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

In the Matter of the Application of:	)	File No. 800-2019-059424
	)	
	)	
	)	
Byron Etta	)	
	)	
	)	
	)	
	)	
Applicant.	)	
	)	

DECISION AND ORDER

The attached Stipulation for a Probationary License is hereby accepted and adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on **November 27, 2019**, although the probation will not commence until the applicant completes any remaining requirements for licensure and the license is issued.

ORDERED: November 20, 2019

MEDICAL BOARD OF CALIFORNIA

By: Ronald H. Lewis, MD

Ronald H. Lewis, M.D., Chair
Panel A

BEFORE THE

MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Application of:	)	Case No. 800-2019-059424
	)	
BYRON ETTA	)	
	)	STIPULATION FOR A PROBATIONARY LICENSE
	)	
For a Physician's and Surgeon's License	)	
	)	

1) Byron Etta, applicant for a physician's and surgeon's license (hereinafter "applicant"), and Kimberly Kirchmeyer, Executive Director of the Medical Board of California (Board), hereby stipulate as follows:

2) Applicant is eligible for medical licensure in California upon meeting all licensure requirements.

3) On April 26, 2019, the Board received an application for a Physician's and Surgeon's License. On April 18, 2018, applicant was placed on probation during training due to an incident of unprofessional behavior. As a result, applicant was required to complete a course on Medical Ethics and Professionalism. In addition, applicant was required to remediate a rotation due to concerns regarding his clinical performance. On October 26, 2018, applicant's probation was lifted for meeting all the requirements of his probationary term.

In January 2019, it was reported that there were concerns regarding applicant's communication skills during a rotation. Applicant was removed from the rotation and did not receive credit. As a result, on February 28, 2019, applicant was re-placed on probation. On June 27, 2019, applicant's probation was lifted due to demonstrating improvement with his communication skills and professionalism. It was reported that to ensure ongoing monitoring of applicant's progress, applicant is required to seek daily feedback in the areas of professionalism and patient care, and is required to comply with the recommendations of the program's Well-being Committee for the remainder of his training.

4) Section 480(a) of the Business and Professions Code states, the Board may deny a license on the grounds that the applicant has done one of the following: done any act that would be grounds for suspension or revocation of a license. Section 2234 of the Business and Professions Code states that the Board may take action for unprofessional conduct. Unprofessional conduct includes, but is not limited to, incompetence.

The above supports a conclusion that grounds exist for denial pursuant to sections 480(a)(3)(A), 2234, and 2234(d) of the Business and Professions Code.

5) Pursuant to Section 2221 of the Business and Professions Code, the Board may deny a license to an applicant because of unprofessional conduct. Alternatively, the Board has the discretionary authority to issue a probationary license with terms and conditions.

6) Applicant acknowledges he has a right to request a Statement of Issues and a hearing upon denial of license for cause.

Applicant waives notice of hearing and judicial review in favor of this Stipulation for a Probationary License, which is subject to approval by the Board. If not approved, this Stipulation is null and void and may not be used for any purpose.

7) Applicant understands and agrees that counsel for the staff of the Board may communicate directly with the Board regarding this proposed Stipulation, without notice to or participation by applicant or his counsel. By signing the Stipulation, applicant understands and agrees that he may not withdraw this agreement or seek to rescind the Stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this Stipulation, the offer of a Stipulation for a Probationary License shall be of no force or effect; except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

ORDER

IT IS ORDERED THAT BYRON ETTA, applicant, be issued a Physician's and Surgeon's License on a probation basis for a period of three (3) years, subject to the following terms and conditions. Probation shall begin on the date the applicant is issued a probationary license.

1) Practice Restriction
During the first year of probation, applicant is prohibited from practicing medicine outside of an Accreditation Council for Graduate Medical Education (ACGME) accredited postgraduate training and must successfully complete 12 months of ACGME accredited postgraduate training in the same training.

2) Monitoring – Practice
Within 30 calendar days after leaving an accredited postgraduate training program, applicant shall submit to the Board or its designee for prior approval as a practice monitor(s), 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 applicant, 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 applicant's field of practice, and must agree to serve as applicant's monitor. Applicant 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 after leaving an accredited postgraduate training program, and continuing throughout probation, applicant's practice shall be monitored by the approved monitor. Applicant 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 applicant fails to obtain approval of a monitor within 60 calendar days after leaving an accredited postgraduate training program, applicant 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. Applicant 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 applicant's performance, indicating whether applicant's practices are within the standards of practice of medicine and whether applicant is practicing medicine safely. It shall be the sole responsibility of the applicant 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, applicant 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 applicant fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, applicant 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 Applicant shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, applicant 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. Applicant shall participate in the professional enhancement program at applicant's expense during the term of probation.

3) Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, applicant shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Applicant shall participate in and successfully complete that program. Applicant shall provide any information and documents that the program may deem pertinent. Applicant shall successfully complete the classroom component of the program not later than six (6) months after applicant's initial enrollment,

and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at applicant's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Applicant shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

4) Clinician-Patient Communication Course (Communication Course)
Within 60 calendar days of the effective date of this Decision, applicant shall enroll in the communication course with the Physician Assessment and Clinical Education (PACE) Program at the University of California, San Diego. Applicant shall participate in and successfully complete that course. Applicant shall provide any information and documents that the program may deem pertinent. Applicant shall successfully complete the classroom component of the course not later than six (6) months after applicant's initial enrollment, and the longitudinal component of the course not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The communication course shall be at applicant's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

If applicant 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, applicant 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 applicant shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the applicant's practice setting changes and the applicant is no longer practicing in a setting in compliance with this Decision, the applicant shall notify the Board or its designee within 5 calendar days of the practice setting change.

If applicant 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, applicant 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 applicant 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 applicant 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 applicant, at any other facility where applicant 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 applicant. Applicant 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, applicant is prohibited from supervising physician assistants and advanced practice nurses.

8) Obey All Laws
Applicant 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
Applicant 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. Applicant shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

10) General Probation Requirements

a) Compliance with Probation Unit
Applicant shall comply with the Board's probation.

b) Address Changes
Applicant shall, at all times, keep the Board informed of applicant'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).

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

d) License Renewal
Applicant shall maintain a current and renewed California physician's and surgeon's license.

e) Travel or Residence Outside California
Applicant 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 applicant should leave the State of California to reside or to practice applicant 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
Applicant shall be available in person upon request for interviews either at applicant'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
Applicant 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 applicant's return to practice. Non-practice is defined as any period of time applicant 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 applicant resides in California and is considered to be in non-practice, applicant 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 applicant 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 applicant's period of non-practice while on probation exceeds 18 calendar months, applicant 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.

Applicant'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.

Periods of non-practice for an applicant residing outside of California, will relieve applicant 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
Applicant 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, applicant's license shall be unrestricted.

14) Violation of Probation
Failure to fully comply with any term or condition of probation is a violation of probation. If applicant violates probation in any respect, the Board, after giving applicant notice and the opportunity to be heard, may petition to revoke probation and take appropriate action. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against applicant 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 applicant ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, applicant may request to surrender his license. The Board reserves the right to evaluate applicant 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, applicant shall within 15 calendar days deliver applicant's wallet and wall certificate to the Board or its designee and applicant shall no longer practice medicine. Applicant will no longer be subject to the terms and conditions of probation. If applicant re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16) Probation Monitoring Costs
Applicant 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.

Applicant agrees to comply with the terms and conditions of the above Order.

	9/25/19
Byron Etta, Applicant	Date
Kimberly Kirchmeyer	10/25/19
Kimberly Kirchmeyer, Executive Director	Date