitted a letter in support of, petitioner's request that his certificate be reinstated. Dr. Zakhireh began working with petitioner at the CSI in June of 2005, and worked with him until petitioner surrendered his license in December 2007. When petitioner surrendered his license, Dr. Zakhireh bought petitioner's practice, and he continues there as the medical director. Dr. Zakhireh would like to have petitioner return to work at the CSI, and petitioner would like to do so. At the CSI, Petitioner would have no involvement in, and no responsibility for, business matters. Dr. Zakhireh would continue to own and operate the clinic. Petitioner would function only as a surgeon.

30. Dr. Zakhireh emphasized that petitioner is an excellent surgeon who has inherent good character and a good heart. Petitioner is sincerely remorseful about his actions in 2003. If his certificate were reinstated by the Board, petitioner would be an asset to the medical community and the community at large.

*Character Reference Letter from Mark Berman, M.D.*

31. Mark Berman, M. D., wrote a letter dated July 23, 2015, in support of petitioner's request that his certificate be reinstated. Dr. Berman has been in private practice since 1983, practicing in the field of cosmetic surgery and otolaryngology. He has known petitioner since 1979, and had the opportunity to consult with him as to many of his patients. Dr. Berman states that petitioner's patients "all loved him" and he built an "outstanding practice." He strongly believes that petitioner is "a fundamentally honest person" who is very remorseful and "has completely rehabilitated from his ethical lapses." (Exhibit 1-C.)

*Payment Probation Monitoring Costs*

32. Petitioner is prepared to reimburse the board for probation monitoring costs which are owing, in the amount of $3,173.

## LEGAL CONCLUSIONS

1. Cause exists to grant the Petition pursuant to the provisions of Business and Professions Code section 2307 by reason of Findings 11 through 19, provided the newly reinstated certificate is accompanied by a probationary Order requiring satisfaction of specific terms and conditions.

2. Petitioner bore the burden of proving both his rehabilitation and his fitness to practice medicine. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence to a

reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.) Petitioner's burden required a showing that he was no longer deserving of the adverse character judgment associated with the discipline imposed against his certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395.)

3. Protection of the public is the Board's highest priority (Business and Professions Code sections 2001.1 and 2229.)

4. The purpose of the Medical Practice Act is to assure the high quality of medical practice. In furtherance of that goal, the board seeks to keep unqualified and undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.)

5. The purpose of administrative discipline is not to punish licensees but to protect the public by eliminating those practitioners who are dishonest, immoral, disreputable, or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

6. California Code of Regulations, title 16, section 1360.2, lists the criteria for rehabilitation to be examined in evaluating the merits of a petition for reinstatement of a revoked license. That regulation provides:

> When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:
>
> (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
>
> (b) Evidence of any act(s) or crime(s) committed subsequent to act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Code Section 480.
>
> (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (a) or (b) above.
>
> (d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).
>
> (e) Evidence, if any, of rehabilitation submitted by the applicant.

7. It is well-established that remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) 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.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) Finally, the evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

8. It is undisputed that the allegations regarding petitioner's dishonest conduct in 2003 were extremely serious. However, his actions are remote in time: the conduct regarding falsification of the insurance document occurred more than 13 years ago. Petitioner has gained insight into the reasons behind the problems and errors that led to the 2006 accusation and petition to revoke probation.

9. With regard to petitioner's dishonesty, petitioner established by clear and convincing evidence that his efforts toward rehabilitation have been successful. Petitioner attended the PACE professional boundaries program, a Medical Ethics and Professionalism Program at University of California, Irvine, and an IMQ professionalism program. Petitioner is remorseful and has taken full responsibility for his dishonest conduct in connection with the SCMC certificate of insurance.

10. The Deputy Attorney General concurs that petitioner has met his burden in establishing that his petition should be granted and his license reinstated, albeit on a restricted basis. The goal of public protection is served by a period of probation, with terms and conditions to protect the public.

## ORDER

The Petition of Craig James Ball for reinstatement of his revoked Physician's and Surgeon's Certificate No. G 38467 is granted, subject to the following:

The newly reinstated certificate is hereby revoked. However, the revocation is stayed and Petitioner is placed on probation for three years upon the following terms and conditions:

**1. Education Course**

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, petitioner shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting areas of deficiency or knowledge as to refreshment of surgical techniques and/or medical practice management/financial management, and shall be Category I certified. The educational program(s) or course(s) shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test

respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

**2. Monitoring – Practice/ Surgical Proctor**

Within 30 calendar days of the effective date of this Decision, Petitioner shall submit to the Board or its designee for prior approval as a practice monitor/surgical proctor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor/surgical proctor shall have no prior or current business or personal relationship with Petitioner, or other relationship that could reasonably be expected to compromise the ability of the monitor/surgical proctor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Petitioner's field of practice, and must agree to serve as Petitioner's monitor/surgical proctor. Petitioner shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor/surgical proctor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring/surgical proctoring plan, the monitor/surgical proctor shall submit a signed statement that the monitor/surgical proctor has read the Decision(s) and Accusation(s), fully understands the role of a monitor/surgical proctor, and agrees or disagrees with the proposed monitoring plan. If the monitor/surgical proctor disagrees with the proposed monitoring plan, the monitor/surgical proctor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Petitioner's practice shall be monitored by the approved monitor/surgical proctor. Petitioner shall make all records available for immediate inspection and copying on the premises by the monitor/surgical proctor at all times during business hours and shall retain the records for the entire term of probation.

If Petitioner fails to obtain approval of a monitor/surgical proctor within 60 calendar days of the effective date of this Decision, Petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall cease the practice of medicine until a monitor/surgical proctor is approved to provide monitoring/proctoring responsibility.

The monitor/surgical proctor shall submit a quarterly written report to the Board or its designee which includes an evaluation of Petitioner's performance, indicating whether Petitioner's practices are within the standards of practice medicine, and whether Petitioner is practicing medicine safely. It shall be the sole responsibility of Petitioner to ensure that the monitor/surgical proctor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor/surgical proctor resigns or is no longer available, Petitioner shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor/surgical proctor who will be assuming that responsibility within 15 calendar days. If Petitioner fails to obtain approval of a replacement monitor/surgical proctor within 60 calendar days of the resignation or unavailability of the monitor/surgical proctor, Petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified Petitioner shall cease the practice of medicine until a replacement monitor/surgical proctor is approved and assumes monitoring responsibility.

In lieu of a monitor/surgical proctor, Petitioner may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Petitioner shall participate in the professional enhancement program at Petitioner's expense during the term of probation.

**3. Notification**

Within seven days of the effective date of this Decision, Petitioner 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 Petitioner, at any other facility where Petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Petitioner. Petitioner shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

**4. Supervision of Physician Assistants**

During probation, Petitioner is prohibited from supervising physician assistants.

**5. Obey All Laws**

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

**6. Quarterly Declarations**

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

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

**7. General Probation Requirements**

Compliance with Probation Unit

Petitioner shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Petitioner shall, at all times, keep the Board informed of Petitioner'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

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

License Renewal

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

Travel or Residence Outside California

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

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

**8. Interview with the Board or its Designee**

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

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**9. Non-practice While on Probation**

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

In the event Petitioner's period of non-practice while on probation exceeds 18 calendar months, Petitioner shall successfully complete a clinical training 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.

Petitioner's period of non-practice while on probation shall not exceed two years.

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

Periods of non-practice will relieve Petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

**10. Violation of Probation**

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

**11. License Surrender**

Following the effective date of this Decision, if Petitioner ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Petitioner may request to surrender his license. The Board reserves the right to evaluate Petitioner's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Petitioner shall, within 15 calendar days, deliver Petitioner's wallet and wall certificate to the Board or its designee and

Petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If Petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

**12. Probation Monitoring Costs**

Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. Within 30 days of the effective date of this decision, Petitioner shall reimburse the Board for probation monitoring costs which are currently owing, in the amount of $3,173.

**13. Completion of Probation**

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

Dated: July 19, 2016

DocuSigned by:
Laurie Pearlman
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LAURIE R. PEARLMAN
Administrative Law Judge
Office of Administrative Hearings