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

In the Matter of the Petition to Reinstate the Revoked Certificate of: Pez Abrahams Physician's and Surgeons Certificate No. A 71500 Petitioner.	Case No. 800-2020-063423

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 2, 2021.

IT IS SO ORDERED: May 3, 2021.

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 to Reinstate the Revoked Certificate of:

PEZ ABRAHAMS, Petitioner

Agency Case No. 800-2020-063423

OAH No. 2020110218

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter remotely by video and teleconference on March 1, 2021.

Peter Osinoff, Attorney at Law, appeared on behalf of petitioner Pez Abrahams, who was present.

Brenda P. Reyes, Deputy Attorney General, appeared under Government Code section 11522.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on March 1, 2021.

FACTUAL FINDINGS

Jurisdiction

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number A 71500 to petitioner on May 4, 2000. The certificate was scheduled to expire on October 31, 2013. On September 4, 2013, the Board placed the certificate on automatic suspension based on petitioner's criminal conviction for fraud. The certificate expired on October 31, 2013, and petitioner did not renew it. On August 4, 2015, petitioner surrendered his certificate in accordance with a Decision on Stipulated Surrender of License and Accusation and Petition to Revoke Probation in case no. D1-2007-184776.

2. Petitioner filed a Petition for Penalty Relief, Reinstatement of Revoked/Suspended Certificate, dated December 13, 2019 (Petition).

Petitioner's Disciplinary History

2011 Stipulated Settlement and Probation

3. In a Decision and Order effective July 15, 2011, in case no. 17-2007-184776 (2011 Decision), the Board adopted a Stipulated Settlement and Disciplinary Order, revoked petitioner's certificate, stayed the revocation, and placed petitioner on seven years' probation on terms and conditions.

4. The Board's executive officer filed the Accusation in case no. 17-2007-184776 on May 25, 2010, and a First Amended Accusation on January 21, 2011. In the Stipulated Settlement, petitioner agreed that, if the Board ever petitioned for

revocation of probation, all of the charges and allegations in the First Amended Accusation would be deemed true, correct, and admitted by petitioner.

5. The First Amended Accusation included factual allegations to support causes for discipline against petitioner for (a) his sexual exploitation of patient E.S., under Business and Professions Code section 726; (b) gross negligence in petitioner's care and treatment of patient E.S., under Business and Professions Code section 2234, subdivision (b); and (c) petitioner's aiding or abetting the unlicensed practice of medicine at the Winnetka Medical Group, which petitioner owned, in violation of Business and Professions Code section 2264.

2013 LICENSE SUSPENSION

6. On September 4, 2013, the Board issued petitioner a Notice of Automatic Suspension of License, based on petitioner's conviction in *U.S. v. Pezhman Ebrahimzadeh, aka Pez Abrahams* (2013, C.D. Cal., no. CR 12-1191) (*U.S. v. Abrahams*). The Board issued the suspension under the authority of Business and Professions Code section 2236.1 (automatic suspension when certificate holder convicted of a felony).

7. In *U.S. v. Abrahams*, petitioner pled guilty to and was convicted of violating Title 18 United States Code section 1347 (health care fraud), a felony. The court sentenced petitioner to serve 42 months in federal prison and ordered him to pay restitution in the amount of $3,184,617, serve three years of supervised probation upon his release from prison, and not be employed in any position requiring licensure without prior approval of his probation officer. Petitioner was incarcerated at Safford Federal Correctional Institution in Safford, Arizona.

8. The facts and circumstances leading to the fraud conviction were that petitioner, as the owner of and sole physician at Winnetka Medical Group, submitted false and fraudulent claims for payment to the Medicare program from September 2008 to May 2012 for services he had not provided.

2015 LICENSE SURRENDER

9. The Board's executive officer filed an Accusation and Petition to Revoke Probation on March 9, 2015, based on the criminal conviction. In a Decision adopting a Stipulated Surrender of License and Order effective on August 4, 2015, in case no. D1-2007-184776 (2015 Decision), the Board accepted the surrender of petitioner's certificate.

10. Upon the filing of the Petition to Revoke Probation, all of the charges and allegations in the First Amended Accusation in case no. 17-2007-184776 were deemed true, correct, and admitted by petitioner. (See Factual Finding 4, ante.) The First Amended Accusation alleged and charged that petitioner engaged in the sexual exploitation of patient E.S., committed gross negligence in the treatment of patient E.S., and aided and abetted the unlicensed practice of medicine at Winnetka Medical Group. (See Factual Finding 5, ante.)

11. In the Stipulated Settlement, petitioner agreed that, if he were ever to file a petition for reinstatement, "all of the charges and allegations contained in Accusation No. D1-2007-184776 shall be deemed to be true, correct and admitted by [petitioner] when the Board determines whether to grant or deny the petition." (Ex. 6, p. 61.)

12. The Accusation and Petition to Revoke Probation stated factual allegations, based on petitioner's fraud conviction in *U.S. v. Abrahams*, to support a cause (a) for discipline against petitioner for conviction of a crime substantially related to the qualifications, functions, or duties of a physician; and (b) to revoke petitioner's probation, imposed under the 2011 Decision, for violating probation condition 7, which required petitioner to obey all laws.

THE PETITION

13. Upon the filing of the Petition that is the subject of this matter, all of the charges and allegations contained in the Accusation in case no. D1-2007-184776 were deemed to be true, correct, and admitted by petitioner. (See Factual Finding 11, ante.) The Accusation alleged and charged that petitioner was convicted, in *U.S. v. Abrahams*, of a crime substantially related to the qualifications, functions, or duties of a physician, and that petitioner's conviction supported revocation of probation based on his violation of probation condition 7, which required petitioner to obey all laws. (See Factual Finding 12, ante.)

Mitigation and Rehabilitation

14. Petitioner testified he came to this country alone at age 13 in 1979, due to the onset of the Iran revolution. He lived with an American family and obtained a student visa. He obtained a Bachelor of Science degree from UCLA in biochemistry, and a medical degree from Rush Medical College in Chicago. Petitioner started his residency at the Chicago Medical School, transferred to L.A. County USC Medical Center for one more year, and did a preliminary internship in general surgery.

Petitioner was licensed in 2000. Prior to revocation, he primarily performed nonsurgical, noninvasive cosmetic medicine.

15. Petitioner testified he is sorry about his criminal acts, that he was irresponsible and wrong, and his misconduct will never recur. Petitioner committed Medicare fraud from 2008 to 2012 because, he testified, he felt he would not be valued unless he appeared more prosperous than he was. He felt inadequate, was not morally focused, and looked only at financial gain, telling himself he deserved to have "flashy things." A one-year ethics course petitioner was required to take while on probation in 2011 or 2012 helped him begin to fundamentally change his character. His values are no longer driven by money.

16. Petitioner expressed gratitude for being caught committing Medicare fraud, testifying he could not otherwise have become the person he is today. Being convicted changed his values; he underwent more than five years of psychotherapy, performed volunteer work, and vowed not to be the same person who shamed himself, his family, and his community.

17. The 2010 case charging petitioner with aiding and abetting the unlicensed practice of medicine led to his criminal conviction in 2012, when he was placed on 18 months' summary probation. The case was dismissed after six months, on December 6, 2012. Petitioner testified he did not know his assistant had been engaging in the unlawful practice of medicine, "but I don't want to minimize this, I pled no contest." He had not yet been incarcerated on the federal Medicare charge.

18. Petitioner's certificate expired in October 2013; petitioner did not renew it. He does not remember when he ceased practicing medicine.

19. Petitioner has paid about $2 million of the approximately $3 million the court ordered him to pay in restitution on the federal Medicare fraud charge. He used all his assets to pay the $2 million, liquidating three pieces of real estate, including his house and his medical clinic property. Petitioner continues to pay $25 per month, and is current in his payments. He completed the other terms of criminal probation, including 300 hours of community service, by November 2018.

20. While in prison, petitioner took a six-month Moneysmart course taught by someone who had committed financial crimes, addressing legal business practices, as well as a program on post-traumatic stress disorder (PTSD) to help him adjust to prison; the PTSD program also helped petitioner develop compassion for others. Petitioner attended 12 weeks of Alcoholics Anonymous (AA) and Narcotics Anonymous meetings, not because he was addicted to alcohol or drugs, but because he found the 12-step programs share features of what he described as his spiritual practices. After petitioner's release from prison, he continued attending AA meetings weekly until Covid-19 forced an end to in-person meetings.

21. In June 2015, petitioner was released from prison to a halfway house in Van Nuys, and four months later he was released from the halfway house. He remained on criminal probation. Petitioner completed a residential drug and alcohol program (RDAP), beginning while he was in prison and continuing while he was in the halfway house, for a total of 500 hours. While in prison, petitioner attended RDAP group sessions every day for about six months. He discussed the errors and aberrant behavior that led to his conviction, did some cognitive behavioral therapy, and learned how to avoid recidivism.

22. In 2014, while in federal prison in Arizona, petitioner was extradited to Los Angeles County jail to face recently filed criminal charges of sexual exploitation and improper touching of a patient during an exam in June 2007. Petitioner was arrested in connection with the alleged crime in 2007; he was interviewed by the police and released. On October 30, 2014, both counts in that California criminal case were dismissed, and petitioner was returned to federal prison in Arizona. Petitioner testified he was not told the reason for the dismissal.

23. While petitioner was in L.A. County jail awaiting trial for sexual exploitation, Rabbi Zvi Boyarsky visited petitioner in the capacity of a chaplain. Rabbi Boyarsky has worked for the Aleph Institute, which assists incarcerated people, for 15 years. Rabbi Boyarsky met petitioner about 10 times and discussed transformation, remorse, and rebuilding. Rabbi Boyarsky believes petitioner has a genuine desire to make amends, turn his life around, and become a better person with a more acute sense of ethics. Petitioner blamed no one but himself for his actions and felt very remorseful about the damage he had caused to others and to his family.

24. After release from the halfway house, petitioner and his family have visited Rabbi Boyarsky at home, and petitioner worked for the Aleph Institute for a time. Rabbi Boyarsky testified he observed petitioner working hard to become a moral, kind human being, and petitioner took their conversations about values seriously. Rabbi Boyarsky has stayed in touch with petitioner. Petitioner is in a stable family relationship and has a very loving family. Petitioner told Rabbi Boyarsky he wants to become a doctor again so he can help people and support his family. Rabbi Boyarsky believes petitioner has genuinely transformed, based on numerous conversations and his long experience with incarcerated people. Petitioner has become focused on values

and ethics and how to withstand temptations, and has shown genuine and sincere remorse; that is why Rabbi Boyarsky agreed to testify in this matter.

25. In addition to programs the courts or the Board ordered, such as a 2011 course on professional boundaries, petitioner participated in various programs in prison, including RDAP, AA, PTSD counseling, and Moneysmart, and talking with Rabbi Boyarsky and, later, Rabbi Camras (see Factual Finding 31, infra). These programs were not mandatory for petitioner. He testified he wanted to participate due to his desire to become a better person.

26. Petitioner was in psychotherapy after his release from the halfway house. He saw Ladan Safvati, LMFT, for five years. Mr. Safvati confirmed this in a letter dated February 4, 2021. Petitioner testified that, through therapy, he learned that positive moral and therapeutic change are inextricable. He and Mr. Safvati discussed petitioner's inadequacies, the reasons petitioner committed illegal acts, and petitioner's family. They explored how to replace his prior values with healthy ones and implement adaptive coping with stresses. Petitioner testified that therapy helped him find a solid ground of positive core values and harness his selfish impulses. He feels he has a new moral authority and is living with moral integrity.

27. Petitioner volunteers in the community. He made presentations with the American Heart Association from 2016 to March 2020, and continues to volunteer virtually. He also volunteers with Paralyzed Veterans of America, helping veterans who have spinal cord injuries to lead a better life while incapacitated. He counts as success his ability to give back to society to reciprocate for what he took illegally.

28. Petitioner also defines success as being a good role model for his 15-year-old son and 9-year-old daughter. Petitioner's mother died 10 days before the

hearing. While visiting her in the Intensive Care Unit, petitioner saw prominent doctors he had studied with, and knew he wanted to get his life back together and practice medicine again.

29. Petitioner has not been able to find gainful employment. He worked for Uber and Lyft off and on in 2016 and 2017, but stopped because his wife needed the car. Petitioner worked as a receptionist at Perfect Pups Spa, a pet grooming shop, in Simi Valley while residing in the halfway house. Petitioner testified he has sent out between 3,000 and 4,000 resumes online, with no success. He has applied at "big box" stores, also with no success, as well as for a position as a veterinary assistant in Northridge. He receives Supplemental Nutrition Assistance Program and CalFresh benefits, and he and his family are on Medi-Cal. He testified he is very frugal.

30. From 2015 to the present, petitioner has accumulated many continuing medical education (CME) credits. Most are for online courses in general practice-related fields, some focused on cardiology, opioids, diabetes, and oncology. Petitioner also regularly reads medical journals online, including the New England Journal of Medicine and others. He has attended medical billing seminars and teleconferenced weekly with disciplined licensees (Ex. K, pp. 3 & 4.) Petitioner testified he has stayed up to date because medicine is his passion and because he hopes to have his certificate reinstated.

31. Rabbi Richard Camras testified at hearing and wrote a letter to support the Petition. Rabbi Camras met petitioner at his synagogue just prior to petitioner's incarceration in 2013; petitioner expressed remorse and said he had to begin his rehabilitation. After petitioner was released from the halfway house in October 2015, Rabbi Camras met him several times; petitioner said he wanted to start over,

rehabilitate, and volunteer at the synagogue. Petitioner and his family attended some religious services, petitioner joined monthly sessions of the synagogue's men's group to discuss ethics until the Covid-19 pandemic prevented such meetings, and petitioner volunteered monthly at the synagogue to help prepare lunches.

32. Outside the synagogue, petitioner took ethics classes through the Aleph Institute. Petitioner appeared willing to serve the community and offered to pay back all the money the synagogue congregation had lent his family for membership fees and his daughter's preschool tuition. He told Rabbi Camras he wants to prove to himself, his family, and society that he has rehabilitated himself. Rabbi Camras believes petitioner is sincerely committed to rehabilitation, but he has not seen petitioner since the last men's group meeting in February 2020. Petitioner is not a current member of the synagogue; Rabbi Camras does not know whether petitioner attends streaming services online. Rabbi Camras's only engagement with petitioner over the past year was during a telephone call when petitioner's mother died.

33. Petitioner discussed the fraud conviction with Rabbi Camras, not the matters involving sexual exploitation and aiding the unlicensed practice of medicine. Petitioner said he was driven by money and "dark spirits," which were no longer part of his decision-making. He admitted his crime publicly, expressed remorse, and vowed not to repeat it. Petitioner also felt remorseful about not being able to take care of family financially and pay his debt to society, and asked the rabbi for help finding a job.

34. Petitioner offered character reference letters in support of his Petition, signed under penalty of perjury by Homayoun Sharim, M.D., and Hossain Sahlolbei, M.D.

a. Dr. Sharim, a family friend, wrote, in a letter dated December 10, 2019, that he has known petitioner for over 30 years. He is aware of the circumstances leading to petitioner's criminal convictions and the revocation of his medical license. "Knowing him as well as I do, I can relay to the Board the sincere and genuine repentance he feels for violating the principles he had worked so diligently to uphold throughout his life. . . . [¶] I trust [petitioner] and respect him as a dedicated physician in his field. . . . I have experienced his integrity, commitment, and love of the profession on numerous occasions. Allowing him to have his medical license reinstated will be of great service to the community. [¶] He has made significant reformative strides that I am aware of to reinvent himself," such as his volunteer activities, his obtaining psychotherapy, and his attending ethics and boundary seminars at the UCI School of Medicine. Petitioner cultivates good virtues to prevent relapses and to protect patients and the public. "His present character could in no way be tempted to repeat his prior or any misdeeds." (Ex. I)

b. Dr. Sahlolbei wrote, in a letter dated September 5, 2019, that he has known petitioner for nearly 20 years. He is familiar with the circumstances leading to petitioner's license revocation. Petitioner has openly and honestly discussed and expressed his regrets about his fraudulent business practices. "He now has a better appreciation of boundaries to prevent lapses of judgement that can harm his, his patients, his practice and his family." (Ex. H.) Petitioner has pursued rehabilitation by performing charitable work, participating in therapeutic programs and psychotherapy, continuing his medical education, and participating in AA. "I believe he is sincere in his

rehabilitation effort, his remorse, and desire to go forward on an honest path in the future practice of medicine." (*Ibid.*)[1]

35. Petitioner has testified he learned, through the many programs he has taken and many years of therapy, the impact his wrongdoing had on others. He knows he betrayed the public, disappointed his family, and alienated his friends. Petitioner is ashamed that he is still tying up state resources. He has been poor for some time, but that has not changed the good values that guide his conduct.

36. If his license is reinstated, petitioner wishes to work in a general practice full time as a salaried employee of a clinic or hospital or medical group. That would allow him to serve and to have a meaningful impact on public health and welfare. Petitioner currently has received two verbal offers of employment, one from a West Covina Hospital doctor, and one from Dr. Sharim.

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[1] In a Decision in case no. 09-2012-228346 effective November 3, 2017, the Board adopted a Stipulated Settlement and Disciplinary Order revoking physician's and surgeon's certificate no. G84450 issued to Dr. Sahlolbei, staying the revocation, and placing Dr. Sahlolbei on four years' probation, which is set to end in November of this year. The underlying First Amended Accusation (FAA) alleged that Dr. Sahlolbei was convicted in state court of violating Penal Code section 487 (grand theft), and that the California Supreme Court reversed the conviction and remanded the matter for further proceedings, which were pending when the FAA was filed. The FAA also alleged counts for gross negligence, repeated negligent acts, and general unprofessional conduct. (See ex. 8.)

LEGAL CONCLUSIONS

1. A person whose certificate has been revoked may petition the Board for reinstatement. "The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons certificated in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed." (Bus. & Prof. Code, § 2307, subd. (c).)

2. The ALJ hearing the petition "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." (Bus. & Prof. Code, § 2307, subd. (e).) The ALJ may recommend reinstating a certificate and imposing probationary terms and conditions. (Bus. & Prof. Code, § 2307, subd. (f).)

3. In a proceeding to reinstate a revoked certificate, the burden rests on the petitioner to prove rehabilitation and entitlement to a restored certificate. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The petitioner must present proof of rehabilitation strong enough to overcome the Board's former adverse determination. (*Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Id.; Housman v. Bd. of Medical Examiners* (1948) 84 Cal.App.2d 308.) Petitioner has sustained his burden of proof.

4. Acts of fraud and dishonesty vitiate the obligation of utmost honesty and integrity doctors owe to their patients. (See *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal. App. 3d 461, 470.) Protection of the public "shall be the highest priority" for the Board in exercising disciplinary authority. (Bus. & Prof. Code, § 2229.) In considering license disciplinary action or relief from such action, an ALJ "shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence." (Bus. & Prof. Code, § 2229, subd. (b).) The ALJ is to consider such criteria as the nature and severity of the petitioner's act or crime, the time elapsed since the act or crime, subsequent acts or crimes, compliance with criminal probation, expungement of any conviction, and other evidence of rehabilitation. (Cal. Code Regs, tit. 16, §§ 1360.1, 1360.2.) "Where rehabilitation and protection are inconsistent, protection shall be paramount." (Bus. & Prof. Code, § 2229, subd. (c).)

5. Petitioner engaged in significant acts of misconduct of various different kinds over a significant period of time. Nevertheless, petitioner has convincingly demonstrated rehabilitation, as set forth in Factual Findings 14 through 36. His commitment to honest business practices, ethics, and respecting boundaries, and his impressive rehabilitative programs and commitment to therapy, his volunteer work, and his assiduous pursuit of continuing medical education, demonstrate that, with effective terms and conditions of probation that will ensure petitioner's medical skills are current, monitor his ongoing rehabilitation, and protect the public, petitioner will not continue to pose a threat to the public if the Board were to reinstate his certificate.

6. Cause exists, therefore, under Business and Professions Code section 2307, to grant petitioner's request for reinstatement of his certificate, under terms and

conditions, as it would be consistent with public interest, based on Factual Findings 3 through 36.

ORDER

The Petition of petitioner Pez Abrahams is granted. Physician's and Surgeon's Certificate no. A 71500 is reinstated. That certificate is, however, immediately revoked, the revocation is stayed, and petitioner's certificate is placed on probation for five years on the following terms and conditions.

1. Clinical Competence Assessment Program

Within 120 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 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 three and no more than five 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.

2. Education Course

Within 90 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 are in satisfaction of this condition.

3. Psychiatric Evaluation

Within 60 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, petitioner shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Petitioner shall pay the cost of all psychiatric evaluations and psychological testing.

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

4. 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. 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.

5. 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 CME requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the First Amended Accusation in case no. 17-2007-184776 and in the Accusation in case no. D1-2007-184776, 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.

6. 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 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 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 First Amended Accusation in case no. 17-2007-184776 and in the Accusation in case no. D1-2007-184776, 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.

If petitioner fails to complete the program within the designated time period, petitioner shall cease the practice of medicine within three (3) calendar days after being notified by the Board or its designee that petitioner failed to complete the program.

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7. Third Party Chaperone

During probation, petitioner shall have a third-party chaperone present while consulting, examining or treating female patients. Petitioner shall, within 60 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 90 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 five 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 calendar days after being so notified. Petitioner shall cease the practice of medicine until a replacement chaperone is approved and assumes monitoring responsibility.

8. Monitoring - Practice/Billing

Within 60 calendar days of the effective date of this Decision, petitioner shall submit to the Board or its designee for prior approval as practice and billing monitors, the names 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 petitioner'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 90 calendar days of the effective date of this Decision, and continuing throughout probation, petitioner's practice and billing 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 90 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 monitors shall submit quarterly written reports 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 or billing, or both, and whether petitioner is practicing medicine safely, billing appropriately or both. 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 five 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 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 petitioner's expense during the term of probation.

9. 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 120 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 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, 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 five 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 calendar days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

10. Notification

Within seven days of the effective date of this Decision, 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.

11. Supervision of Physician Assistants and Advanced Practice Nurses

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

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12. 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.

13. 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.

14. 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).

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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 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.

15. 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 upon reasonable prior notice throughout the term of probation.

16. 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 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; and Quarterly Declarations.

17. 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.

18. 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.

19. 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 or her 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.

20. 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: 03/30/2021

Howard W. Cohen (Mar 30, 2021 10:49 PDT)

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings