

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 State Bar No. 116564
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3521
5 Facsimile: (415) 703-5480
E-mail: Janezack.simon@doj.ca.gov
6 *Attorneys for Complainant*

7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation
13 Against:

14 **DETLEF K. EHLING, M.D.**
15 2299 Bacon Street Suite T
Concord, CA 94520-2050

16 Physician's and Surgeon's Certificate No. A66608

17 Respondent.
18

Case No. 800-2019-060863

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

19 **FINDINGS OF FACT**

20 1. Christine J. Lally, in her official capacity as Interim Executive Director of the
21 Medical Board of California (Board), filed Petition to Revoke Probation No. 800-2019-060863
22 against Detlef K. Ehling, M.D. (Respondent).

23 2. On October 2, 1998, the Board issued Physician's and Surgeon's Certificate No.
24 A66608 to Respondent. The Certificate is renewed and current, with an expiration date of August
25 31, 2020. (Exhibit Package¹, Exhibit 1, License Certification.)

26 ///

27 _____
28 ¹ The evidence in support of this Default Decision and Order is submitted herewith as the
"Exhibit Package."

1 3. In a disciplinary action entitled “In the Matter of Accusation Against Detlef K.
2 Ehling, M.D.,” Case No. 800-2015-016011, the Board issued a decision, effective April 27, 2017,
3 in which Respondent's Physician's and Surgeon's Certificate was revoked, stayed, and placed on
4 probation for a period of five years with certain terms and conditions, including conditions
5 requiring him to abstain from the use of alcohol and to submit to biological fluid testing. The
6 2017 disciplinary order was based on excessive use of alcohol and impairment due to alcohol
7 dependency, and arose out of an incident in July 2015 when Respondent arrived at the hospital
8 following a mid-morning automobile accident, with a blood alcohol level of .17%, requiring
9 admission for medically assisted alcohol withdrawal. (Exhibit Package, Exhibit 2, 2017
10 Decision.)

11 4. Respondent failed to comply with the terms of the 2017 Decision.

- 12 • On April 24, 2017, the Board analyst assigned to monitor Respondent's compliance with
13 the biological fluid testing required as a condition of his probation sent Respondent a
14 letter introducing herself and reviewing the testing procedures. The letter explicitly
15 informed Respondent that no biological fluid collection sites were available outside of
16 the United States and that the Board would not excuse Respondent from testing while
17 traveling, whether within the United States or abroad.
- 18 • In May 2017, Respondent informed the Probation unit that he planned to travel to
19 Germany in August and September 2017. Respondent was advised there were no
20 approved testing locations in Europe. Respondent and his attorney followed up with
21 several more communications about the travel plans, and were advised by the Board's
22 probation staff that if called to test while out of the country, Respondent could be
23 subject to discipline. Respondent traveled to Europe as planned, checked in with
24 FirstSource, and was not called to test while he was out of the country.
- 25 • In August 2018, Respondent once again announced to the Board's Probation unit that he
26 intended to travel to Germany in September 2018. He was again reminded there were
27 no approved collection sites in Europe, and that if he were called to test and failed to do
28 so, he would be subject to discipline. Respondent traveled to Europe, and failed to

1 submit to tests when required to do so on three occasions. In response, the Board issued
2 a Citation Order imposing a fine of \$500 and ordering Respondent to comply with his
3 probation conditions. Respondent appealed the Citation Order.

- 4 • In late January 2019, Respondent informed the Board's Probation unit that he was going
5 to Mexico in February 2019. Once again, Respondent was reminded that it was his
6 obligation to submit to testing when selected, and there were no testing locations
7 outside of the United States. Again, Respondent was cautioned that if he were selected
8 to test while abroad, he could violate his conditions of probation and subject himself to
9 disciplinary action. Respondent advised the analyst that after consulting with his
10 attorney, he was proceeding with his travel plans. Respondent missed three required
11 biological fluid tests while he was in Mexico.
- 12 • On March 13, 2019, the Board issued a Cease Practice Order against Respondent for his
13 failure to provide a biological fluid sample on February 18, 2019, in violation of his
14 probation. Respondent was required to undergo a clinical diagnostic evaluation and
15 demonstrate thirty days of negative biological fluid testing. The Cease Practice Order
16 was terminated on April 19, 2019.
- 17 • On April 12, 2019, a Petition to Revoke Probation (Case No. 800-2019-053789) was
18 filed, based on Respondent's failure to comply with the biological fluid testing
19 requirement of the 2017 Decision.
- 20 • On May 7, 2019, Respondent informed the Board's probation unit that he planned to
21 travel to Europe from May 22 to June 12, 2019. Respondent checked in daily to
22 determine if he was required to test; he was selected to test on May 31, 2019, but failed
23 to do so.
- 24 • A hearing was held on June 19, 2019 to consider both Respondent's appeal of the
25 Citation Order and the Petition to Revoke Probation. On July 31, 2019, the Board
26 issued and served its Decision in Case Nos. 800-2019053789/800-2018-048841.

27 (Exhibit Package, Exhibit 3, 2019 Decision.)
28

1 5. The 2019 Decision, effective August 30, 2019 noted that Respondent was on
2 probation with the Board because he abused alcohol, and that the Board reasonably required
3 Respondent to submit to biological fluid testing to protect the public. Moreover, the requirement
4 that testing be performed by duly certified facilities in accordance with applicable regulations
5 exists to ensure reliability and promote public protection. The 2019 Decision upheld the Citation
6 Order and issued a public reprimand in response to the Petition to Revoke Probation. The 2019
7 Decision noted, "This will serve to remind respondent that he is required to comply with his
8 probation conditions and that his future failure to do so will again expose him to disciplinary
9 action in the absence of compelling evidence in mitigation. The appropriate avenue for
10 respondent to seek Board approval for biological fluid testing abroad is to file a petition to modify
11 his probation terms." (Exhibit Package, Exhibit 3, 2019 Decision.)

12 6. On August 30, 2019, Respondent notified the Board's probation unit that he intended
13 to travel to Japan from September 13 through October 6, 2019. The Probation analyst once again
14 advised Respondent that failure to submit to required testing could result in disciplinary action.
15 Respondent was selected to submit to urine testing on September 20, 2019 and September 27,
16 2019, and to submit to hair follicle testing on September 23, 2019, but failed to submit to any of
17 the tests. On October 16, 2019, a Cease Practice Order was issued. (Exhibit Package, Exhibit 4,
18 Declaration of Elena Contrarez.)

19 7. On November 26, 2019, this Petition to Revoke Probation was filed. On the same
20 date, an employee of the Medical Board sent by certified mail a copy of Petition to Revoke
21 Probation No. 800-2019-060863, Statement to Respondent, Notice of Defense in blank, copies of
22 the relevant sections of the California Administrative Procedure Act as required by sections
23 11503 and 11505 of the Government Code, and a request for discovery, addressed to Detlef K.
24 Ehling, M.D. at his address of record with the Board, which was and is 2299 Bacon Street #T,
25 Concord, CA 94520-2050. The package was also sent to another address associated with
26 Respondent, 2299 Bacon Street Suite 1, Concord, CA 94520, and to his attorney, John Flee 273
27 Orchard Road, Orinda CA 94563. The green certified mail receipt was signed by Mr. Flee; the
28

///

1 Post Office tracking service shows that both packages addressed to Respondent were unable to
2 be delivered because no authorized recipient was present at either address. (Exhibit Package,
3 Exhibit 5; Petition to Revoke Probation, proof of service, green certified mail receipt, Post Office
4 tracking information.)

5 8. There was no response to the Accusation. On December 13, 2019, an employee
6 of the Attorney General's Office sent by certified mail, addressed to Respondent at both addresses
7 listed above, and to Mr. Fleer, a Courtesy Notice of Default, advising Respondent of the service
8 Petition to Revoke, and providing him with an opportunity to file a Notice of Defense and request
9 relief from default. One of the green certified receipts for a package addressed to Respondent
10 was signed and returned, and the Post Office tracking system shows that all three packages were
11 delivered as addressed. (Exhibit Package, Exhibit 6, Courtesy Notice of Default, proof of
12 service, Certified Mail Receipt, USPS tracking information.)

13 9. Respondent has not responded to service of the Petition to Revoke Probation or the
14 Notice of Default. He has not filed a Notice of Defense. As a result, Respondent has waived his
15 right to a hearing on the merits to contest the allegations contained in the Petition to Revoke
16 Probation.

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

19 STATUTORY AUTHORITY

20 11. Government Code section 11506 states, in pertinent part:

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

25 ///

26 ///

12. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of Petition to Revoke Probation No. 800-2019-060863.

13. 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."

14. 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, as set forth in the Exhibit Package, finds that the allegations in Petition to Revoke Probation No. 800-2019-060863 are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Detlef K. Ehling, M.D. has subjected his Physician and Surgeon's Certificate No. A66608 to discipline.

2. The Board has jurisdiction to adjudicate this case by default.

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

Respondent's probation is subject to revocation because he repeatedly failed to comply with the terms and conditions of his probation.

ORDER

IT IS SO ORDERED that:

1. The probation that was granted by the Medical Board in Case No. 800-2015-016011 is hereby REVOKED.

2. Physician and Surgeon's Certificate No. A66608, heretofore issued to Respondent Detlef K. Ehling, 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

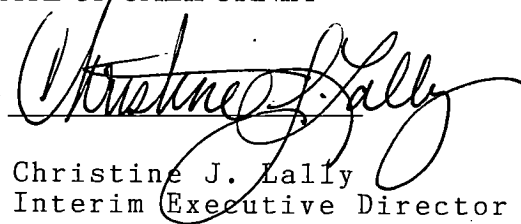
1 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
2 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

3 This Decision will become effective at 5:00 pm 2/27, 2020

4 It is so ordered on January 28, 2020.

5
6 MEDICAL BOARD OF CALIFORNIA
7 DEPARTMENT OF CONSUMER AFFAIRS
8 STATE OF CALIFORNIA

9 By


Christine J. Lally
Interim Executive Director

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 State Bar No. 116564
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3521
5 Facsimile: (415) 703-5480
E-mail: Janezack.simon@doj.ca.gov
6 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Nov. 26 20 19
BY ANALYST

7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke
12 Probation Against:

Case No. 800-2019-060863

13 **DETLEF K. EHLING, M.D.**
14 **2299 Bacon Street, Suite T**
15 **Concord, CA 94520-2050**
16 **Physician's and Surgeon's Certificate No. A**
17 **66608**

PETITION TO REVOKE PROBATION

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Christine J. Lally (Complainant) brings this Petition to Revoke Probation solely in her
21 official capacity as the Interim Executive Director of the Medical Board of California,
22 Department of Consumer Affairs (Board).

23 2. On October 2, 1998, the Board issued Physician's and Surgeon's Certificate Number
24 A 66608 to Detlef K. Ehling, M.D. (Respondent). The certificate was in full force and effect at all
25 times relevant to the charges brought herein and will expire on August 31, 2020, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

3. 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.

4. Section 2004 provides that the Board shall have the responsibility for the enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

5. Section 2227 provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2228 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.

7. Code of Regulations, title 16, section 1361.52, states:

(a) A licensee who does any of the following shall be deemed to have committed a major violation of his or her probation:

...

(5) Fails to undergo biological fluid testing when ordered;

...

(b) If a licensee commits a major violation, the Board will take one or more of the following actions:

1 (1) Issue an immediate cease-practice order and order the licensee to undergo a
2 clinical diagnostic evaluation at the expense of the licensee. Any order issued by the
3 Board pursuant to this subsection shall state that the licensee must test negative for
4 at least a month of continuous biological fluid testing before being allowed to
5 resume practice.

6 (2) Increase the frequency of biological fluid testing.

7 (3) Refer the licensee for further disciplinary action, such as suspension, revocation,
8 or other action as determined by the Board.

9 . . .

10 (e) Nothing in this section shall be considered a limitation on the Board's authority to
11 revoke the probation of a licensee who has violated a term or condition of that
12 probation.

13 APRIL 27, 2017 DISCIPLINARY DECISION

14 8. In a disciplinary action entitled "In the Matter of Accusation Against Detlef K.
15 Ehling, M.D.," Case No. 800-2015-016011, the Board issued a decision, effective April 27, 2017,
16 in which Respondent's Physician's and Surgeon's Certificate was revoked, stayed, and
17 Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of five
18 years with certain terms and conditions, including conditions requiring him to abstain from the
19 use of alcohol and to submit to biological fluid testing. The 2017 disciplinary order was based on
20 excessive use of alcohol and impairment due to alcohol dependency, and arose out of an incident
21 in July 2015 when Respondent arrived at the hospital following a mid-morning automobile
22 accident, with a blood alcohol level of .17%, requiring admission for medically assisted alcohol
23 withdrawal. A copy of the 2017 Decision is attached as **Exhibit A**.

24 PROBATION HISTORY

25 FACTS

26 9. On April 24, 2017, the Board analyst assigned to monitor Respondent's compliance
27 with the biological fluid testing required as a condition of his probation sent Respondent a letter
28 introducing herself and reviewing the testing procedures. The letter explicitly informed
Respondent that no biological fluid collection sites were available outside of the United States
and that the Board would not excuse Respondent from testing while traveling, whether within the
United States or abroad.

1 10. In May 2017, Respondent informed the Probation unit that he planned to travel to
2 Germany in August and September 2017. Respondent was advised there were no testing locations
3 in Europe. Respondent and his attorney followed up with several more communications about the
4 travel plans, and was advised by the Board's probation staff that if called to test while out of the
5 country, he could be subject to discipline. Respondent traveled to Europe as planned, checked in
6 with FirstSource, and was not called to test while he was out of the country.

7 11. In August 2018, Respondent once again announced to the Board's Probation unit that
8 he intended to travel to Germany in September 2018. He was again reminded there were no
9 approved collection sites in Europe, and that if he were called to test and failed to do so, he would
10 be subject to discipline. Respondent traveled to Europe, and failed to submit to tests when
11 required to do so on three occasions. In response, the Board issued a Citation Order imposing a
12 fine of \$500 and ordering Respondent to comply with his probation conditions. Respondent
13 appealed the Citation Order.

14 12. In late January 2019, Respondent informed the Board's Probation unit that he was
15 going to Mexico in February 2019. Once again, Respondent was reminded that it was his
16 obligation to submit to testing when selected, and there were no testing locations outside of the
17 United States. Again, Respondent was cautioned that if he were selected to test while abroad, he
18 could violate his conditions of probation and subject himself to disciplinary action. Respondent
19 advised the analyst that after consulting with his attorney, he was proceeding with his travel
20 plans. Respondent missed three required biological fluid tests while he was in Mexico.

21 13. On March 13, 2019, the Board issued a Cease Practice Order against Respondent for
22 his failure to provide a biological fluid sample on February 18, 2019, in violation of his probation.
23 Respondent was required to undergo a clinical diagnostic evaluation and demonstrate thirty days
24 of negative biological fluid testing. The Cease Practice Order was terminated on April 19, 2019.

25 14. On April 12, 2019, a Petition to Revoke Probation (Case No. 800-2019-053789) was
26 filed, based on Respondent's failure to comply with the biological fluid testing requirement of the
27 2017 Decision.
28

1 15. On May 7, 2019, Respondent informed the Board's probation unit that he planned to
2 travel to Europe from May 22 to June 12, 2019. Respondent checked in daily to determine if he
3 was required to test; he was selected to test on May 31, 2019, but failed to do so.

4 16. A hearing was held on June 19, 2019 to consider both Respondent's appeal of the
5 Citation Order and the Petition to Revoke Probation. On July 31, 2019, the Board issued and
6 served its Decision. The 2019 Decision, effective August 30, 2019 noted that Respondent is on
7 probation with the Board because he abused alcohol, and that the Board has reasonably required
8 Respondent to submit to biological fluid testing to protect the public. Moreover, the requirement
9 that testing be performed by duly certified facilities in accordance with applicable regulations
10 exists to ensure reliability and promote public protection. The 2019 Decision upheld the Citation
11 Order and issued a public reprimand in response to the Petition to Revoke Probation. The 2019
12 Decision noted, "This will serve to remind respondent that he is required to comply with his
13 probation conditions and that his future failure to do so will again expose him to disciplinary
14 action in the absence of compelling evidence in mitigation. The appropriate avenue for
15 respondent to seek Board approval for biological fluid testing abroad is to file a petition to modify
16 his probation terms." (A copy of the 2019 Decision is attached as Exhibit B.)

17 17. On August 30, 2019, Respondent notified the Board's probation unit that he would
18 travel to Japan from September 13-October 6, 2019. The Probation analyst once again advised
19 Respondent that failure to submit to required testing could result in disciplinary action.
20 Respondent was selected to test on September 20, September 23 and September 27, 2019, but
21 failed to do so.

22 18. On October 16, 2019, a Cease Practice Order was issued.

23 **CAUSE TO REVOKE PROBATION**

24 **(Biological Fluid Testing)**

25 19. At all times after the effective date of the Board's 2017 Decision, Condition 7
26 (Biological Fluid Testing) requires Respondent to submit biological fluid samples for testing
27 upon request by the designated testing laboratory. Condition 7 states, in part, as follows:

28 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.

20. At all times after the effective date of the Board's 2017 Decision Condition 10 (Violation of Probation Condition for Substance Abusing Licensees) provides that failure to fully comply with any term or condition of probation is a violation of probation. Condition 10 further states as follows:

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 the [sic] determining the length of time a Respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he or 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.

21. Respondent's probation is subject to revocation because he failed to provide a biological fluid sample when selected to do so on September 20, 23 and 27, 2019, thereby violating Conditions 7 and 10 of his probation and Code of Regulations, title 16, section 1361.52, subsection (a)(5) (failure to undergo biological fluid testing when ordered). Respondent's conduct constitutes a major violation of his probation within the meaning of Condition 10 of his probation and Code of Regulations, title 16, section 1361.52, and his probation is therefore subject to revocation.

PRAYER

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

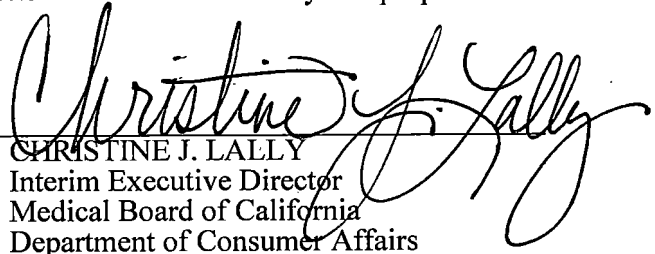
1 1. Revoking the probation that was granted by the Board in Case No. 800-2015-016011
2 and imposing the disciplinary order that was stayed, thereby revoking Physician's and Surgeon's
3 Certificate No. A 66608 issued to Respondent;

4 2. Revoking, suspending, or denying approval of Respondent's authority to supervise
5 physician assistants and advanced practice nurses;

6 3. Ordering Respondent, if placed on further probation, to pay the Board the costs of
7 probation monitoring;

8 4. Taking such other and further action as deemed necessary and proper.

9
10 DATED: November 26, 2019


CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

11
12
13
14
15 SF2019202480
16 21691877.docx
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Decision and Order

Medical Board of California Case No. 800-2015-016011

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

**In the Matter of the Accusation
Against:**

DETLEF K. EHLING, M.D.

**Physician's and Surgeon's
Certificate No. A66608**

Respondent

Case No. 8002015016011

DECISION

**The attached Stipulated Settlement and Disciplinary Order 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 April 27, 2017.

IT IS SO ORDERED: March 28, 2017.

MEDICAL BOARD OF CALIFORNIA



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

**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

10/21/2019
Date

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 KEITH C. SHAW
Deputy Attorney General
4 State Bar No. 227029
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5385
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 800-2015-016011.

OAH No. 2016090704

11
12 **DETLEF K. EHLING, M.D.**

2299 Bacon Street #1

13 Concord, CA 94520

14 Physician's and Surgeon's Certificate No.
A66608

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
22 of California (Board). She brought this action solely in her official capacity and is represented in
23 this matter by Xavier Becerra, Attorney General of the State of California, by Keith C. Shaw,
24 Deputy Attorney General.

25 2. Respondent Detlef K. Ehling, M.D. is represented in this proceeding by attorney John
26 Fleer, Esq., whose address is: Law Offices of John L. Fleer, 1850 Mt. Diablo Blvd., Suite 120,
27 Walnut Creek, CA 94596
28

3. On or about October 2, 1998, the Board issued Physician's and Surgeon's Certificate No. A66608 to Detlef K. Ehling, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-016011, and will expire on August 31, 2016, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-016011 was filed before the Medical Board of California, Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 14, 2016. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2015-016011 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-016011. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2015-016011, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 800-2015-016011 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw her 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 as its Decision and Order, the Stipulated Settlement and Disciplinary Order 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.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4

5
6
7
8
9
10

11
12
13
14

15
16
17
18
19
20
21
22
23
24

25
26
27
28

1 of the Proposed Decision, request for reconsideration, remands and other interlocutory orders
2 issued by the Board. The cessation of practice shall not apply to the reduction of the probationary
3 time period.

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

7 2. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the
8 use of products or beverages containing alcohol.

9 If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall
10 receive a notification from the Board or its designee to immediately cease the practice of
11 medicine. The Respondent shall not resume the practice of medicine until the final decision on an
12 accusation and/or a petition to revoke probation is effective. An accusation and/or petition to
13 revoke probation shall be filed by the Board within 30 days of the notification to cease practice.
14 If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the
15 Board shall provide the Respondent with a hearing within 30 days of the request, unless the
16 Respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge
17 alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of
18 the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's Proposed
19 Decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the
20 case is heard by the Board, the Board shall issue its Decision within 15 days of submission of the
21 case, unless good cause can be shown for the delay. Good cause includes, but is not limited to,
22 non-adoption of the Proposed Decision, request for reconsideration, remands and other
23 interlocutory orders issued by the Board. The cessation of practice shall not apply to the
24 reduction of the probationary time period.

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

28 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of

1 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
2 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.
3 Respondent shall participate in and successfully complete that program. Respondent shall
4 provide any information and documents that the program may deem pertinent. Respondent shall
5 successfully complete the classroom component of the program not later than six (6) months after
6 Respondent's initial enrollment, and the longitudinal component of the program not later than the
7 time specified by the program, but no later than one (1) year after attending the classroom
8 component. The professionalism program shall be at Respondent's expense and shall be in
9 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

18 4. PSYCHIATRIC EVALUATION: At the Board's discretion, and on whatever
19 periodic basis that may be required by the Board or its designee, Respondent shall undergo and
20 complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-
21 appointed board certified psychiatrist, who shall consider any information provided by the Board
22 or its designee and any other information the psychiatrist deems relevant, and shall furnish a
23 written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to
24 the effective date of the Decision shall not be accepted towards the fulfillment of this
25 requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological
26 testing.

27 Respondent shall comply with all restrictions or conditions recommended by the
28 evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

1 5. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision,
2 Respondent shall submit to the Board or its designee for prior approval the name and
3 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who
4 has a doctoral degree in psychology and at least five years of postgraduate experience in the
5 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall
6 undergo and continue psychotherapy treatment, including any modifications to the frequency of
7 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

8 The psychotherapist shall consider any information provided by the Board or its designee
9 and any other information the psychotherapist deems relevant and shall furnish a written
10 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
11 psychotherapist any information and documents that the psychotherapist may deem pertinent:

12 Respondent shall have the treating psychotherapist submit quarterly status reports to the
13 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric
14 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of
15 probation, Respondent is found to be mentally unfit to resume the practice of medicine without
16 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
17 period of probation shall be extended until the Board determines that Respondent is mentally fit
18 to resume the practice of medicine without restrictions.

19 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

20 6. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)
21 days of the effective date of this Decision, Respondent shall provide to the Board the names,
22 physical addresses, mailing addresses, and telephone numbers of any and all employers and
23 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's
24 worksite monitor, and Respondent's employers and supervisors to communicate regarding
25 Respondent's work status, performance, and monitoring.

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

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

11 For the duration of the probationary term, up to five (5) years, Respondent shall be subject
12 to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the
13 previous five (5) consecutive years of probation, may testing be reduced to one (1) time per
14 month. Nothing precludes the Board from increasing the number of random tests to the first-year
15 level of frequency for any reason, which is 52 to 104 random tests per year.

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

- 19 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry
20 Association or have completed the training required to serve as a collector for the United
21 States Department of Transportation.
22 (b) Its specimen collectors conform to the current United States Department of
23 Transportation Specimen Collection Guidelines
24 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published
25 by the United States Department of Transportation without regard to the type of test
26 administered.
27 (d) Its specimen collectors observe the collection of testing specimens.
28 (e) Its laboratories are certified and accredited by the United States Department of Health

- 1 and Human Services.
- 2 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day
3 of receipt and all specimens collected shall be handled pursuant to chain of custody
4 procedures. The laboratory shall process and analyze the specimens and provide legally
5 defensible test results to the Board within seven (7) business days of receipt of the
6 specimen. The Board will be notified of non-negative results within one (1) business day
7 and will be notified of negative test results within seven (7) business days.
- 8 (g) Its testing locations possess all the materials, equipment, and technical expertise
9 necessary in order to test Respondent on any day of the week.
- 10 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens
11 for the detection of alcohol and illegal and controlled substances.
- 12 (i) It maintains testing sites located throughout California.
- 13 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line
14 computer database that allows the Respondent to check in daily for testing.
- 15 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff
16 access to drug test results and compliance reporting information that is available 24 hours a
17 day.
- 18 (l) It employs or contracts with toxicologists that are licensed physicians and have
19 knowledge of substance abuse disorders and the appropriate medical training to interpret
20 and evaluate laboratory biological fluid test results, medical histories, and any other
21 information relevant to biomedical information.
- 22 (m) It will not consider a toxicology screen to be negative if a positive result is obtained
23 while practicing, even if the Respondent holds a valid prescription for the substance.
- 24 Prior to changing testing locations for any reason, including during vacation or other travel,
25 alternative testing locations must be approved by the Board and meet the requirements above.
- 26 The contract shall require that the laboratory directly notify the Board or its designee of
27 non-negative results within one (1) business day and negative test results within seven (7)
28 business days of the results becoming available. Respondent shall maintain this laboratory or

1 service contract during the period of probation.

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

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

10 A biological fluid test will not be considered negative if a positive result is obtained while
11 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited
12 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

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

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

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

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

28 8. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of

1 the effective date of this Decision, Respondent shall submit to the Board or its designee, for its
2 prior approval, the name of a substance abuse support group which he shall attend for the duration
3 of probation. Respondent shall attend substance abuse support group meetings at least once per
4 week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse
5 support group meeting costs.

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

13 The facilitator shall provide a signed document to the Board or its designee showing
14 Respondent's name, the group name, the date and location of the meeting, Respondent's
15 attendance, and Respondent's level of participation and progress. The facilitator shall report any
16 unexcused absence by Respondent from any substance abuse support group meeting to the Board,
17 or its designee, within twenty-four (24) hours of the unexcused absence.

18 9. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty
19 (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or
20 its designee for prior approval as a worksite monitor, the name and qualifications of one or more
21 licensed physician and surgeon, other licensed health care professional if no physician and
22 surgeon is available, or, as approved by the Board or its designee, a person in a position of
23 authority who is capable of monitoring the Respondent at work.

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

1 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

2 The worksite monitor shall have an active unrestricted license with no disciplinary action
3 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms
4 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth
5 by the Board or its designee.

6 Respondent shall pay all worksite monitoring costs.

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

11 The worksite monitor shall verbally report any suspected substance abuse to the Board and
12 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected
13 substance abuse does not occur during the Board's normal business hours, the verbal report shall
14 be made to the Board or its designee within one (1) hour of the next business day. A written
15 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
16 any other information deemed important by the worksite monitor shall be submitted to the Board
17 or its designee within 48 hours of the occurrence.

18 The worksite monitor shall complete and submit a written report monthly or as directed by
19 the Board or its designee which shall include the following: (1) Respondent's name and
20 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)
21 the worksite monitor's license number, if applicable; (4) the location or location(s) of the
22 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the
23 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;
24 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can
25 lead to suspected substance abuse by Respondent. Respondent shall complete any required
26 consent forms and execute agreements with the approved worksite monitor and the Board, or its
27 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

28 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)

1 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior
2 approval, the name and qualifications of a replacement monitor who will be assuming that
3 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a
4 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the
5 monitor, Respondent shall receive a notification from the Board or its designee to cease the
6 practice of medicine within three (3) calendar days after being so notified. Respondent shall
7 cease the practice of medicine until a replacement monitor is approved and assumes monitoring
8 responsibility.

9 10. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING
10 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of
11 probation.

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

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

24 (2) Increase the frequency of biological fluid testing.

25 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or
26 other action as determined by the Board or its designee.

27 B. If Respondent commits a minor violation of probation as defined by section 1361.52,
28 subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or

1 more of the following actions:

2 (1) Issue a cease-practice order;

3 (2) Order practice limitations;

4 (3) Order or increase supervision of Respondent;

5 (4) Order increased documentation;

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

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

10 (7) Take any other action as determined by the Board or its designee.

11 C. Nothing in this Decision shall be considered a limitation on the Board's authority to
12 revoke Respondent's probation if he or she has violated any term or condition of probation. If
13 Respondent violates probation in any respect, the Board, after giving Respondent notice and the
14 opportunity to be heard, may revoke probation and carry out the disciplinary order that was
15 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed
16 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
17 is final, and the period of probation shall be extended until the matter is final.

18 11. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
19 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
20 Chief Executive Officer at every hospital where privileges or membership are extended to
21 Respondent, at any other facility where Respondent engages in the practice of medicine,
22 including all physician and locum tenens registries or other similar agencies, and to the Chief
23 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
24 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
25 calendar days.

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

27 12. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
28 prohibited from supervising physician assistants and advanced practice nurses.

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

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

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

9 15. GENERAL PROBATION REQUIREMENTS.

10 Compliance with Probation Unit

11 Respondent shall comply with the Board's probation unit.

12 Address Changes

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

18 Place of Practice

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

22 License Renewal

23 Respondent shall maintain a current and renewed California physician's and surgeon's
24 license.

25 Travel or Residence Outside California

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

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

4 16. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
5 available in person upon request for interviews either at Respondent's place of business or at the
6 probation unit office, with or without prior notice throughout the term of probation.

7 17. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
8 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
9 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
10 defined as any period of time Respondent is not practicing medicine as defined in Business and
11 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
12 patient care, clinical activity or teaching, or other activity as approved by the Board. If
13 Respondent resides in California and is considered to be in non-practice, Respondent shall
14 comply with all terms and conditions of probation. All time spent in an intensive training
15 program which has been approved by the Board or its designee shall not be considered non-
16 practice and does not relieve Respondent from complying with all terms and conditions of
17 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
18 on probation with the medical licensing authority of that state or jurisdiction shall not be
19 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
20 period of non-practice.

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

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

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

28 Periods of non-practice for a Respondent, living outside of California, will relieve

1 Respondent of the responsibility to comply with the probationary terms and conditions with the
2 exception of this condition and the following terms and conditions of probation: Obey All Laws;
3 and General Probation Requirements; Quarterly Declarations; Abstain from Use of Alcohol
4 and/or Controlled Substances; and Biological Fluid Testing.

5 18. COMPLETION OF PROBATION. Respondent shall comply with all financial
6 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
7 completion of probation. Upon successful completion of probation, Respondent's certificate shall
8 be fully restored.

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

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

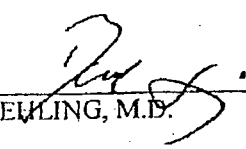
26 21. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
27 with probation monitoring each and every year of probation, as designated by the Board, which
28 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of

1 California and delivered to the Board or its designee no later than January 31 of each calendar
2 year.

3 ACCEPTANCE

4 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
5 discussed it with my attorney, John Fleer, Esq. I understand the stipulation and the effect it will
6 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
7 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
8 Decision and Order of the Medical Board of California.

9
10 DATED: 2/24/2017


11 DETLEF K. EHLING, M.D.
Respondent

12 I have read and fully discussed with Respondent Detlef K. Ehling, M.D. the terms and
13 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
14 I approve its form and content.

15
16 DATED: 2/24/17


17 JOHN FLEER, ESQ.
Attorney for Respondent

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dated: Feb. 24, 2017

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General



KEITH C. SHAW
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2015-016011

1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 KERRY WEISEL
Deputy Attorney General
4 State Bar No. 127522
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5554
6 Facsimile: (415) 703-5480
E-mail: Kerry.Weisel@doj.ca.gov
7 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 14, 2016
BY [Signature] ANALYST

8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2015-016011

12 Detlef K. Ehling, M.D.
2485 High School Ave Ste 208
13 Concord CA 94520

ACCUSATION

14 Physician's and Surgeon's Certificate
No. A66608,

15 Respondent.
16

17
18 Complainant alleges:

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On October 2, 1998, the Medical Board issued Physician's and Surgeon's Certificate
24 Number A66608 to Detlef K. Ehling, M.D. (Respondent). The Physician's and Surgeon's
25 Certificate was in full force and effect at all times relevant to the charges brought herein and will
26 expire on August 31, 2016, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2234 of the Code states, in pertinent part: "The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of [Chapter 5, the Medical Practice Act]

" "

5. Section 2239 of the Code states:

"(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely . . . constitutes unprofessional conduct. . . .

" "

6. Section 822 of the Code states:

"If a licensing agency determines that its licensee's ability to practice his or her profession safely is impaired because the licensee is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

"(a) Revoking the licensee's certificate or license.

"(b) Suspending the licensee's right to practice.

"(c) Placing the licensee on probation.

"(d) Taking such other action in relation to the licensee as the licensing agency in its discretion deems proper.

"The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its

1 action and until it is satisfied that with due regard for the public health and safety the person's
2 right to practice his or her profession may be safely reinstated."

3 **FACTS**

4 7. On July 18, 2015, while driving near his home, Respondent hit a parked car.
5 Respondent says that he hit the car when he swerved to avoid an oncoming car. He was driving at
6 a low enough speed that the airbags did not deploy. He was transported to San Francisco General
7 Hospital ("SFGH") by ambulance.

8 8. When Respondent arrived at the hospital shortly after noon, his blood alcohol level
9 was measured at 170 ml/dL or 0.17%. Respondent had no serious injuries but remained
10 hospitalized at San Francisco General Hospital until July 27, 2015 while he underwent medically
11 assisted alcohol withdrawal.

12 9. Respondent reported to his treating physicians that his drinking had increased in the
13 past year due to various stressors. He said he had started drinking during the day including in the
14 morning.

15 10. On July 27, 2015, Respondent was discharged from SFGH to California Pacific
16 Medical Center ("CPMC") for further management of alcohol withdrawal. His diagnoses on
17 discharge from SFGH included alcohol withdrawal and alcohol dependency.

18 11. Respondent remained at CPMC until July 30, 2015. His discharge summary from
19 CPMC noted that he had been hospitalized for alcohol withdrawal, essential tremors, and
20 generalized weakness.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Excessive Use of Alcohol)**

23 12. Respondent Detlef K. Ehling, M.D. is subject to disciplinary action for unprofessional
24 conduct under sections 2234 and/or 2239 of the Code in that he used alcoholic beverages, as
25 described above, to the extent that it was dangerous to himself and others when he drove a car
26 with a blood alcohol level of 0.17% and to the extent that such use impaired his ability to practice
27 medicine safely.

28 ///

EXHIBIT B

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

In the Matter of the Petition to
Revoke Probation and Citation
Against:

DETLEF K. EHLING

Physician's and Surgeon's
Certificate No. A66608

Respondent

Case No. 800-2019-053789
800-2018-048841

OAH No. 2019050482
2019050512

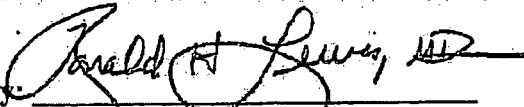
DECISION

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

This Decision shall become effective at 5:00 p.m. on August 30, 2019.

IT IS SO ORDERED July 31, 2019.

MEDICAL BOARD OF CALIFORNIA

By: 

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

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

10/24/2019
Date

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

In the Matter of the Petition to Revoke
Probation and Citation Against:

DETLEF K. EHLING, M.D.,

Physician's and Surgeon's Certificate
No. A 66608

Respondent.

Case Nos. 800-2019-053789
800-2018-048841

OAH Nos. 2019050482¹
2019050512

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard these matters on June 18, 2019, in Oakland, California.

Deputy Attorney General Joshua Templet represented complainant Kimberly Kirchmeyer, Executive Director, Medical Board of California, Department of Consumer Affairs.

John Fleer, Attorney at Law, represented respondent Detlef K. Ehling, M.D., who was present throughout the administrative hearing.

The record closed and the matter was submitted for decision on June 18, 2019.

FACTUAL FINDINGS

Background

1. On October 2, 1998, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 66608 to Detlef K. Ehling, M.D. (respondent). The certificate has been active at all times relevant here. It will expire on August 31, 2020, unless renewed.

¹ These matters were consolidated for hearing and decision.

2. On July 14, 2016, the Executive Director of the Board issued an accusation against respondent.

3. The factual circumstances underlying the accusation are as follows. On July 15, 2015, while driving near his home, respondent hit a parked car. Respondent reported that he swerved to avoid an oncoming car. He was driving at a speed low enough that the airbags did not deploy. Respondent was transported to the hospital by ambulance. When he arrived at the hospital, his blood alcohol content was measured at 0.17 percent. Respondent had no serious injuries, but remained hospitalized until July 27, 2015, while undergoing medically assisted alcohol withdrawal. Respondent reported to his treating physicians that his drinking had increased in the past year due to various stressors. He stated he had started drinking during the day, including in the morning.

On July 27, 2015, respondent was discharged to another hospital for further management of alcohol withdrawal. His diagnoses on discharge included alcohol withdrawal and alcohol dependency. Respondent was discharged from the second hospital on July 30, 2015. His discharge summary noted that he had been hospitalized for alcohol withdrawal, essential tremors and generalized weakness.

4. On February 24, 2017, respondent signed a Stipulated Settlement, which the Board adopted as its Decision and Order, effective April 27, 2017. The Decision and Order revoked respondent's certificate, stayed the revocation and placed respondent on probation for a period of five years with certain terms and conditions, including that he abstain from the use of alcohol and submit to biological fluid testing. On April 18, 2017, respondent signed an acknowledgement of Decision.

Probation Compliance

5. The Board assigned Probation Monitor Arlene Caballero to monitor respondent's probation compliance, and Probation Analyst Virginia Gerard to monitor respondent's compliance with the biological fluid testing requirement. Probation Analyst Elena Contreras later replaced Gerard. The Board contracted with FirstLab to oversee the collection and analysis of biological fluid testing.

6. Condition No. 7 of the disciplinary order states:

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 a 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 the 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, up to five (5) years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. 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, that 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 (1) 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 (7) business days of receipt of the specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) 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 the 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 the 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 (1) business day and negative test results within seven (7) 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 himself or 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 (1) 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, his or 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 a 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, alcohol, or any other substance the Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself or 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(a), and the Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to any other terms or

conditions the Board determines are necessary for public protection or to enhance Respondent's rehabilitation.

7. The requirements that the specimen collectors be 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, that the specimen collectors conform to the United States Department of Transportation Specimen Collection Guidelines, and that the laboratories be certified and accredited by the United States Department of Health and Human Services, are mandates contained in California Code of Regulations, title 16, section 1361.54.

8. On April 24, 2017, Gerard sent a letter to respondent further explaining the terms of his biological fluid testing condition. On page two, in bold, the letter stated:

Should you travel while on probation, you must ensure there are adequate collection site[s] available to test when selected at or near your travel destination. FirstLab can assist you with finding a collection site; however FirstLab requests you provide them with a minimum of two weeks' notice prior to traveling.

The Board does not approve travel nor will the Board excuse you from testing when traveling within the United States or out of the country. Currently, there are no collection sites contracted with FirstLab outside of the United States.

9. Respondent promptly enrolled with FirstLab, began checking in with FirstLab daily and submitted to urine, blood and hair follicle tests as directed.

10. Respondent was born and raised in Germany. On May 1, 2017, respondent wrote to Caballero, informing her that he was planning a trip to visit his mother and friends in Germany from mid-August to mid-September 2017. Respondent asked for the Board's permission to travel. Contreras responded on May 18, 2017, stating that there were no testing locations in Europe and that the Board did not approve travel.

11. On June 26, 2017, respondent's attorney, John Fleer, wrote to Contreras on respondent's behalf. Fleer asserted that the Board could not restrict respondent from traveling, and that whether respondent had consumed alcohol could be verified when he returned. Fleer asked the Board to approve the travel request.

12. On July 27, 2017, respondent sent a letter to Caballero advising her that he had made plans to travel to several European countries from August 18 to September 10, 2017, to see his 92-year-old ailing mother, and to visit family and friends. Respondent noted that he might be required to test during the time he was traveling. He attached a list of labs available in Germany, Austria and Hungary. Respondent stated that he had no intention of consuming alcohol while away and his abstention could be confirmed upon his return through ethyl

glucuronide testing. He noted that all of his testing had been negative for two years, and reported how important it was to visit his elderly mother.

13. On August 10, 2017, Contreras responded to respondent's letter. She requested a copy of his flight itinerary. She reminded respondent that the Board did not approve travel and noted that FirstSource² did not have a contract with collection sites outside of the United States. Contreras warned respondent that if he were called to test while out of the country, he could be subject to discipline, but that documentation of his mother's circumstances could be a mitigating factor.

14. Respondent traveled to Europe as planned, returning on September 10, 2017. He checked in with FirstSource each day, but was not called to test while out of the country.

15. On November 7, 2017, respondent submitted to a hair follicle test at the request of FirstSource. Hair follicle tests can reveal the use of alcohol or controlled substances for up to 90 days. The hair follicle test was negative for alcohol and controlled substances.

16. On August 18, 2018, respondent wrote to Contreras advising her that he intended to travel to Germany in September to visit his elderly mother. He reported that his mother's health remained very volatile and had been deteriorating. Respondent planned to visit other friends and family members in other European countries as well. Respondent noted that he had been sober for three years and offered to test when he returned from his trip. Respondent provided his flight itinerary.

17. On August 23, 2018, Contreras responded. She repeated that the Board did not approve travel and that there were no collection sites in Europe that were contracted with FirstSource. She reminded respondent that if he were called to test and failed to do so, he would be subject to discipline. Respondent provided his flight itinerary indicating he would be in Germany from September 4 to September 30, 2018.

18. On September 6, 2018, respondent sent an email message to Contreras from Germany, notifying her that he had been called to test but was unable to test with FirstSource because he was out of the country. Respondent was called to test again on September 11 and September 21, 2018, while he remained in Europe. Respondent did not submit to testing on September 6, 11 or 21, 2018. Respondent returned on September 30, 2018.

19. On October 12, 2018, the Board issued a Citation Order to respondent. The citation was issued due to respondent's failure to comply with Condition No. 7, in that he had failed to provide a biological fluid sample as directed on September 6, 11 and 21, 2018. The citation imposed an administrative fine in the amount of \$500, and ordered him to comply with his probation conditions.

² FirstLab changed its name to FirstSource.

20. Respondent appealed the citation on October 26, 2018. An informal conference was held by Marco Armas, of the Board's Citation and Fine Program, on November 26, 2018. Following the conference, Armas denied the appeal. Respondent requested a hearing on the citation and this proceeding was scheduled.

21. On November 6, 2018, respondent submitted to a hair follicle test at the request of FirstSource; it was negative for alcohol and controlled substances.

22. On January 29, 2019, respondent sent an email message to Contreras, notifying her that he planned to travel to Mexico from February 15 to 24, 2019. He offered to supply her with potential collection sites in Mexico, and his flight schedule.

23. Contreras responded later that morning advising respondent that, as he was aware, the Board did not approve travel plans. She reminded him that if he were called to test during his vacation, the Board could take disciplinary action.

24. On February 12, 2019, respondent advised Caballero that after consulting with his attorney, he was proceeding with his travel plans.

25. On February 18, 2019, while respondent was in Mexico, he was directed to submit to biological fluid testing. Respondent did not submit to testing. On February 27, 2019, Contreras wrote to respondent asking for a written statement explaining why he did not submit to testing. On February 28, 2019, respondent wrote to Contreras, stating that he was unable to submit to testing because he was out of the country.

26. On March 13, 2019, complainant Kimberly Kirchmeyer, Executive Director of the Board, issued a Cease Practice Order for violating Probation Condition No. 7, requiring him to submit to biological fluid testing. Pursuant to the order, respondent was prohibited from practicing until a clinical diagnostic evaluation was completed and 30 days of negative biological fluid testing was completed. Respondent submitted to the evaluation and to biological fluid testing as required. Respondent also filed an application for a stay of the Cease Practice Order in superior court.

27. On April 12, 2019, complainant, acting in her official capacity issued a petition to revoke probation against respondent.

28. On April 19, 2019, complainant terminated the Cease Practice Order.

29. On April 30, 2019, respondent submitted to a hair follicle test at the request of FirstSource; it was negative for alcohol and controlled substances.

30. On May 7, 2019, respondent wrote to Contreras advising her that he would be traveling to Germany to see his mother from May 22 to June 12, 2019. He reported that his mother's health had been deteriorating and that due to her loss of hearing he was unable to communicate with her over the telephone. Respondent also advised that he planned to spend

short periods of time in Denmark, the Netherlands, Georgia and Azerbaijan to visit friends and family. He enclosed possible testing sites in Germany and in the other countries he planned to visit. Respondent reported that he did not intend to consume alcohol during his travel, and noted that he had remained sober throughout his probationary period. Respondent reported that he was willing to test upon his return on abroad.

31. On May 31, 2019, respondent sent an email message to Contreras, reporting that he was in Germany visiting his ailing mother; that he was directed to test that day, but that he had not because the Board had not approved a local testing site.

32. Between May 15, 2017 and May 9, 2019, respondent submitted to 90 urine tests, four hair follicle tests and eight blood tests; all have been negative for alcohol and controlled substances.

Respondent's Evidence

33. Respondent is 64 years old. He was born in Berlin and attended medical school there. He moved to the United States in 1988 to attend a residency in New York. He returned to Germany after completing the residency. In 1996, he returned to this country to attend a family medicine residency and has resided here since then. Respondent is board certified in family medicine and has staff privileges at John Muir Medical Center in Walnut Creek and at John Muir's Concord campus. Respondent has had a solo family medicine practice, first in Martinez, then in Concord, California, since 2002.

34. Respondent's father became very ill in 2014, prompting respondent to return to Germany to practice for a period of time. In 2015, he was facing various stressors, including staffing issues at his practice, financial issues and problems in his relationship. In April 2015, he began to consume more alcohol as his stress level increased. He started seeing a psychologist because he recognized he was drinking too much, especially on weekends. Respondent denies ever drinking while working or before going to work.

35. Following his accident on July 18, 2015, respondent agreed to remain in the hospital for detoxification, and to seek treatment for his alcohol issues. After being discharged, and while awaiting entry into a treatment facility, his health deteriorated, and he was hospitalized with sepsis due to an infection that occurred during the treatment following his accident. After a stay in the intensive care unit, he was transferred to a nursing/rehabilitation facility to recover.

36. Respondent reports that following his discharge from the rehabilitation facility he contacted residential substance abuse treatment facilities, but because he had been sober for more than one month by then, he was referred to outpatient treatment. Respondent reports having met with an alcohol counselor twice per week initially through Weyland Consultation Services, and participating in urine testing. All urine screens were negative.

37. Respondent's brother, Jurgen Ehling, wrote a letter for the Board's consideration dated May 10, 2019. He is a retired cardiologist residing in Germany. Ehling confirms that respondent's mother is 94 years old, resides in an assisted living facility, and suffers from severe congestive heart failure, severe hearing loss and early dementia. Ehling reports further that seeing her two sons is important to her.

38. Respondent testified credibly that he has not consumed alcohol since July 18, 2015, the date of his accident. Respondent submitted to hair follicle tests within two months of his travel to Europe in 2017, within 40 days of traveling to Europe in 2018, and within 65 days of traveling to Mexico in 2019, substantiating his claim that he has remained sober during his travel.

39. Respondent has submitted to biological testing more than 100 times and has never had a positive screen. Respondent has complied with all probation conditions, except for having missed tests while traveling.

LEGAL CONCLUSIONS

1. The burden of proof in this matter is on the Board and the standard of proof is a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441; *Owen v. Sands* (2009) 176 Cal.App.4th 985.)

2. The purpose of the Medical Practice Act³ is to assure the high quality of medical practice; in other words to keep unqualified 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.) The purpose of physician discipline is to protect the public and to aid in the rehabilitation of licensees. (Bus. & Prof. Code, § 2229.)

3. Complainant seeks to impose discipline on respondent's California certificate based on his failure to submit to biological fluid testing while traveling abroad. The Stipulation and Order clearly requires respondent to submit to biological fluid testing upon demand; and to submit samples at facilities described in California Code of Regulations, title 16, section 1361.54. The Board contracts with FirstSource to collect samples from authorized sites and to analyze samples and report the results to the Board. FirstSource has no contracts with collection sites outside of the United States. Respondent offered to submit to testing at collection sites in Europe, but did not establish that those sites meet the guidelines set forth in section 1361.54.

4. Respondent argues that Condition No. 7 violates his constitutional rights as follows: 1) the Board is restricting respondent's freedom to travel, which is a basic human right; 2) broad travel restrictions are unconstitutional; 3) travel is not an offense; and 4) the Board's

³ Business and Professions Code sections 2000 through 2521.

travel limitation is not tailored to the benefit of respondent, citing *People v. Bauer* (1989) 211 Cal.App.3d 937.

Because the content of Condition No. 7 is contained in California Code of Regulations, title 16, section 1361.54, respondent is essentially requesting the Board to declare its own regulation unconstitutional. The *Bauer* court held that imposing a probation condition that restricted the defendant's residence to a location approved by his probation officer affected the defendant's constitutional rights to travel and his freedom of association. However, as noted in *People v. Arevalo* (2018) 19 Cal.App.5th 652, courts have authority to restrict these rights if the restriction is reasonably necessary to meet the twin goals of rehabilitation and protection of the public. The *Arevalo* court was also mindful that probation was a privilege and not a right; the defendant could choose serving time in custody as opposed to accepting probation, just as respondent could have surrendered his license in lieu of accepting probation. Respondent voluntarily signed the Stipulated Settlement that became the Disciplinary Order. The biological fluid testing requirements were spelled out in the document that respondent stipulated to and signed.

It is noted at the outset that the Board has not restricted respondent's ability to travel. The Board does not approve or disapprove travel by probationers. Indeed, in 2017, respondent traveled to Europe after notifying the Board and the Board took no action. The Board only took action thereafter because respondent failed to submit to biological fluid testing when directed.

Even if the requirement that he submit to testing were considered to be a restriction on travel because no collection sites have been identified outside of the country that meet the requirements of section 1361.54, the restriction is reasonably necessary to meet the goals of respondent's rehabilitation and the protection of the public. Respondent is on probation to the Board because he abused alcohol. The Board has reasonably required respondent to submit to biological fluid testing to protect the public. The requirements contained in section 1361.54 require that the testing comply with standards to ensure its reliability. The Board has a significant interest in assuring that substance abusing licensees are tested under the guidelines set forth in section 1361.54 in order to enforce its primary responsibility: ensuring public protection. Respondent's constitutional challenge to section 1361.54 is rejected.

Respondent was required to test on September 6, September 11 and September 21, 2018, and February 18, 2019. The evidence established that he did not test on those dates as required. Respondent is therefore in violation of his probation terms; cause for issuance of the citation and to revoke probation has been established.

The question remains whether respondent's probation should be revoked or extended, whether no discipline is warranted, or whether a public reprimand should issue pursuant to Business and Professions Code section 2227, subdivision (a)(4). The Board's concern is whether respondent poses a threat to the public. The evidence did not establish that respondent has failed to abstain from alcohol consumption; to the contrary, he testified credibly that he has not consumed alcohol since his traffic accident on July 18, 2015, and all

screens, over 100 since 2017, have been negative. Respondent submitted to hair follicle testing as requested within 90 days of his 2017 and 2018 trips to Europe and his 2019 trip to Mexico; those tests revealed no evidence of alcohol use during those travel periods. Respondent has complied with all other probation requirements.

Revocation is not warranted under these circumstances. However, the citation will be sustained, and a public reprimand issued in response to the petition to revoke probation. This will serve to remind respondent that he is required to comply with his probation conditions and that his future failure to do so will again expose him to disciplinary action in the absence of compelling evidence in mitigation. The appropriate avenue for respondent to seek Board approval for biological fluid testing abroad is to file a petition to modify his probation terms.

ORDER

1. Citation Order No. 800-2018-048841, issued to Detlef K. Ehling, M.D., holder of Physician's and Surgeon's Certificate No. A 66608, is sustained. Respondent is ordered to maintain compliance with all terms and conditions of the Decision and Order, issued by the Board effective April 27, 2017.

2. Respondent Detlef K. Ehling, M.D., is hereby publicly reprimanded pursuant to Business and Professions Code section 2227, subdivision (a)(4).

DATED: June 27, 2019

DocuSigned by:

Jill Schlichtmann

00097D940B484D9

JILL SCHLICHTMANN

Administrative Law Judge

Office of Administrative Hearings