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

In the Matter of the Petition for Penalty Relief-Reinstatement of Certificate of:	)	
MILTON PEECHUAN HUANG, M.D.	)	**Case No. 27-2013-229738**
	)	**OAH No. 2014010133**
Petitioner.	)	

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 November 26, 2014.

IT IS SO ORDERED October 29, 2014.

MEDICAL BOARD OF CALIFORNIA

By: _____
Jamie Wright, J.D., Chair
Panel A

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PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on June 17, 2014, in Oakland, California.

Joshua Templet, Deputy Attorney General, represented the Office of the Attorney General, Department of Justice.

John Fleer, Attorney at Law, represented petitioner Milton Peechuan Huang, who was present at the hearing.

The matter was submitted for decision on June 17, 2014.

FACTUAL FINDINGS

1. On March 8, 2002, the Medical Board of California (board) issued physician and surgeon's certificate number C 5079 to Milton Peechuan Huang (petitioner). The certificate number was subsequently changed to CFE 50791. Retired status was granted at petitioner's request on April 16, 2008. Effective December 24, 2009, petitioner surrendered his certificate.

2. On November 6, 2008, the board filed accusation number 03-2008-189734 and initiated disciplinary proceedings against petitioner. The accusation alleged that while working as a psychiatrist or psychotherapist for the University of California at Santa Cruz (UCSC) Student Health Center in 2007, petitioner had sexual contact with a patient, a 21 year-old UCSC female student. Effective December 24, 2009, the board and petitioner entered into a Stipulation for Surrender of Physician and Surgeon's Certificate and Order (Stipulation and Order) to resolve the accusation. Pursuant to the Stipulation and Order

petitioner surrendered his certificate to practice medicine and lost all rights and privileges as a physician and surgeon in California.

3. On or about January 14, 2013, petitioner filed the pending Petition for Penalty Relief seeking reinstatement of his certificate.

4. Petitioner admits engaging in the conduct alleged in the accusation. He acknowledges that his conduct was completely inappropriate and wrong, even though at the time he believed in was in love with the student. It was the first time he had ever been sexually attracted to a patient and he did not know how to handle it. Petitioner terminated the relationship in December 2007. In early 2008, the student filed a complaint with UCSC. In February 2008 petitioner resigned from his employment with UCSC and in March 2008 he closed his small private psychotherapy practice. Petitioner states that given the circumstances at the time, he felt it was inappropriate for him to be seeing patients. Petitioner also voluntarily placed his license on inactive (retired) status.

Petitioner has never denied engaging in inappropriate sexual conduct with the UCSC student. He has always admitted his wrongdoing and consented to settlement of the lawsuit later filed against him by the student. The settlement required him to contribute financially to the settlement. Stipulating to surrender of his medical certificate was also part of petitioner's acknowledgment of his wrongdoing.

5. During the period between surrender of his license and his petition for reinstatement, petitioner embarked on a path of personal rehabilitation. In 2011 petitioner completed a course on boundary violations that he feels provided him with significant insight regarding what led to his boundary violation with the student. The course included a post-course weekly follow-up teleconference during which the participants discussed issues related to professional boundaries. Petitioner still participates in this weekly teleconference. Petitioner also participated, and continues to participate, in psychotherapy to address such issues as boundaries, self-esteem, making amends, strengthening integrity and making good choices. He feels the therapy helped him improve his personal connections with his wife and family, gave him greater awareness of past emotional patterns that made him susceptible to a boundary violation, and helped him understand how to set and maintain appropriate boundaries.

6. On February 1, 2013, psychologist Mark R. Zaslav undertook a psychological evaluation of petitioner to determine his safety to resume practice. Upon conclusion of the evaluation, it was Dr. Zaslav's opinion that petitioner does not have any mental disorder and is safe to return to the practice of medicine without restriction. Dr. Zaslav administered a series of psychological tests to petitioner. Petitioner's results were all within the normal limits and indicated petitioner is not suffering from a depressive illness, is well-adjusted, does not have a predilection to harm or exploit others, and is currently happy. Dr. Zaslav also conducted an extensive interview of petitioner. The interview revealed that at the time of the misconduct, petitioner was in a deep crisis of adjustment, feeling alienated from his family and lacking the skills to handle a needy, seductive patient or control his own

emotions. However, petitioner ended the relationship quickly, which is uncharacteristic of a predatory clinician, and immediately accepted responsibility. He thereafter undertook what Dr. Zaslav characterized as an "impressive course of rehabilitation," that included extensive self-reflection, coursework and therapy. Dr. Zaslav also noted that petitioner never blamed the victim or engaged in self-justification during the interview, but instead seemed focused on self-analysis and improvement. Dr. Zaslav concluded from the interview that petitioner had made a significant effort to improve himself through seeking assistance and throwing himself into reinventing himself. In Dr. Zaslav's opinion, petitioner has improved to the point where there is "virtually no chance" that petitioner will engage in the same type of misconduct in the future.

7. Petitioner currently lives in Santa Cruz, California with his wife and two teenage children. He works as a nuerofeedback therapist at the office of clinical psychologist Mark Steinberg. He has held this position, which does not require a medical license, since 2010. His main duties involve direct patient care in the administration of EEG neurofeedback. Petitioner enjoys the neurofeedback field and has completed the necessary classes to become a diplomat in quantitative analysis. However, petitioner desires to return to the practice of medicine and is seeking reinstatement of his medical certificate. If his certificate is reinstated, petitioner planes to "move back into practice carefully," while continuing to work with Dr. Steinberg on a part-time basis.

8. Petitioner obtained his undergraduate degree from Stanford University in 1986 and his medical degree from the University of Texas Health Science Center in 1990. Between 1990 and 1994, he completed his residency in psychiatry at the University of Michigan. From 1994 to 1996 petitioner was a research fellow at the same institution. Prior to surrender of his medical license, petitioner also served as a lecturer, an adjunct professor, and the Assistant Director of the Psychiatric Information Program at the University of Michigan. He also engaged in scientific research and held consulting positions with various groups.

9. Petitioner submitted several letters and declarations in support of his petition for reinstatement. Loic Jassey, Ph.D., MFT, began providing therapy to petitioner in August 2010 and continues to see petitioner. He submitted two letters and a declaration in support of petitioner. In a declaration executed April 17, 2014, Jassey states that petitioner has "shown a sincere and dedicated effort to rehabilitate himself and to do a thorough inventory and assessment of any and all issues pertaining to his sexual misconduct in 2007." Jassey opines that petitioner now has the resources to manage any future crisis, without resorting to self-destructive behavior or harmful misconduct, and states he "strongly support[s] the reinstatement of [petitioner's] medical license."

In a declaration dated May 26, 2014, Mark Steinberg, Ph.D., writes that petitioner has been employed as a neurotherapist in his office since 2010. During their association, Steinberg has observed that petitioner has a keen intellectual curiosity, is liked and respected by their patients, is competent, perceptive and patient, has great clinical skills, and always maintains

appropriate boundaries, both with patients and office procedures. Steinberg is aware of petitioner's misconduct but nevertheless "recommends him without reservation."

In a letter dated November 20, 2014, Joseph Weintraub, M.D., writes that he is a friend of petitioner and has found him to be a thoughtful, intelligent and warm person. Weintraub indicates he is aware of petitioner's misconduct but opines petitioner has learned from his error and that it will not reoccur.

In a letter dated September 13, 2012, psychologist Daniel Blumberg, M.D., confirms that petitioner has been seeing a therapist and has benefitted from the therapy. Blumberg indicates he supports reinstatement of petitioner's medical certificate.

10. Petitioner has completed several continuing medical education courses, including the Professional Boundaries and Ethics: Maintenance and Accountability Seminar Series on January 4, 2012, and the PBI Professional Boundaries Course on October 14-16, 2011.

LEGAL CONCLUSIONS

1. The burden of proof is on petitioner to establish the he is both rehabilitated and fit to practice medicine. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308; *Tardiff v. State Bar* (1980) 27 Cal.3d 395.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.)

2. Business and Professions Code section 2307, subdivision (a), authorizes an individual whose certificate has been revoked to petition the board for reinstatement or modification of penalty. Subdivision (e) of that same section provides:

> The panel of the board or the administrative law judge 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.

Subdivision (f) authorizes the administrative law judge reinstating a certificate to recommend the imposition of any terms and conditions deemed necessary.

California Code of Regulations, title 16, section 1360.2, provides:

> When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provision of Section

11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(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 [Business and Professions Code] Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b). . . .

(e) Evidence, if any, of rehabilitation submitted by the applicant.

3. Petitioner has established that he is a good candidate for reinstatement. He has engaged in a substantial course of rehabilitation designed to address public safety concerns raised by his misconduct in 2007. He has not engaged in any subsequent misconduct but has instead devoted himself to self-improvement. Several of petitioner's colleagues, who are aware of his sexual misconduct in 2007 and his rehabilitative efforts, support his reinstatement to the practice of medicine. And a recent psychiatric evaluation indicates he is safe to practice. The significant evidence of rehabilitation submitted by petitioner demonstrates that it would not be against the public interest to reinstate his license on a probationary basis.

ORDER

Physician and Surgeon's Certificate Number CFE 50791issued to petitioner Milton Peechuan Huang is hereby reinstated. Said certificate shall be immediately revoked, the revocation stayed and petitioner's certificate placed on probation for three (3)years upon the following terms and conditions:

1. Psychiatric Evaluation. Within 30 calendar days of the effective date of this decision, and on whatever periodic basis as 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.

Petitioner shall not engage in the practice of medicine until notified by the board or its designee that petitioner is mentally 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.

2. 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.

3. 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.

4. Practice Monitor. 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 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 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, 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 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 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, 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.

5. 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, petitioner's practice setting changes and petitioner is no longer practicing in a setting in compliance with this Decision, 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. Petitioner shall not resume practice until an appropriate practice setting is established.

6. Third Party Chaperone. During probation, petitioner shall have a third party chaperone present while consulting, examining or treating 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 60 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.

7. Notification. Within seven (7) days of the effective date of this decision, petitioner shall provide a true copy of this decision 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.

8. Supervision of Physician Assistants. During probation, petitioner is prohibited from supervising physician assistants.

9. 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.

10. 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.

11. General Probation Requirements. Petitioner shall comply with the board's probation unit and all terms and conditions of this decision. 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). Petitioner shall not engage in the practice of medicine in petitioner's or a patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility. Petitioner shall maintain a current and renewed California physician's and surgeon's license.

    Petitioner shall immediately inform the division 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.

12. Interview with the Board or Its Designee. Petitioner shall be available in person for interviews either at petitioner's place of business or at the probation unit office, with the board or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

13. 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 in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the board. All time spent in an intensive training program which has been approved by the board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A board-ordered suspension of practice shall not be considered as a period of non-practice.

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

    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 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; and General Probation Requirements.

14. 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.

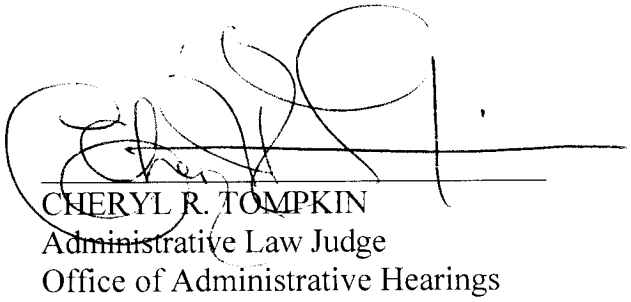
15. Violation of Probation. Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was

stayed. If an accusation, 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.

16. 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.

17. 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.

DATED: July 16, 2014



CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings