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

In the Matter of the Petition for Reinstatement of: **Richard James Heiss, II, M.D.** **Physician's and Surgeon's Certificate No. G 69342** **Petitioner.**	**Case No. 800-2019-051821**

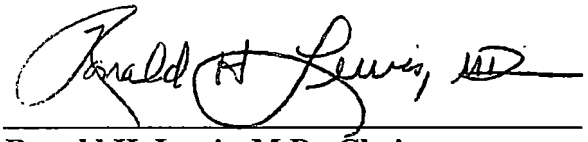
DECISION

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 June 18, 2020.

IT IS SO ORDERED: May 19, 2020.

MEDICAL BOARD OF CALIFORNIA



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

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

In the Matter of the Petition for Reinstatement of:

RICHARD JAMES HEISS, II, Petitioner

Agency Case No. 800-2019-051821

OAH No. 2019090278

PROPOSED DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March 11 and 12, 2020, in Los Angeles, California.

Kevin E. Thelen, Esq., LeBeau Thelen, LLP, represented petitioner Richard James Heiss, II.

Wendy Widlus, Deputy Attorney General, appeared for the Attorney General of the State of California.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on March 12, 2020.

FACTUAL FINDINGS

Background

1. On July 30, 1990, the Medical Board of California (Board) issued petitioner Physician's and Surgeon's Certificate Number G 69342.

2. In December 2002, petitioner surrendered his license after being charged with sexual misconduct in Board case number 08-2001-128079. The disciplinary charges included an allegation that petitioner was convicted in July 2002 of sexual exploitation of a patient, a misdemeanor (Bus. & Prof. Code, § 729, subd. (a)).[1] The criminal conviction involved KB, a 20-year-old female patient, who alleged that on the evening of October 18, 2001, while in petitioner's office, petitioner gave her an unknown beverage that he said contained alcohol, left the office and then returned "completely naked," approached KB from behind, removed her skirt and panties, laid her on the floor, and placed his fingers in her vagina and his penis into her mouth and vagina.

3. The disciplinary charges also included allegations that in June or July 2001, while petitioner was examining female patient EM in his office, petitioner grabbed her trousers and underwear, stretched the elastic bands outward, placed his bare hand under EM's underwear, and fondled her pubic area, including rubbing her clitoral area with his fingers. In addition, during an office visit on May 11, 2000, petitioner allegedly told female patient PBW that his ex-wife was suing him and had a "boob job," asked PBW if she was "available," told her she had "great quads," placed his hand on her inner thigh and asked "I wonder what's up there," and stayed in the

[1] Undesignated statutory references are to the Business and Professions Code.

room while PBW got dressed. Furthermore, on May 25, 2001, during an appointment with female patient HR, petitioner allegedly asked questions about her sex life, including whether she found her husband attractive, enjoyed having sex with him, and experienced orgasms, and, after petitioner gave HR a referral for a mammogram, said that she "owe[d]" him one and would "have to go out on a date" with him after he divorced his wife. Finally, the disciplinary charges included allegations that at some time between November 2000 and February 2001, petitioner, while working with JO, a male medical corpsman, approached JO from behind, stated that in his "day we used to do rectal lavage," patted JO's buttocks, and grazed JO's testicles with his hand.

4. Petitioner surrendered his license according to the terms of a Stipulated Surrender of License and Order in which he admitted the criminal conviction for sexual exploitation of a patient, and admitted that he had inappropriate sexual contact with KB by digitally penetrating her vagina while she was at his medical office. Petitioner also admitted that the allegations regarding patient PBW were true, but did not admit the remaining charges. The stipulation provided that petitioner could petition for reinstatement after a period of two years from the effective date of his surrender, and that he must comply with all of the laws, regulations, and procedures for reinstatement of a revoked license in effect at the time the petition was filed. The stipulation also required petitioner to pay the Board its costs of investigation and enforcement in the amount of $5,000 prior to the issuance of a new or reinstated license.

5. On December 4, 2002, the Board adopted the Stipulated Surrender of License and Order as its Decision and Order, effective December 11, 2002.

First Petition for Reinstatement

6. Petitioner submitted his first petition for reinstatement in February 2015. The Board assigned the petition to an administrative law judge for a hearing, and denied it effective September 30, 2016, determining that petitioner had presented some evidence of rehabilitation, but not enough to warrant reinstatement at that time. Of particular concern to the Board were: (1) petitioner's refusal to acknowledge his own culpability for his sexual wrongdoing until just two years before the reinstatement hearing; (2) his lack of insight into what may have triggered him to act in sexually inappropriate ways, apart from his acknowledged alcohol abuse at the time; (3) a lack of evidence from petitioner's long-term psychiatrist about his psychiatric care and treatment focused on his sexual misconduct; (4) petitioner's admitted long-term alcohol abuse from the 1990's until June 2013, when he entered residential treatment and achieved sobriety; (5) petitioner's misdemeanor convictions in 2005 and 2006 for driving under the influence of alcohol; (6) a lack of evidence of drug or alcohol testing to support petitioner's other evidence of sobriety; and (7) petitioner's failure to call an expert to testify at the hearing about petitioner's potential for relapse into alcohol abuse.

7. The Board commended petitioner for his hard work in attaining and maintaining sobriety, and also found that petitioner had accepted responsibility for his wrongdoing, expressed remorse, and gave candid testimony about his alcohol abuse. But considering all of the evidence, petitioner failed to submit adequate evidence of rehabilitation to demonstrate that it would be consistent with the public health, safety, and welfare to reinstate his license at that time. Consequently, the Board denied the petition, but encouraged petitioner to continue with his rehabilitation efforts.

Current Petition for Reinstatement

8. Petitioner submitted the current petition for reinstatement in December 2018, with letters from five physicians and several other persons describing his changed character and rehabilitative efforts. In the accompanying narrative statement, petitioner described himself as still alcohol-free since June 2013, and as having had no criminal or civil complaints of any kind against him since his last petition. He also stated he had done considerable self-reflection since his prior petition about his sexual misconduct, concluding that the root cause of his dysfunction was inadequate spiritual grounding and maintenance. He reported addressing that inadequacy during his alcohol abuse recovery by resuming active church membership, and pledged to remain committed to his sobriety and to his renewed spirituality. He also described himself as an active co-facilitator of a grief recovery group, which helped him address his unresolved grief about the death of his son from inhalant abuse in 1995. In addition, petitioner stated he received regular mental health therapy, attended two Alcoholics Anonymous meeting per week, was gainfully employed in another son's landscaping business, and had been happily remarried for 19 years.

9. The Board interviewed petitioner and three of the five physicians who wrote letters on his behalf, and assigned the petition to an administrative law judge for hearing. At the hearing, petitioner took full responsibility for his misconduct and testified he does not blame anyone but himself. He has continued his sobriety and regular attendance at Alcoholics Anonymous, and has now been sober for almost seven years. He remains active in his church and in facilitating grief counseling, has a strong marriage, and now works in a fence repair business. He provided proof of attendance in continuing medical education courses, and expressed a desire to join a group medical practice if the Board reinstated his license. He testified he would not go

into solo practice and would accept whatever probationary terms the Board deems appropriate.

10. Robert M. Nagy, M.D., petitioner's psychiatrist, testified that petitioner is stable in his sobriety and mental health. Dr. Nagy has treated petitioner since 2001, and now sees petitioner three or four times per year for treatment of major depression and alcohol dependency, prescribing medications for depression and impulse control. Dr. Nagy opined that petitioner has responded well to treatment since he attained sobriety, and that the chance of relapse into alcohol abuse is low if petitioner maintains the status quo with respect to his mental health treatment and regular involvement in Alcoholics Anonymous. Petitioner's medical history also includes a diagnosis of multiple sclerosis in the 1990's; although petitioner is now symptom-free, Dr. Nagy recommended a follow-up with a neurologist given the possible neuropsychiatric effects of that disorder. Dr. Nagy also testified that he has seen petitioner accept responsibility for his sexual misconduct since he became sober in 2013. With continued maintenance of the status quo and monitoring as the Board deems appropriate, Dr. Nagy believes that petitioner is safe to reenter the medical profession.

11. Patrick Renfro, petitioner's sponsor at Alcoholics Anonymous, testified that petitioner has not wavered from his sobriety, and that his risk of relapse gets lower and lower. Mr. Renfro has been petitioner's sponsor since 2017 when petitioner's prior sponsor passed away. Mr. Renfro testified that he knows the details of petitioner's license surrender, and that petitioner has never deflected about the details of his misconduct or attempted to blame his behavior on other people.

12. Calvin Kubo, M.D., the President of Golden Valley Medical Associates, Inc. in Bakersfield, California, has known petitioner since the 1970's when they attended

the same college. They worked together at the Bakersfield Family Medical Center from August 1990 to May 1992, and then opened a private practice together with two other physicians before starting their own separate private practices. Dr. Kubo was at the intervention that petitioner's family conducted in 2013 that prompted petitioner to enter residential treatment for alcohol abuse, and testified that petitioner has transformed his life since then. With petitioner's continued commitment to sobriety, Dr. Kubo testified that petitioner would not present any risk at all if his license is reinstated. Dr. Kubo also testified he would be willing to serve as a petitioner's practice monitor if the Board grants reinstatement.

13. Terry Moreland, a fellow member of petitioner's church, testified he met petitioner almost five years ago and knows petitioner's daily lifestyle. In his testimony and supporting letter of reference, Mr. Moreland stated that petitioner has overcome his past and become a man of integrity who is committed to his religious faith.

14. The Attorney General took a neutral position on the petition, but recommended that the Board impose appropriate probation terms applicable to substance-abusing licensees if the petition is granted.

15. Overall, the evidence presented on the current petition established that petitioner has continued his rehabilitative efforts and maintained sobriety since the denial of his first petition for reinstatement. He remains committed to sobriety and expressed remorse for and insight into his sexual misconduct. The current petition also included additional evidence from petitioner's treating psychiatrist about his current mental health, including testimony that petitioner is safe to return to practice under appropriate conditions, with a low risk of relapse of alcohol abuse. Therefore, the evidence on the current petition presents a stronger case for reinstatement than the evidence presented on the prior petition.

LEGAL CONCLUSIONS

General Legal Standards

1. A person whose certificate has been surrendered while under investigation or while charges are pending may petition the Board for reinstatement after a minimum period has elapsed from the surrender. (§ 2307.) Petitioner surrendered his license in 2002, and the Board agreed petitioner could request reinstatement after a minimum period of two years from the effective date of the surrender (Factual Finding 4), which has long since elapsed. (§ 2307, subd. (b)(1).) In deciding the petition, the Board "may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability." (§ 2307, subd. (e).)

2. When petitioner surrendered his license, he agreed to comply with the laws, regulations, and procedures for reinstatement of a revoked license in any future petition for reinstatement. (Factual Finding 4.) "'[I]n a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated and is entitled to have his license restored, and not on the board to prove to the contrary.'" (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398, quoting *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) On a petition to reinstate a professional license, a petitioner must prove rehabilitation by clear and convincing evidence to a reasonable certainty. (*Housman v. Board of Medical Examiners, supra*, 84 Cal.App.2d at pp. 315-316; see also *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092.) Clear and convincing evidence "requires a

finding of high probability," and has been described as "requiring that the evidence be '"so clear as to leave no substantial doubt"; "sufficiently strong to command the unhesitating assent of every reasonable mind."' [Citation.]" (*In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

Analysis

3. The evidence on the current petition presents a stronger case for reinstatement than the evidence presented on the prior petition. Petitioner has continued his rehabilitative efforts and maintained his sobriety for several more years. He remains committed to his sobriety and expressed remorse for and insight into his prior sexual misconduct. His treating psychiatrist described his current sobriety and mental health as stable, and testified that petitioner is safe to return to practice under appropriate conditions, with a low risk of relapse of alcohol abuse if petitioner maintains the status quo. (Factual Finding 15.)

4. The Board has identified criteria to consider in evaluating a petitioner's evidence of rehabilitation and eligibility for reinstatement of a revoked or suspended license. (Cal. Code Regs., tit. 16, § 1360.2.) Those criteria apply to this petition for reinstatement under the terms of petitioner's stipulation to surrender his license. (Factual Finding 4.) The evidence presented about those criteria was as follows:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial. The acts under consideration as grounds for denial were serious and involved sexual misconduct with patients.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480. Petitioner was convicted of

misdemeanor driving under the influence of alcohol crimes in 2005 and 2006, which could also be considered as grounds for denial. (Factual Finding 6; see § 480, subd. (a)(1).) Petitioner also admitted to excessive use of alcohol until June 2013, which if done by a licentiate would be grounds to revoke or suspend a medical license. (Factual Finding 6; see §§ 480, subd. (a)(3), 2239.)

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b). Over eighteen years have elapsed since petitioner's sexual misconduct with patients, and petitioner's subsequent criminal convictions for driving under the influence of alcohol were 14 and 15 years ago. Petitioner's excessive use of alcohol ended almost seven years ago.

(d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e). Petitioner has a total criminal record of three misdemeanor convictions, the last of which was in 2006, with no evidence presented of any noncompliance with probation requirements. (Cal. Code Regs., tit. 16, § 1360.1, subds. (b), (d).) There was also no evidence presented of any dismissal proceedings under Penal Code section 1203.4. (Cal. Code Regs., tit. 16, § 1360.1, subds. (e).)

(e) Evidence, if any, of rehabilitation submitted by the applicant. Petitioner submitted evidence of continued sobriety, ongoing mental health treatment, regular participation in Alcoholics Anonymous, and stability in his personal life. He has the positive recommendations of his treating psychiatrist and other physicians and friends, and displayed a changed attitude from that which existed at the time of the misconduct.

5. Considering the above, petitioner is sufficiently rehabilitated to be able to return safely to the practice of medicine with appropriate conditions and terms to

ensure public protection. While petitioner's sexual misconduct with patients was the direct cause of his license surrender, the evidence indicates that alcohol abuse was a substantial factor in the misconduct, and that petitioner continued to abuse alcohol until 2013. Therefore, inclusion of the uniform probationary conditions for substance-abusing licenses is appropriate in this case, along with additional terms and conditions of probation appropriate to petitioner's sexual misconduct and his long absence from practice.

ORDER

The petition of Richard James Heiss, II, for reinstatement of his surrendered certificate is granted. Physician's and Surgeon's Certificate Number G 69342 shall be reinstated.

Pursuant to the Stipulated Surrender of License and Order, petitioner shall pay the Board its costs of investigation and enforcement in the amount of $5,000 prior to issuance of the reinstated certificate.

Upon issuance of the reinstated certificate, the certificate is immediately revoked, the revocation is stayed, and petitioner is placed on probation for seven years upon the following terms and conditions:

1. Clinical Diagnostic Evaluations and Reports

Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, petitioner shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and

surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with petitioner within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether petitioner has a substance abuse problem, whether petitioner is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to petitioner's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that petitioner is a threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

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

condition; the nature, duration and severity of petitioner's substance abuse problem or problems; and whether petitioner is a threat to himself or herself or the public.

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

The Board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether petitioner is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on petitioner based on the recommendations made by the evaluator. Petitioner shall not be returned to practice until he or she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that he or she has not used, consumed, ingested, or administered to himself or herself a prohibited substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

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

Petitioner shall not engage in the practice of medicine until notified by the Board or its designee that he or she is fit to practice medicine safely. The period of time that petitioner is not practicing medicine shall not be counted toward completion of the term of probation.

Petitioner shall undergo biological fluid testing as required in this Decision at least two (2) times per week while awaiting the notification from the Board if he or she is fit to practice medicine safely.

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

2. Notice of Employer or Supervisor Information

Within seven (7) days of the effective date of this Decision, petitioner shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Petitioner shall also provide specific, written consent for the Board, petitioner's worksite monitor, and petitioner's employers and supervisors to communicate regarding petitioner's work status, performance, and monitoring.

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

3. Biological Fluid Testing

Petitioner shall immediately submit to biological fluid testing, at petitioner'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. Petitioner shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Petitioner shall be tested on the date of the notification as directed by the Board or its designee. The Board may order petitioner 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 petitioner.

During the first year of probation, petitioner 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, petitioner shall be subject to 36 to 104 random tests per year. Only if there have 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, petitioner 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 petitioner 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 petitioner 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 petitioner 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. Petitioner 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 petitioner.

If a biological fluid test result indicates petitioner has used, consumed, ingested, or administered to himself or herself a prohibited substance, the Board shall order petitioner to cease practice and instruct petitioner to leave any place of work where petitioner is practicing medicine or providing medical services. The Board shall immediately notify all of petitioner's employers, supervisors and work monitors, if any, that petitioner 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 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 petitioner'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 petitioner and approved by the Board, alcohol, or any other substance the petitioner 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, petitioner 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 petitioner's rehabilitation.

4. Substance Abuse Support Group Meetings

Within thirty (30) days of the effective date of this Decision, petitioner shall submit to the Board or its designee, for its prior approval, the name of a substance

abuse support group which he or she shall attend for the duration of probation. Petitioner shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee.

Petitioner shall pay all substance abuse support group meeting costs.

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

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

5. Worksite Monitor for Substance-Abusing Licensee

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

the Board or its designee, a person in a position of authority who is capable of monitoring the petitioner at work.

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

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

Petitioner shall pay all worksite monitoring costs.

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

The worksite monitor shall verbally report any suspected substance abuse to the Board and petitioner's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written report that includes the date,

time, and location of the suspected abuse; petitioner's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

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

If the worksite monitor resigns or is no longer available, petitioner shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If petitioner fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

6. Violation of Probation Condition for Substance Abusing Licensee

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

A. If petitioner 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 petitioner 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 petitioner's expense. The cease-practice order issued by the Board or its designee shall state that petitioner must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of the determining the length of time a petitioner 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. Petitioner 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 petitioner for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of petitioner;

(4) Order increased documentation;

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

(6) Order petitioner 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 petitioner's expense;

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

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke petitioner's probation if he or she has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If petitioner violates probation in any respect, the Board, after giving petitioner 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 petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

7. Controlled Substances - Abstain From Use

Petitioner shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act,

dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to petitioner by another practitioner for a bona fide illness or condition.

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

If petitioner has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The petitioner shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the petitioner with a hearing within 30 days of the request, unless the petitioner stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and

other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

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

8. Alcohol - Abstain From Use

Petitioner shall abstain completely from the use of products or beverages containing alcohol.

If petitioner has a confirmed positive biological fluid test for alcohol, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The petitioner shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the petitioner with a hearing within 30 days of the request, unless the petitioner stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request

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

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

9. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, petitioner shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test petitioner's knowledge of the course. Petitioner shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

10. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a professionalism program that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Petitioner shall participate in and successfully complete that program. Petitioner shall provide any information and documents that the program may deem pertinent. Petitioner shall successfully

complete the classroom component of the program not later than six (6) months after petitioner's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

Petitioner 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.

11. Professional Boundaries Program

Within 60 calendar days from the effective date of this Decision, petitioner shall enroll in a professional boundaries program approved in advance by the Board or its designee. Petitioner, at the program's discretion, shall undergo and complete the program's assessment of petitioner's competency, mental health and/or neuropsychological performance, and at minimum, a 24-hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The program shall evaluate

petitioner at the end of the training and the program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire program not later than six (6) months after petitioner's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on petitioner's performance in and evaluations from the assessment, education, and training, the program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that petitioner can practice medicine safely. Petitioner shall comply with program recommendations. At the completion of the program, petitioner shall submit to a final evaluation. The program shall provide the results of the evaluation to the Board or its designee. The professional boundaries program shall be at petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

The program has the authority to determine whether or not petitioner successfully completed the program.

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

Petitioner shall not practice medicine until petitioner has successfully completed the program and has been so notified by the Board or its designee in writing.

12. Clinical Competence Assessment Program

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Petitioner shall successfully complete the program not later than six (6) months after petitioner's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of petitioner's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to petitioner's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require petitioner's on-site participation for a minimum of 3 and no more than 5 days as determined by the program for the assessment and clinical education evaluation. Petitioner shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the petitioner has demonstrated the ability to practice safely and independently. Based on petitioner's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with the program's recommendations.

Determination as to whether petitioner successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

Petitioner shall not practice medicine until petitioner has successfully completed the program and has been so notified by the Board or its designee in writing.

13. Psychotherapy

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

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

Petitioner shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require petitioner to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, petitioner is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over petitioner's license and the period of probation shall be extended

until the Board determines that petitioner is mentally fit to resume the practice of medicine without restrictions.

Petitioner shall pay the cost of all psychotherapy and psychiatric evaluations.

14. Monitoring Practice

Within 30 calendar days of the effective date of this Decision, petitioner shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with petitioner, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as petitioner's monitor. Petitioner shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, petitioner's practice shall be monitored by the approved

monitor. Petitioner shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If petitioner fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of petitioner's performance, indicating whether petitioner's practices are within the standards of practice of medicine, and whether petitioner is practicing medicine safely. It shall be the sole responsibility of petitioner to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, petitioner shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If petitioner fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, petitioner may participate in a professional enhancement program approved in advance by the Board or its designee, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Petitioner shall participate in the professional enhancement program at respondent's expense during the term of probation.

15. Solo Practice Prohibition

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

If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The petitioner shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the petitioner's practice setting changes and the petitioner is no longer practicing in a setting in compliance with this Decision, the petitioner shall notify the Board or its designee within 5 calendar days of the practice setting change. If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being

so notified. The petitioner shall not resume practice until an appropriate practice setting is established.

16. Third Party Chaperone

During probation, petitioner shall have a third party chaperone present while consulting, examining or treating female patients. Petitioner shall, within 30 calendar days of the effective date of the Decision, submit to the Board or its designee for prior approval name(s) of persons who will act as the third party chaperone.

If petitioner fails to obtain approval of a third party chaperone within 60 calendar days of the effective date of this Decision, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall cease the practice of medicine until a chaperone is approved to provide monitoring responsibility.

Each third party chaperone shall sign (in ink or electronically) and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party chaperone.

Petitioner shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient initials, address and telephone number; 2) medical record number; and 3) date of service. Petitioner shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

Petitioner is prohibited from terminating employment of a Board-approved third party chaperone solely because that person provided information as required to the Board or its designee.

If the third party chaperone resigns or is no longer available, petitioner shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name of the person(s) who will act as the third party chaperone. If petitioner fails to obtain approval of a replacement chaperone within 30 calendar days of the resignation or unavailability of the chaperone, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall cease the practice of medicine until a replacement chaperone is approved and assumes monitoring responsibility.

Petitioner shall provide written notification to petitioner's patients that a third party chaperone shall be present during all consultations, examination, or treatment with female patients. Petitioner shall maintain in the patient's file a copy of the written notification, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the notification for the entire term of probation.

17. Notification

Within seven (7) days of the effective date of this Decision, the petitioner shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner, at any other facility where petitioner 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 petitioner. Petitioner 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.

18. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, petitioner is prohibited from supervising physician assistants and advanced practice nurses.

19. Obey All Laws

Petitioner 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.

20. Quarterly Declarations

Petitioner 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.

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

21. General Probation Requirements

Compliance with Probation Unit: Petitioner shall comply with the Board's probation unit.

Address Changes: Petitioner shall, at all times, keep the Board informed of petitioner'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: Petitioner shall not engage in the practice of medicine in petitioner's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

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

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

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

22. Interview with the Board or its Designee

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

23. Non-practice While on Probation

Petitioner 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 petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If petitioner resides in California and is considered to be in non-practice, petitioner shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve petitioner from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

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

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

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

Periods of non-practice for a petitioner residing outside of California will relieve petitioner of the responsibility to comply with the probationary terms and conditions, with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

24. Completion of Probation

Petitioner 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, petitioner's certificate shall be fully restored.

25. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the Board, after giving petitioner 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 petitioner 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.

26. License Surrender

Following the effective date of this Decision, if petitioner ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request to surrender his license. The Board reserves the right to evaluate petitioner'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, petitioner shall within 15 calendar days deliver petitioner's wallet and wall certificate to the Board or its designee and petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

27. Probation Monitoring Costs

Petitioner 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: April 13, 2020

DocuSigned by:
Thomas Heller
THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings