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

In the Matter of the Statement of Issues Against:	)	
Rocco Robert Tutela, Jr.	)	Case No. 800-2019-052902
Respondent.	)	

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the petition for reconsideration, filed by Rocco Robert Tutela, Jr., and the time for action having expired at 5:00 p.m. on February 28, 2020, the petition is deemed denied by operation of law.

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

In the Matter of the Statement of Issues Against:	)	
	)	MBC No. 800-2019-052902
Rocco Robert Tutela, Jr.	)	
	)	
Physician's and Surgeon's	)	**ORDER GRANTING STAY**
	)	
	)	(Government Code Section 11521)
	)	
Applicant	)	

The Medical Board of California has filed a Request for Stay of execution of the Decision in this matter with an effective date of February 20, 2020, at 5:00 p.m.

Execution is stayed until February 28, 2020, at 5:00 p.m.

This stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: **FEB 19 2020**

Christine J. Lally
Interim Executive Director
Medical Board of California

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

In the Matter of the Statement of Issues Against:	)	
Rocco Robert Tutela, Jr.	)	**Case No. 800-2019-052902**
Respondent	)	

DECISION

The attached 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 February 20, 2020.

IT IS SO ORDERED: January 21, 2020.

MEDICAL BOARD OF CALIFORNIA

Kristina D. Lawson, J.D., Chair
Panel B

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

In the Matter of the Statement of Issues Against:

ROCCO ROBERT TUTELA, JR., Respondent.

Case No. 800-2019-052902

OAH No. 2019100821

PROPOSED DECISION

Administrative Law Judge David Benjamin, State of California, Office of Administrative Hearings, heard this matter on November 27, 2019, in Oakland, California.

Emily L. Brinkman, Deputy Attorney General, represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

Michael A. Firestone, Attorney at Law, represented respondent Rocco Robert Tutela, Jr., who was present.

The record closed and the matter was submitted for decision on November 27, 2019.

FACTUAL FINDINGS

1. Respondent Rocco Robert Tutela, Jr., is licensed to practice medicine in New Jersey, and in the past has been licensed to practice in New York.

2. On July 23, 2018, respondent signed and then submitted to the Medical Board of California (Board) an application for a California Physician's and Surgeon's Certificate. The Board denied the application and respondent requested a hearing. Kimberly Kirchmeyer, Executive Director of the Board, issued the statement of issues and this hearing followed. The statement of issues alleges that respondent made a false and dishonest statement on his application.

3. Question 40 on the application asks, "Have you ever had staff privileges in a hospital terminated, denied, suspended, limited, revoked, or not renewed?" Respondent answered "No." By signing the application, respondent certified that he had read the complete application and knew its full contents, and he declared under penalty of perjury that all of the information in the application is true and correct. By signing the application, respondent acknowledged that "any omission, falsification, or misrepresentation of any item or response on this application . . . is a sufficient basis for denying . . . a license."

4. The Board concluded, apparently from its review of the National Practitioner Database, that respondent's staff privileges at Long Island Jewish Medical Center (LIJMC) had been limited in 2009 and that his answer to Question 40 was false. (The National Practitioner Data Bank reports that respondent's clinical privileges at LIJMC were reduced on December 2, 2008, due to "failure to consult or delay in seeking consultation with supervisor/proctor," and that his clinical privileges were

restored on July 10, 2009.) The Board asked respondent to explain his failure to disclose that matter.

5. In a letter dated September 19, 2018, respondent wrote,

> My recollection was that of a, "Summary Action," not a limitation of privileges. The National Practitioner Database does, however, have this classified as a reduction of clinical privileges. This was an error on my part and hope the following documentation will clarify this.

Respondent pointed out that the matter in question had led to a malpractice claim and settlement, which he had disclosed to the Board in his answer to Question 26 on the application.

In the explanation attached to his letter, also dated September 19, respondent wrote:

> The events leading up to the summary action which resulted in my staff privileges being limited for the 6 month period of January-June 2009 are stated, to follow. The action was limited to a single case:
>
> It was alleged that I caused injury to one of a patient's hepatic veins during a complicated liver resection surgery for the treatment of a cancerous lesion that had metastasized from the patient's colon, and that injury caused bleeding and shock in the operating room which ultimately resulted in the patient's death several hours after

> surgery. This procedure was performed with a colleague who, too was credentialed to perform liver resections. Intraoperative consultation was made to the Vice-Chairman of Surgery who assisted with repair. The following day I met with the Chairman of Surgery and Chief Medical Officer. We collectively concluded that we would review and discuss future high-risk cases for a 6 month period to see if we could improve outcomes or change approach. During that 6 month time period no further morbidities or mortalities occurred and proctorship was determined to no longer be continued.

6. In a letter to the Board dated November 11, 2018, Gene F. Coppa, M.D., Chair of Surgery at LIJMC, describes the events as follows:

> As a result of the root cause analysis during quality improvement review of an adverse outcome in a patient in [2008], a corrective action was initiated which required [respondent] to communicate with the Chairman of the Department of Surgery at Long Island Jewish Medical Center and obtain approval prior to scheduling any high risk procedure. There was intraoperative proctorship by the Chairman of the Department of Surgery/designee in order to assess his performance in the intraoperative conduct of high risk cases, particularly liver resection procedures.
>
> Intraoperative proctorship was for a period of six months. He completed the six month monitoring period in July

> [2009], I determined that the proctorship as outlined above was no longer needed.

Respondent's understanding of the action taken in 2008 is the same as that expressed by Dr. Coppa.

7. At hearing, respondent testified that he can see why the Board feels that his answer to Question 40 was false, but he asserts that the answer is not false because there was never any real limitation of his privileges. In 2009, respondent states, he was on probation because it was his first year at LIJMC. As a probationary employee, he was required to discuss difficult cases with his chairman even before the corrective action was initiated by Dr. Coppa. The proctorship did not change his practice because he always looked for advice on difficult cases and went to the tumor board and surgical review committee for approval. Respondent feels there was a "gentlemen's agreement" that he would not do anything different than he had been doing before. His practice for scheduling surgeries stayed the same. He never received a "formal letter" informing him of a reduction in privileges and was never told his staff privileges were limited, other than the limitations that already applied to him as a probationary employee. Respondent states there was no reduction in his practice "in any way, shape, or form."

When he met with Dr. Coppa in 2008 and was told about the proctorship, respondent asked Dr. Coppa if he should seek legal advice. Dr. Coppa told him that the matter "had to go to this level because of the type of incident" and that it had to go "to the state." Respondent decided not to spend the $5,000 to $6,000 it would have cost him to dispute the matter. Today, respondent states, he "would not take this sitting down" and he would seek to dispute or clarify it.

Respondent denies any intent to deceive the Board by his answer to Question 40. He emphasizes that he disclosed to the Board, in his answer to Question 26, the malpractice action and settlement that arose out of the 2008 surgery.

8. Respondent's answer to Question 40 was false. His privileges at LIJMC were limited for six months, from January to July 2009, in the manner described by Dr. Coppa. Insofar as respondent asserts his answer was true because his privileges were never limited, his testimony on that point is not persuasive or credible. Whatever respondent's practice was before 2009, his privileges were restricted for six months under the terms of the corrective action imposed by Dr. Coppa. Respondent knew those restrictions were being imposed, and he was informed when he successfully completed the six-month period. When he first met with Dr. Coppa about the matter, respondent knew that the matter was of such significance that Dr. Coppa was referring it to state authorities, and respondent was sufficiently concerned that he considered retaining legal counsel. Respondent's answer to Question 40 was false. When he submitted his application to the Board, he knew the answer to Question 40 was false.

Question 26 on the application asks, "Has a claim or an action ever been filed against you for the practice of medicine that resulted in a malpractice settlement, judgment, or arbitration?" Respondent answered "Yes," and identified the case that led to the corrective action in 2008. Respondent's narrative response to this question, however, does not disclose to the Board that his staff privileges were limited as a consequence, and therefore does not provide the information sought by the Board in Question 40.

9. Respondent answered "No" to Question 40 to advance his application to the Board.

10. Respondent submitted five character references.

Niranjan Rao, M.D., is the vice-president and chief medical officer of Saint Peter's University Hospital in New Brunswick. He has known respondent since 2009. Dr. Rao writes that respondent is respected by his colleagues, nurses and staff, that he is competent and affable, and that he is an active volunteer in the county medical society and the New Jersey delegation to the American Medical Association.

Michael J. Richardson, M.D., is an anesthesiologist who has worked with respondent for 10 years. He praises respondent as a gentleman, a skilled surgeon, an effective teacher, and a good husband and father. Dr. Richardson writes that respondent is very proud of his work with the Middlesex County Medical Society.

James Salwitz, M.D., is president of the medical staff at Robert Wood Johnson University Hospital. Respondent has been on the staff at that hospital for 10 years. Salwitz writes that respondent is an "outstanding surgeon as well as a clinician leader in our community." He notes that respondent has been president of the Middlesex County Medical Society since 2017.

Borislav Stoev, DO, FACEP, is the president of the medical staff and chair of the emergency department at Saint Peter's. Like respondent's other references, Stoev compliments respondent's volunteer work with the county medical society. Stoev writes that respondent is a skilled surgeon with an "amazing" attitude toward his colleagues and a calm bedside manner with his patients.

Nancy J. Pinkin is an assemblywoman in the New Jersey General Assembly. She writes that respondent is a strong advocate for the medical profession and that he has been a leader on medical issues such as access to care, opioid addiction and end-of-life issues. Pinkin goes on to state that respondent has a reputation for a

strong and satisfied client base and that he has been active in county and state medical societies. She feels respondent would be a valuable asset to the residents of California.

None of respondent's references demonstrate any knowledge of the facts of this case or the issues presented in this case. None of respondent's references address his reputation for honesty.

LEGAL CONCLUSIONS

1. An application for a physician's and surgeon's certificate may be denied if the applicant has done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself. (Bus. & Prof. Code, § 480, subd. (a)(2).)

An application may be denied if the applicant has knowingly made a false statement of fact that is required to be revealed in the application. (Bus. & Prof. Code, § 480, subd. (d).)

Under Business and Professions Code sections 2234 and 2234, subdivision (e), as those sections interact with Business and Professions Code sections 2221 and 480, subdivision (a)(3), the Board may deny an application of any applicant who has committed unprofessional conduct or an act of dishonesty that is substantially related to the qualifications, functions or duties of a physician.

Under penalty of perjury, respondent knowingly made a false statement of fact on his application for a physician's and surgeon's certificate when he answered "No" to Question 40. (Finding 8.) The false statement is directly related to the qualifications, functions or duties of a physician and surgeon. (Cal. Code Regs., tit. 16, § 1360.)

Respondent answered the question falsely for the purpose of advancing his application. (Findings 7-9). Cause exists to deny respondent's application.

2. Cause for denial having been established, the issue is the appropriate action to take. Respondent seeks an unrestricted certificate. Complainant argues for a three-year, probationary certificate. The Board's disciplinary guidelines have been reviewed and considered.

The relationship between doctor and patient is based on the utmost trust in the doctor's honesty and integrity. (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470.) Intentional dishonesty "demonstrates a lack of moral character and satisfies a finding of unfitness to practice medicine." (*Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305.) The burden is on respondent to demonstrate sufficient rehabilitation from his act of dishonesty so that it would not be contrary to the public interest to grant his application.

Evidence of rehabilitation is equivocal. When he was first contacted by the Board about his answer to Question 40, respondent acknowledged that his privileges had been limited and admitted, or at least seemed to admit, that he had answered that question in error. Acknowledgment of a mistake is a fundamental element of rehabilitation. But at hearing, respondent made a new claim – that his answer was true and his privileges were not restricted – that reflects poorly on his credibility and diminishes any claim of rehabilitation. None of respondent's five character references demonstrate any knowledge of the facts of this case, and none of them address respondent's reputation for honesty. It would be contrary to the public interest to grant respondent an unrestricted certificate. Complainant's recommendation of a three-year probationary certificate, with a requirement that respondent complete an ethics course, is reasonable and, on this record, sufficient to protect the public.

ORDER

The application of respondent Rocco Robert Tutela, Jr., for an unrestricted physician's and surgeon's certificate is denied. However, respondent shall be issued a probationary physician's and surgeon's certificate for three years on the following terms and conditions:

1. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of California Code of Regulations, title 16, section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

2. Notification

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

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

3. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

4. Obey All Laws

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

5. Quarterly Declarations

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

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

6. General Probation Requirements

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

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

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

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

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

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

7. Interview with the Board or its Designee

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

8. Non-practice While on Probation

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

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

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

9. Completion of Probation

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

10. Violation of Probation

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

probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

11. License Surrender

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

12. Probation Monitoring Costs

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

DATE: December 16, 2019

DocuSigned by:
44D8D6AE55194F9...

DAVID BENJAMIN

Administrative Law Judge

Office of Administrative Hearings

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
CAITLIN ROSS
Deputy Attorney General
State Bar No. 271651
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3615
Facsimile: (415) 703-5480
E-mail: caitlin.ross@doj.ca.gov
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 19 20 19
BY K Vuong ANALYST

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

In the Matter of the Statement of Issues Against: **ROCCO ROBERT TUTELA, JR.** Applicant.	Case No. 800-2019-052902 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On August 8, 2018, Rocco Robert Tutela, Jr. (Applicant) submitted to the Board an application (the Application) for a Physician's and Surgeon's License. The Board denied the application and Applicant requested a hearing.

JURISDICTION

(Unprofessional Conduct/Dishonesty/False Statement in License Application)

3. This Statement of Issues is brought before the Medical Board of California, 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 2221, subdivision (a) of the Code states:

"(a) The board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license. The board in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to [various terms and conditions]."

5. Section 480, subdivisions (a), (a)(2), (a)(3)(A-B), and (d) of the Code state:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

...

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another."

"(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made."

...

"(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license."

6. Section 2234, and subdivision (e) of the Code state:

"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:

. . .

"(e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon."

7. California Code of Regulations, title 16, section 1360, states:

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

STATEMENT OF FACTS

8. Applicant submitted to the Board the Application for a Physician's and Surgeon's License. On the Application, Applicant listed his licensures in New Jersey and New York, with his New York practice dating from August 11, 2005 until May 31, 2011.

9. As a practicing physician in New York, Applicant was involved in a 2008 incident where Applicant performed a liver resection surgery on a cancer patient. The patient sustained injury during the surgery and died several hours after the surgery. The incident occurred at Long Island Jewish Medical Center (LIJMC), a hospital in New York. As a result of this incident, Applicant's clinical privileges at LIJMC were limited—specifically, Applicant needed to obtain approval from the LIJMC Chairman of the Department of Surgery before scheduling and performing any high-risk procedures. Applicant also was subject to a proctorship in order to

assess his performance for high-risk procedures. After six months, Applicant's clinical privileges were restored.

10. On August 8, 2018, Applicant submitted to the Board an Application for a Physician's and Surgeon's License. On this Application, Question 40 asked whether Applicant had ever had staff privileges in a hospital terminated, denied, suspended, limited, revoked or not renewed. In response to this question, Applicant answered "No". On July 23, 2018, Applicant certified under penalty of perjury to the truthfulness of all information in the Application.

11. In a letter dated September 13, 2018, the Board asked Applicant to provide a signed and dated explanation regarding the non-disclosure of clinical privileges action on Question 40 of the Application. The Board also asked Applicant to provide a signed and dated explanation of the events and circumstances leading to the clinical privilege action at LIJMC.

12. In a letter dated September 19, 2018 from Applicant to the Board, Applicant explained that his recollection of the event was that of a "Summary Action," not a limitation of privileges, but that the National Practitioner Database classified the incident as a reduction of clinical privileges. Applicant acknowledged that he made an error. In a second later dated September 19, 2018, Applicant said he met with the Chairman of Surgery and Chief Medical Officer on the day after the liver surgery, and that they collectively concluded that they would review and discuss future high-risk cases for a 6-month period to see if they could improve outcomes or change approach. Applicant further stated that during that six-month period, no further morbidities or mortalities occurred and proctorship was determined to no longer be continued.

CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct/Dishonesty/False Statement in License Application)

13. Applicant's Application is subject to denial under Business and Professions Code sections 480, subdivision (a)(2) (dishonesty), subdivision (a)(3)(A-B) (substantially related act) and subdivision (d) (false statement in an application), and sections 2234 (unprofessional conduct) and 2234, subdivision (e) (dishonesty), and California Code of Regulations, title 16, section 1360 (substantially related act) in that Applicant demonstrated unprofessional conduct and

dishonesty when he provided false information in his Application regarding the reduction of clinical privileges at LIJMC.

PRAYER

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

1. Denying the application of Rocco Robert Tutela, Jr. for a Physician's and Surgeon's Certificate;

2. If issued a probationary license, ordering Applicant to pay the Medical Board of California the costs of probation monitoring;

3. Denying or suspending approval of Applicant's authority to supervise physician assistants and advanced practice nurse if he is issued a license and placed on probation;

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

DATED: June 19, 2019

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

SF2019200580
21441788.docx