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

In the Matter of the Petition to Revoke Probation Against: Gregory Michael Organ, M.D. Physician's & Surgeon's Certificate No G81845 Petitioner.	Case No.: 800-2019-058010

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by Jonathan H. Rose, Esq., attorney for Gregory Michael Organ, M.D., for the reconsideration of the Decision in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on April 21, 2020.

IT IS SO ORDERED: April 21, 2020.

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 Petition to Revoke Probation Against: Gregory Michael Organ, M.D. Physician's and Surgeon's Certificate No. G81845 Respondent	))))))))))	MBC No. 800-2019-058010 **ORDER GRANTING STAY** (Government Code Section 11521)

Jonathan H. Rose, Esq., on behalf of Respondent, Gregory Michael Organ, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of April 10, 2020, at 5:00 p.m.

Execution is stayed until April 20, 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: April 9, 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 Petition to Revoke Probation Against:	)	
Gregory Michael Organ, M.D.	)	Case No. 800-2019-058010
Physician's and Surgeon's Certificate No. G81845	)	
Respondent	)	

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 April 10, 2020.

IT IS SO ORDERED March 12, 2020.

MEDICAL BOARD OF CALIFORNIA

By: Kristina Lawson
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 Petition to Revoke Probation Against:

GREGORY MICHAEL ORGAN, M.D.,

Physician's and Surgeon's Certificate No. G 81845

Respondent.

Case No. 800-2019-058010

OAH No. 2019080954

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on January 21 and 22, 2020, in Oakland, California.

Deputy Attorney General Lawrence A. Mercer represented complainant Kimberly Kirchmeyer, Executive Director, Medical Board of California, Department of Consumer Affairs.

Jonathan H. Rose, Attorney at Law, represented respondent Gregory Michael Organ, M.D., who was present throughout the hearing.

The record closed and the matter was submitted for decision on January 22, 2020.

SUMMARY

Respondent's certificate was placed on probation after he was found in possession of cocaine. Complainant seeks to revoke probation due to a positive urinalysis for cocaine metabolite, which respondent attributes to unknowing consumption of Peruvian mate de coca tea. Because respondent's explanation is not found to be credible, respondent's certificate will be revoked.

FACTUAL FINDINGS

Procedural Background

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

2. On August 2, 1995, the Board issued Physician's and Surgeon's Certificate Number G 81845 to respondent Gregory Michael Organ, M.D. The certificate was in effect at all times relevant to the charges in the petition. It is scheduled to expire on May 31, 2021, unless renewed. On July 29, 2019, the Board issued a Cease Practice Order prohibiting respondent from engaging in the practice of medicine until the final decision has been issued in this matter.

3. In a previous disciplinary matter, respondent entered into a stipulated settlement and disciplinary order, in which his certificate was revoked. The revocation

was stayed and the certificate was placed on probation for three years with certain terms and conditions, including biological fluid testing. The stipulated settlement and disciplinary order was adopted by the Board on May 7, 2019, and became effective on June 6, 2019.

Respondent's Two Cocaine-Related Arrests

JUNE 18, 2008 – KENSINGTON

4. On June 18, 2008, Kensington police officers were dispatched to investigate a report of a domestic altercation at the residence of respondent's ex-wife. Respondent was asked for identification. He reached into his pocket for his wallet, and officers observed a vial containing a white powdery substance. Respondent initially asserted that it was asthma medication. A search of respondent yielded an additional bindle containing a white powdery substance. Samples of both tested positive for cocaine. The total weight was measured as 0.12 grams. Respondent was arrested on charges of possession of a controlled substance. The Contra Costa County District Attorney did not prosecute respondent because the quantity of cocaine fell below the filing standard.

OCTOBER 30, 2016 – PALO ALTO

5. On October 30, 2016, a Palo Alto police officer pulled respondent over due to a non-functioning rear parking light violation. During this traffic stop, the officer smelled the aroma of marijuana. Respondent retrieved an orange pill bottle containing marijuana from the glove compartment, which he stated belonged to his brother. The officer searched the glove compartment and found a black case containing 1.2 grams of cocaine and related paraphernalia. Respondent was issued a

citation for possession of cocaine, possession of cocaine paraphernalia, and possession of marijuana.

Respondent participated in a deferred entry of judgment program wherein he pleaded guilty to the charges and was required to comply with conditions including completing 24 hours of education classes, attending six meetings, and submitting to five drug screens. Respondent was deemed to have complied with the requirements of the program on August 24, 2017. As a result, the criminal matter was dismissed.

This arrest resulted in the stipulated settlement agreement and probation order at issue in this matter.

Probation Conditions

6. On June 4, 2019, Probation Analyst Jennifer Saucedo sent respondent a letter with details regarding the biological fluid testing condition. Probation Monitor Melissa Girón met with respondent on June 14, 2019 to review all of the probation conditions.

7. Condition 1 of respondent's probation provides that respondent shall abstain from the use of controlled substances other than medications lawfully prescribed or recommended by another practitioner for a bona fide illness or condition. Respondent holds a medical marijuana recommendation and is permitted to consume medical cannabis. Respondent is not required to abstain from the use of alcoholic beverages.

8. Condition 2 of respondent's probation provides that respondent shall undergo biological fluid testing.

9. Condition 6 of respondent's probation provides that respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine.

10. Condition 12 of respondent's probation provides that failure to fully comply with any term or condition of probation is a violation of probation and may provide cause for probation revocation.

Positive Drug Test of July 16, 2019

11. The Board's biological fluid testing program is administered by FirstSource. Respondent is required to check in daily with FirstSource to determine if he is selected to provide a sample for testing. If so, he must report to an approved site for testing that day. Respondent's practice is to check in shortly after midnight, before he goes to bed.

Respondent was selected for testing on Tuesday, July 16, 2019. He provided a urine sample at a lab in Oakland at approximately 5:53 p.m. Respondent refused to sign the lab's collection form and wrote on the form, "split specimen volume less than 45 cc total . . . request for better specimen denied." Respondent's request to drink water and provide another specimen had been denied because the lab was about to close.

12. On July 22, 2019, the Board was notified by FirstSource that the urinalysis of respondent's July 16, 2019 sample indicated a positive result of 344 ng/mg of cocaine metabolites. The lab's cutoff level for a positive result is 300 ng/ml.

13. On July 22, 2019, Probation Analyst Saucedo contacted respondent and notified him of the positive test result. Respondent was asked to provide a written explanation to the Board. In a letter dated July 24, 2019, respondent wrote that he was

surprised and perplexed about the positive test. He suggested two possible causes of accidental exposure, both related to topical product used for his chronic hip pain: lidocaine cream that he had been using for a few weeks and a CBD product that he used on a single occasion. He wrote that he had "zero interest in cocaine use" and that he would be more diligent in scrutinizing all products in the future.

14. Respondent's explanation was not deemed adequate, and the Cease Practice Order described in Finding 2 was issued on July 29, 2019.

Expert Opinions of Timur Durrani, M.D.

15. Timur Durrani, M.D., is an expert in medical toxicology. He serves as a medical review officer for employers whose employees hold safety sensitive positions, including the Department of Defense and the San Francisco Metropolitan Transit Authority. Dr. Durrani was retained by the Board to review respondent's positive drug test. He wrote a report and testified at the hearing. Dr. Durrani was a credible witness.

Dr. Durrani concluded, based on his review of FirstSource's records, that respondent's positive drug test was the result of cocaine ingestion and that the test was valid. Neither lidocaine cream nor CBD products would be expected to cause a positive test for cocaine metabolites. It cannot be determined how much cocaine was ingested or when it was ingested. Cocaine metabolite is found in urine for about 72 hours after ingestion. Dr. Durrani acknowledged that consumption of mate de coca tea can cause a positive urine test for cocaine metabolite. Dr. Durrani explained that when he serves as a medical review officer, he is prohibited from considering employee explanations related to purported unknowing ingestion, if these explanations would not constitute a legitimate medical explanation. In Dr. Durrani's view, respondent has

not provided a legitimate medical explanation for his positive drug test, even assuming that his report of unknowing consumption is found to be true.

Respondent's Explanations

16. Respondent denies being a substance abusing practitioner and reported that he has knowingly ingested cocaine on only two occasions: once in college and once while celebrating his 50th birthday in 2008, a few weeks prior to the Kensington arrest described above in Finding 4. Respondent explained that he went to a jazz performance in San Francisco with friends for his birthday. To his surprise, someone passed around cocaine and respondent used some. At the end of the evening, a companion handed him a container with the remainder of the cocaine and respondent put it in his pocket. Respondent forgot it was there. A few weeks later, while at his ex-wife's house for a scheduled visit with his minor daughter, the cocaine fell out of his pocket when he was retrieving his wallet while being questioned by police officers.

17. Respondent testified that the cocaine found in his vehicle in October 2016 did not belong to him. He stated that he had recently purchased the vehicle and was unaware that there was cocaine in the glove compartment. Although respondent testified that he told this to the arresting officer, the police report does not reflect it.

18. Respondent's testimony minimizing his history of cocaine use and disavowing responsibility for cocaine found in his possession was not credible.

19. Respondent adamantly denies having knowingly ingested cocaine prior to the positive drug test of July 16, 2019. He contends that on Sunday, July 14, 2019, two days before the test, he visited a childhood friend to help him with yardwork, notwithstanding the fact that at this time, respondent used a cane and was unable to sit or stand for more than 10 minutes due to chronic hip pain. Respondent's friend

purportedly served "sun tea," which he had brewed in glass jars on his porch. In a conversation with his friend in early August 2019, respondent disclosed that he had tested positive for cocaine. At this time, his friend revealed that the sun tea he served contained mate de coca tea from Peru, which contains coca leaf. Upon supposedly learning that he had been served this tea, respondent did not promptly notify the Board of this possible explanation for his positive urinalysis. He never reported to Probation Analyst Saucedo that he had become aware that he had unknowingly consumed mate de coca tea.

20. Respondent's friend, Thomas Edgerton, testified at the hearing. He explained that he prepares sun tea daily, using one tea bag of black tea, one tea bag of mint tea, and a third tea bag of varying types that he selects from his vast collection. Edgerton stated that he purchased two boxes of Delisse brand mate de coca tea while in Peru, and he sometimes uses a bag of this tea as the third tea bag in his sun tea. Although Delisse mate de coca tea contains coca leaf and is not legal in the United States, Edgerton stated that he passed through customs with the tea without issue. Edgerton stated that he was unaware that respondent was on probation with the Board when he served him the tea, and that he did not inform respondent that he was serving him tea made with coca leaf.

21. Five months after respondent purportedly ingested the tea at Edgerton's residence, Edgerton prepared a batch of sun tea using a bag of Delisse brand mate de coca tea and provided it to Minh Tran at Drug Detection Laboratories, Inc. The tea tested positive for cocaine.

The testimony of Edgerton and respondent that respondent unknowingly ingested mate de coca tea was not credible. Instead, the evidence suggests that they collaborated to fabricate a false explanation for respondent's positive drug test.

Expert Opinion of Douglas Tucker, M.D.

22. Respondent retained psychiatrist Douglas Tucker, M.D., to review the toxicology records and assess respondent for substance use disorder. Dr. Tucker is a specialist in addiction psychiatry and addition medicine. Dr. Tucker interviewed respondent for just under three hours on December 11, 2019, performed an assessment, and reviewed documents. He wrote a report and testified at the hearing. His testimony was credible.

Dr. Tucker found that there was insufficient evidence to diagnose respondent with substance use disorder. Dr. Tucker conceded that the lack of a substance use disorder diagnosis is not a finding that an individual has not used an illicit substance. Dr. Tucker's opinions were based on his conclusion that respondent's explanations of his two cocaine-related arrests and his positive drug test were "plausible." Because it has been found that respondent has not been truthful about these events, Dr. Tucker's opinions are given little weight.

Additional Evidence

23. Respondent grew up in Omaha, Nebraska. His father was a prominent surgeon. Respondent graduated medical school in 1985. He completed a residency in general surgery followed by a fellowship in pediatric surgery. Respondent worked for Kaiser Permanente in Northern California as a pediatric surgeon from 1998 through 2008. Respondent has not practiced pediatric surgery since this time. He recently recertified in pediatric surgery with the hopes of reentering this practice area.

Respondent did not work as a physician for approximately six years. In 2014, he began working for Advantage Surgical and Wound Care as a wound care physician. He worked two days a week, attending to patients in skilled nursing facilities. He worked

in this capacity up until the time of the cease practice order in July 2019. At this time, respondent went out on disability for orthopedic issues. Respondent had total hip replacement surgery in December 2019 and remained on disability at the time of the hearing.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving each of the grounds for revoking probation alleged in the Petition to Revoke Probation, and must do so by a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441.)

2. A preponderance of the evidence established that respondent violated Conditions 1 and 6 of his probation by failing to refrain from the use of controlled substances. The evidence did not establish that respondent's positive urinalysis was the result of unknowing consumption of mate de coca tea. Furthermore, even assuming this explanation were credible, respondent's failure to exercise diligence to prevent accidental exposure to controlled substances would constitute a violation of probation. Cause for probation revocation has been established, in light of the matters set forth in Findings 12 and 14.

3. The Board's Disciplinary Guidelines provide for license revocation as the maximum penalty for a probation violation. The Guidelines advise that the maximum penalty should be given for repeated similar offenses or for violations revealing a cavalier or recalcitrant attitude.

Despite three documented cocaine-related incidents, respondent denies any history of substance abuse. He denied knowledge of the cocaine found in his vehicle

2016 and in his urine in 2019. He admitted possessing cocaine in 2008, when he went for a scheduled visitation with his minor child, but unconvincingly explained that this was an isolated incident. The evidence established that respondent has a history of cocaine use that he is unwilling to admit.

Approximately five weeks after his certificate was placed on probation, respondent tested positive for the very same drug that resulted in the imposition of probation. His explanation for this positive test was not credible.

Respondent's positive test for cocaine metabolite a mere five weeks after his probation started, and his implausible explanations, demonstrate a cavalier attitude. Revocation is the appropriate penalty. It would be against the public interest to permit respondent to retain his certificate.

ORDER

The Petition to Revoke Probation concerning Physician's and Surgeon's Certificate Number G 81845 to respondent Gregory Michael Organ, M.D., is granted. The stay of revocation is lifted and the certificate is revoked.

DATE: February 11, 2020

DocuSigned by:
Karen E Reichmann
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KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings