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

In the Matter of the Petition to Revoke Probation Against, **YOLANDA WAI NG, M.D.** **1108 Amur Creek Ct.** **San Jose CA 95120-4103** **Physician's and Surgeon's Certificate No. A 131737** Respondent.	Case No. 800-2019-057889 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 20, 2019, Complainant Kimberly Kirchmeyer, in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs, filed Petition to Revoke Probation No. 800-2019-057889 against YOLANDA WAI NG, M.D. (Respondent) before the Medical Board of California.

2. On or about July 21, 2014, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 131737 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2020, unless renewed.

3. On or about August 20, 2019, Sara Pasion, Staff Services Analyst, an employee of the Complainant Agency, served by Certified Mail a copy of the Petition to Revoke Probation No. 800-2019-057889, Statement to Respondent, Notice of Defense, and Request for Discovery to Respondent's address of record with the Board, which was and is: 1108 Amur Creek Ct. San Jose CA 95120-4103. A copy of the Petition to Revoke Probation, the related documents, and Declaration of Service are attached as exhibit A, and are incorporated herein by reference.

4. Service of the Petition to Revoke Probation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

6. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Petition to Revoke Probation, and therefore waived her right to a hearing on the merits of Petition to Revoke Probation No. 800-2019-057889.

7. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

8. On September 26, 2019, a Courtesy Notice of Default was sent to Respondent's address of record. Respondent returned the signed Return Receipt on September 28, 2019, but did not submit a Notice of Defense. A Copy of the Notice (without the attachments that are contained in Exhibit A above) and return receipt are attached as Exhibit B.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibits A and B, and upon the facts set forth in the Declaration of Paulette Romero (Exhibit C), finds that the allegations in Petition to Revoke Probation No. 800-2019-057889 are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent YOLANDA WAI NG, M.D. has subjected her Physician's and Surgeon's Certificate No. A 131737 to discipline.

2. A copy of the Petition to Revoke Probation, the Declaration of Paulette Romero and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Medical Board of California is authorized to revoke Respondent's Physician's and Surgeon's Certificate based upon the following violations alleged in the Petition to Revoke Probation:

A. Respondent failed to engage in the practice of medicine for a period exceeding two years;

B. Respondent failed to complete a clinical competency assessment after 18 months of non-practice;

C. Respondent violated the terms of her probation.

ORDER

IT IS SO ORDERED that Physician's and Surgeon's Certificate No. A 131737, heretofore issued to Respondent YOLANDA WAI NG, M.D., is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on November 22, 2019 at 5:00 p.m.

It is so ORDERED October 23, 2019.

KIMBERLY KIRCHMEYER
EXECUTIVE DIRECTOR
FOR THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Oct. 20 2019
BY [illegible] ANALYST

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

In the Matter of the Petition to Revoke Probation Against: **YOLANDA WAI NG, M.D.** **1108 Amur Creek Ct.** **San Jose CA 95120-4103** **Physician's and Surgeon's Certificate No. A 131737** Respondent.	Case No. 800-2019-057889 PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about July 21, 2014, the Medical Board of California issued Physician's and Surgeon's Certificate Number A 131737 to YOLANDA WAI NG, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on May 31, 2020, unless renewed.

3. On September 25, 2015, pursuant to Business and Professions Code § 2310(a), a full out of state suspension order issued, which prohibited Respondent from engaging in the practice of medicine. On December 1, 2015, an Accusation was filed in a disciplinary action entitled "In the Matter of Accusation Against Yolanda Wai Ng, M.D.," Case No. 800-2015-016674. On February 14, 2017, the Medical Board of California issued a Decision, which became effective March 16, 2017, by which Respondent's Physician's and Surgeon's Certificate was revoked. However, the order of revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of five (5) years with certain terms and conditions relating to substance abusing licensees. A copy of that Decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Petition to Revoke Probation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

6. Section 2228 of the Code states:

"The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

"(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

"(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

"(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

"(d) Providing the option of alternative community service in cases other than violations relating to quality of care."

CAUSE TO REVOKE PROBATION

(Non-practice While on Probation)

7. Pursuant to the Decision described in paragraph 3 above, and at all times after the March 16, 2017 effective date of Respondent's probation, Condition 14 provided that, in the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete a clinical training program. Said condition further provided that

Respondent's period of non-practice while on probation shall not exceed two years. Non-practice is defined as any period of time that Respondent is not engaged in the practice of medicine for at least 40 hours in a calendar month.

8. At all relevant times after the effective date of Respondent's probation, Condition 16 provided that, in the event Respondent violated any term of her probation, the Board may, after giving Respondent notice and the opportunity to be heard, revoke the disciplinary order that was stayed.

9. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 14, referenced above. The facts and circumstances regarding this violation are as follows:

A. Pursuant to the Decision, effective March 16, 2017, Respondent was required to file quarterly declarations including, among other information, the number of hours that she was practicing medicine and the place(s) where she was practicing during the quarter.

B. Beginning with her first quarterly report, dated April 8, 2017, and continuing from quarter to quarter through April 8, 2019, Respondent reported that she was not engaged in the practice of medicine.

C. In addition to terms of the Decision that placed her on probation, Respondent received notice on September 26, 2018, that if 18 months of non-practice had elapsed on September 16, 2018, then the terms of her probation required her to complete a clinical training program prior to returning to the practice of medicine. Respondent did not complete a clinical training program and she did not return to the practice of medicine.

D. In addition to terms of the Decision that placed her on probation, Respondent received notice on December 26, 2018 that her period of non-practice had exceeded 18 months and that she must complete a clinical training program prior to resuming the practice of medicine in California. She was also notified that if her period of non-practice should exceed two years she would be in violation of the terms of her probation and the Board would take further disciplinary action. Respondent did not complete the required clinical training program.

E. In addition to terms of the Decision that placed her on probation, Respondent received notice on March 18, 2019, that her period of non-practice had now exceeded two years, that she was in violation of the terms of her probation and that she may not practice medicine in California without permission of the Board.

10. Respondent's probation is subject to revocation and the Board may carry out the disciplinary order of license revocation that was stayed on the basis that Respondent's period of non-practice exceeded 18 months and she has not completed a clinical training program and, further, that Respondent's period of non-practice has exceeded two years, in violation of the terms of her probation.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking the probation that was granted by the Medical Board of California in Case No. 800-2015-016674 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. A 131737 issued to Yolanda Wai Ng, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. A 131737, issued to Yolanda Wai Ng, M.D.;

3. Revoking, suspending or denying approval of Yolanda Wai Ng, M.D. authority to supervise physician's assistants and advanced practive nurses;

4. Ordering Yolanda Wai Ng, M.D. to pay the Medical Board of California the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring;

5. Taking such other and further action as deemed necessary and proper.

DATED: August 20, 2019

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

Exhibit A

Decision and Order

Medical Board of California Case No. 800-2015-016674

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

In the Matter of the Accusation Against:	)	
YOLANDA WAI NG, M.D.	)	Case No. 800-2015-016674
Physician's and Surgeon's Certificate No. A 131737	)	
Respondent	)	

DECISION AND ORDER

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the Proposed Decision. The Proposed Decision is amended as follows:

1. Page 1 – first paragraph, line 2 – "and expired on May 31. 2016" is stricken and replaced with "and expires on May 31, 2018".

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 16, 2017.

IT IS SO ORDERED: February 14, 2017.

MEDICAL BOARD OF CALIFORNIA

Michelle Anne Bholat MD

Michelle Anne Bholat, M.D., Chair
Panel B

MEDICAL BOARD OF CALIFORNIA
I do hereby certify that this document is a true and correct copy of the original on file in this office.
S. Woods
Signature
For Custodian of Records
Title
7/8/2019
Date

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

In the Matter of the Accusation Against: YOLANDA WAI NG, M.D. Physician's and Surgeon's Certificate No. A131737, Respondent.	Case No. 800-2015-016674 OAH No. 2016070932

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on December 1, 2016, in Oakland, California.

Deputy Attorney General Carolyne Evans represented complainant Kimberly Kirchmeyer, the Executive Director of the Medical Board of California, Department of Consumer Affairs.

Respondent Yolanda Wai Ng, M.D., was present and was represented by John L. Fleer, Attorney at Law.

The record closed and the matter was submitted on December 1, 2016.

FACTUAL FINDINGS

1. On July 21, 2014, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A131737 (certificate) to Yolanda Wai Ng, M.D. The certificate was in full force and effect during the events set forth below, and expired on May 31, 2016. Respondent's certificate is currently suspended pursuant to an out of state suspension order issued by the Board on September 25, 2015, pursuant to Business and Professions Code section 2310.

2. On December 1, 2015, complainant Kimberly Kirchmeyer, acting in her official capacity as Executive Director of the Board, issued an accusation against respondent. The accusation alleges that respondent's California certificate is subject to discipline because of actions taken by the Washington Medical Quality Assurance Commission (Washington

Commission) against respondent's license to practice medicine in Washington. Respondent requested a hearing, and this hearing followed.

Action by the Washington Commission

3. On August 18, 2010, the State of Washington issued respondent a license to practice as a physician and surgeon.

4. On August 20, 2015, the Washington Commission issued a Stipulated Findings of Fact, Conclusions of Law, and Agreed Order (Agreed Order) suspending respondent's license to practice medicine in Washington. The facts and circumstances surrounding the Agreed Order are set forth in Factual Findings 5 through 7.

5. On June 1, 2014, respondent began working for a health care network in eastern Washington. During a routine employment intake examination respondent had a positive urine toxicology screen for marijuana metabolites. On July 8, 2014, respondent's employer referred her to the Washington Physician's Health Program (WPHP). WPHP referred respondent to Hazelden Springbrook (Hazelden) for a multidisciplinary evaluation.

6. Hazelden's evaluation concluded that respondent required inpatient treatment for marijuana dependence, and that she could not safely return to work until she completed such treatment. In August 2014, respondent notified WPHP that she would not enter treatment. She has continued to refuse treatment, as recommended by WPHP. After respondent refused treatment, WPHP informed the Washington Commission that respondent is "impaired by untreated cannabis dependence and is unable to safely practice medicine with appropriate safety to patients."

7. The Washington Commission found that respondent's "misuse of marijuana during her employment, demonstrated a potential inability to treat patients with reasonable skill and safety" and constituted unprofessional conduct. The Washington Commission further found that "Patient safety requires indefinite suspension of Respondent's license preventing her from treating patients with no right to petition for termination" until she complies with the treatment and recommendations of WPHP and is deemed safe to practice medicine.

Respondent's evidence

8. Respondent is 40 years old and is originally from San Jose, California. She received her undergraduate degree from University of California at Los Angeles. She received her medical degree from St. George's University in Grenada, in 2007. Respondent completed a residency in pediatrics in 2010, and a fellowship in pediatric nephrology in 2013.

9. Respondent began smoking marijuana in medical school. Respondent stated that she used marijuana two to three times each month for one year prior to testing positive

for marijuana. She used marijuana, in part, to alleviate back pain and menstrual cramps. Marijuana is legal in the state of Washington.

10. Respondent maintains that she did not follow through with Hazelden's recommendation that she complete a 90-day inpatient treatment program because she disagreed that she required treatment for cannabis dependency and because she could not afford the program. (According to respondent, the cost of Hazelden's program was $50,000.)

11. Respondent is pregnant. She stated that she last used marijuana on May 21, 2014, when she consumed a birthday cake that was made with cannabis. Given respondent's refusal to enter treatment for cannabis dependency, her testimony regarding the date on which she last used marijuana, which was uncorroborated by other evidence, was not convincing.

12. This is respondent's first disciplinary matter.

13. Respondent resides in California. Since her suspension on September she has worked editing science papers on a part-time basis, and she has also taken art classes.

14. Respondent firmly believes that she does not require treatment for cannabis dependency. She states that she is willing to submit to a substance abuse evaluation to instill the Board's confidence in her safety to practice medicine.

LEGAL CONCLUSIONS

1. The standard of proof applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty.

2. Business and Professions Code[1] section 141, subdivision (a), applies generally to licenses issued by agencies that are part of the Department of Consumer Affairs, such as the Board. It provides, in relevant part, as follows:

> For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action by another state . . . for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board.

[1] All references are to the Business and Professions Code unless otherwise indicated.

Insofar as the Agreed Order in Washington was based upon a determination that respondent's use of marijuana during her employment as a physician demonstrated a potential risk of harm to her patients, the disciplinary action was based on acts substantially related to the practice of medicine. Accordingly, cause exists under section 141 to take disciplinary action against respondent's certificate, by reason of the matters set forth in Findings 4 through 7.

3. Section 2305, which applies specifically to licenses issued by the Board, provides in relevant part as follows:

> The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state . . . that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

The conduct for which respondent was disciplined for in Washington, set forth in Factual Findings 5 through7, constitutes cause for disciplinary action in California under sections 2234 (general unprofessional conduct) and 2239 (use of controlled substance[2]). Accordingly, cause exists under section 2305 to take disciplinary action against respondent's certificate.

Disciplinary considerations

4. Cause for discipline having been established, the issue is the appropriate level of discipline to impose. The Board's disciplinary guidelines for a violation of section 2234 recommend a stayed revocation and five years' probation, subject to appropriate terms and conditions; the maximum discipline is license revocation.

Complainant argues that revocation is the appropriate discipline in the instant case. While respondent's refusal to enter treatment for her cannabis dependence raises serious concerns regarding her willingness to take appropriate action to ensure the safety of her patients, given respondent's current willingness to undergo an evaluation, and presumably treatment if required, protection of the public can be achieved by placing respondent on probation for a period of five years, subject to terms and conditions.

The Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th ed., 2011), and "Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees" (Guidelines) provide guidance to the appropriate disposition of this matter. (Cal. Code Regs., tit. 16, § 1361.) Where, as here, a licensee is disciplined for unprofessional conduct involving the abuse of drugs, the licensee is presumed to be a

[2] Official notice is taken of Health and Safety Code section 11054, subdivision (c)(13), which classifies marijuana as a Schedule I controlled substance.

"substance-abusing licensee" and subject to mandatory terms and conditions of probation outlined in the Uniform Standards for Substance-Abusing Licensees. (Cal. Code Regs., tit. 16, § 1361, subd. (b), and § 1361.5, subds. (a) & (c).)

As set forth below, respondent's certificate shall be placed on probation for a period of five years, pursuant to the probation conditions in the Guidelines, as well as other terms contained in the Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th ed., 2011). Inasmuch as the basis for respondent's discipline in Washington did not involve the use of alcohol, and there was no evidence presented at hearing that respondent abuses alcohol, she will not be required to abstain from alcohol as a condition of probation.

ORDER

Physician's and Surgeon's Certificate No. A131737, issued to Yolanda Wai Ng, M.D., is revoked. However, revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

1. Clinical Diagnostic Evaluations and Reports

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with respondent within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether respondent has a substance abuse problem, whether respondent is a threat to herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that respondent is a threat

to herself or others, the evaluator shall notify the Board within 24 hours of such a determination.

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

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

The Board shall review the clinical diagnostic evaluation report within five business days of receipt to determine whether respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on respondent based on the recommendations made by the evaluator. Respondent shall not be returned to practice until she has at least 30 days of negative biological fluid tests or biological fluid tests indicating that she has not used, consumed, ingested, or administered to herself a prohibited substance, as defined in section 1361.51, subdivision (e), of title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that she is fit to practice medicine safely. The period of time that respondent is not practicing medicine shall not be counted toward completion of the term of probation. Respondent shall undergo biological fluid testing as required in this Decision at least two times per week while awaiting the notification from the Board if she is fit to practice medicine safely.

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

2. Notice of Employer or Supervisor Information

Within seven days of the effective date of this Decision, respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, respondent's worksite monitor, and respondent's employers and supervisors to communicate regarding respondent's work status, performance, and monitoring.

For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when respondent has medical staff privileges.

3. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by respondent.

During the first year of probation, respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, respondent shall be subject to 36 to 104 random tests per year. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, respondent shall contract with a laboratory or service, approved in advance by the Board or its designee, which will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

(a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.

(b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.

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

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

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

(f) Its testing locations shall submit a specimen to a laboratory within one business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven business days of receipt of the specimen. The Board will be notified of non-negative results within one business day and will be notified of negative test results within seven business days.

(g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test respondent on any day of the week.

(h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(i) It maintains testing sites located throughout California.

(j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows respondent to check in daily for testing.

(k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the

appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one business day and negative test results within seven business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent.

If a biological fluid test result indicates respondent has used, consumed, ingested, or administered to herself a prohibited substance, the Board shall order respondent to cease practice and instruct respondent to leave any place of work where respondent is practicing medicine or providing medical services. The Board shall immediately notify all of respondent's employers, supervisors and work monitors, if any, that respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, her treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of respondent's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by respondent and approved by the Board, or any other substance the respondent has been instructed by the Board not to use, consume, ingest, or administer to herself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, respondent has committed a major violation, as defined in section 1361.52, subdivision (a), and the Board shall impose any or all of the consequences set forth in section 1361.52, subdivision (b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance respondent's rehabilitation.

4. Substance Abuse Support Group Meetings

Within 30 days of the effective date of this Decision, respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which she shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three years of experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with respondent within the last five years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing respondent's name, the group name, the date and location of the meeting, respondent's attendance, and respondent's level of participation and progress. The facilitator shall report any unexcused absence by respondent from any substance abuse support group meeting to the Board, or its designee, within 24 hours of the unexcused absence.

5. Worksite Monitor for Substance-Abusing Licensee

Within 30 calendar days of the effective date of this decision, respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available,

or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring respondent at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall respondent's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five years, and shall sign an affirmation that he or she has reviewed the terms and conditions of respondent's disciplinary order and agrees to monitor respondent as set forth by the Board or its designee.

Respondent shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with respondent in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding respondent's behavior, if requested by the Board or its designee; and review respondent's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and respondent's employer or supervisor within one business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) respondent's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of respondent's work attendance; (8) any change in respondent's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by

respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

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

6. Violation of Probation Condition for Substance-Abusing Licensees

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

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

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

(2) Increase the frequency of biological fluid testing.

(3) Refer respondent for further disciplinary action, such as suspension, revocation, or other action as determined by

the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).).

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of respondent;

(4) Order increased documentation;

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

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

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

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke respondent's probation if she has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

7. Controlled Substances - Abstain From Use

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

Within 15 calendar days of receiving any lawfully prescribed medications, respondent shall notify the Board or its designee of the: Issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

8. Notification

Within seven days of the effective date of this Decision, respondent shall provide a true copy of this Decision to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

9. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

10. Obey All Laws

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

11. Quarterly Declarations

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

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

12. General Probation Requirements

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

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

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

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

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

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

13. Interview with the Board or its designee

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

14. Non-Practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine 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 respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

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

15. Completion of Probation

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

16. Violation of Probation

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

17. License Surrender

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

18. Probation Monitoring Costs

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

DATED: December 22, 2016

DocuSigned by:
Diane Schneider
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DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings