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

In the Matter of the Petition to Revoke Probation Against: HENRY DAVIS HARRIS, M.D. 4632 1/2 St. Charles Place Los Angeles, CA 90019 Physician's and Surgeon's Certificate No. A 39781 Respondent.	Case No. 800-2016-028447 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On February 28, 2017, Complainant Kimberly Kirchmeyer, in her official capacity as the Executive Director of the Medical Board of California (Board), filed a Petition to Revoke Probation in case number 800-2016-028447 against Henry Davis Harris, M.D. (Respondent).

2. On April 26, 1983, the Board issued Physician's and Surgeon's Certificate No. A 39781 to Respondent. That license expired on January 31, 2017, and has not been renewed.

3. On February 28, 2017, Richard M. Acosta, an employee of the Complainant Agency, served by Certified Mail a copy of the Petition to Revoke Probation No. 800-2016-028447, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which

was and is 4632 ½ St. Charles Place, Los Angeles, California 90019. A copy of the Petition to Revoke Probation, the related documents, and Declaration of Service are attached as Exhibit A, and are incorporated herein by reference.

4. Service of the Petition to Revoke Probation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c). On or about April 29, 2017, the aforementioned documents were returned by the U.S. Postal Service marked "Unclaimed/Max Hold Time Expired." A copy of the U.S. Postal Service tracking information is attached as Exhibit B, and is incorporated herein by reference.

5. Business and Professions Code section 118 states, in pertinent part:

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the license on any such ground."

6. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

Respondent failed to file a Notice of Defense within 15 days after service upon him of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of Petition to Revoke Probation No. 800-2016-028447.

7. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibits A and B, finds that the allegations in Petition to Revoke Probation No. 800-2016-028447 are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Henry Davis Harris, M.D. has subjected his Physician's and Surgeon's Certificate No. A 39781 to discipline.

2. A copy of the Petition to Revoke Probation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board is authorized to revoke Respondent's Physician's and Surgeon's Certificate based upon the following violations alleged in the Petition to Revoke Probation:

Respondent's Physician's and Surgeon's Certificate is subject to revocation under Code section 2004, subdivision (c), section 2227, subdivision (a), and section 2228, subdivision (a), in that he failed to comply with Probation Condition 5 – successfully complete a clinical training program. From September 19 through 23, 2016, Respondent participated in Phase II of the PACE program, which is a five-day clinical education and assessment program provided in the actual clinical environment of the UC San Diego Medical Center or one of its satellite clinics. The November 29, 2016, Phase II Physician Assessment Report of Respondent's performance indicates that he received a "Fail, Category 4."

ORDER

IT IS ORDERED that Physician's and Surgeon's Certificate No. A 39781, heretofore issued to Respondent Henry Davis Harris, M.D., is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 18, 2017 at 5:00 p.m.

IT IS SO ORDERED July 21, 2017

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

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 28, 2017
BY: ANALYST

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

In the Matter of the Petition to Revoke Probation Against: **HENRY DAVIS HARRIS, M.D.** 4632 1/2 St. Charles Place Los Angeles, CA 90019 Physician's and Surgeon's Certificate No. A 39781, Respondent.	Case No. 800-2016-028447 **PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California (Board).

2. On or about April 26, 1983, the Board issued Physician's and Surgeon's Certificate Number A 39781 to Henry Davis Harris, M.D. (Respondent). The Physician's and Surgeon's Certificate is delinquent with an expiration date of January 31, 2017.

3. In a disciplinary action entitled *In the Matter of the Petition for Reinstatement of: Henry D. Harris, M.D.*, Case No. 27-2010-208225, the Board issued a decision, effective July 11, 2014, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the

revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of seven (7) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Petition to Revoke Probation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program."

6. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

7. Section 2228 of the Code states:

"The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

"(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

"(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

"(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated

treatment, where appropriate.

"(d) Providing the option of alternative community service in cases other than violations relating to quality of care."

CAUSE TO REVOKE PROBATION

(Failure to Pass Clinical Training Program)

8. At all times after the effective date of Respondent's probation, Condition 5 stated:

> "Clinical Training Program – Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California – San Diego School of medicine ("Program"). 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 program comprised of a two-day assessment of petitioner's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to petitioner's area of practice in which petitioner was alleged to be deficient, and at a minimum, a 40-hour program of clinical education in the area of practice in which petitioner was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Petitioner shall pay all expenses associated with the clinical training program.
>
> "Based on petitioner's performance and test results in the assessment and clinical education, 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, treatment for any medical condition, treatment for any psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with Program recommendations.
>
> "At the completion of any additional educational or clinical training, the petitioner shall submit to and pass an examination. Determination as to whether petitioner successfully completed the examination or successfully completed the 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, except that petitioner may practice in a clinical training program approved by the Board or its designee. Petitioner's practice of medicine shall be restricted only to that which is required by the approved training."

9. Respondent's probation is subject to revocation because he failed to comply with

Probation Condition 5, referenced above. The facts and circumstances regarding this violation are as follows:

10. From September 19 through 23, 2016, Respondent participated in Phase II of the PACE program, which is a five-day clinical education and assessment program provided in the actual clinical environment of the UC San Diego Medical Center or one of its satellite clinics.

11. The November 29, 2016 Phase II Physician Assessment Report of Respondent's performance indicates that he received a "Fail, Category 4."

PRAYER

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

1. Revoking the probation that was granted by the Medical Board of California in Case No. 27-2010-208225 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. A 39781 issued to Henry Davis Harris, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. A 39781 issued to Henry Davis Harris, M.D.;

3. Revoking, suspending or denying approval of his authority to supervise physician's assistants, pursuant to section 3527 of the Code; and

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

DATED: February 28, 2017

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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Exhibit A

Decision and Order

Medical Board of California Case No. 27-2010-208225

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

In the Matter of the Petition for Reinstatement of:	)
	)
	)
HENRY D. HARRIS	) Case No. **27-2010-208225**
	)
	) OAH No. **2011100866**
	)
Physician's and Surgeon's Certificate No. A 39781	)
	)
	)
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 **July 11, 2014.**

IT IS SO ORDERED **June 11, 2014.**

MEDICAL BOARD OF CALIFORNIA

By: Barbara Yaroslavsky

Barbara Yaroslavsky, 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: HENRY D. HARRIS, Physician's and Surgeon's Certificate No. A 39781 Petitioner.	Case No. 27-2010-208225 OAH No. 2011100866

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on April 8, 2014, in Los Angeles, California.

Deputy Attorney General Margaret J. Phe represented the Office of the Attorney General.

Theodore A. Cohen, Attorney at Law, represented petitioner Henry D. Harris, who was present.

The record remained open to allow the petitioner to file and serve additional attendance sheets from Alcoholics Anonymous meetings to supplement Exhibit H, and additional continuing medical education certificates to supplement Exhibit I.[1] Those documents were timely filed and served and, in a letter dated April 14, 2014 (marked Exhibit AG-C), the Office of the Attorney General stated that it had no objection to the documents. The additions to Exhibits H and I, and Exhibit AG-C, are admitted.

The matter was deemed submitted on April 14, 2014.

[1] Petitioner mismarked the documents to be added to Exhibit H as "Exhibit 10," and mismarked the documents to be added to Exhibit I as "Exhibit 11."

FACTUAL FINDINGS

1. On April 26, 1983, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 39781 to petitioner Henry D. Harris. Petitioner surrendered the certificate effective November 3, 2001, with an accusation pending against him. On or about June 25, 2010, petitioner signed and then filed with the Board a petition for reinstatement, and this hearing followed.

Background

2. Petitioner was born January 25, 1948, in Los Angeles. He was married in 1986. He and his former spouse have two adult children.

3. Petitioner received his bachelor's degree from California State University, Long Beach, in 1973. In 1980, he graduated from Meharry Medical College in Nashville, Tennessee. After graduation, petitioner began an internship in anesthesiology at Martin Luther King, Jr., Community Hospital (MLK) in Los Angeles. After 17 months of training, he left the internship without completing it and entered private practice. Petitioner established offices in South Central Los Angeles and Beverly Hills.

4. Petitioner has a history of cocaine and alcohol abuse, beginning in 1983. His marriage in 1986 was short-lived because of his addiction. At some point, petitioner's family members intervened. He was hospitalized for five days, and then entered the Board's physician diversion program. Petitioner also began attending Alcoholics Anonymous meetings. He has not used illegal drugs or consumed alcoholic beverages since 1988. It appears that in the early 1990's he successfully completed diversion.

5. In 1995, petitioner was arrested and charged with numerous counts of fraud arising out of his medical practice.

6. On November 24, 1997, in Los Angeles County Superior Court Case No. BA109019, petitioner was convicted by jury verdict of one count of conspiracy to defraud and conspiracy to commit a crime, in violation of Penal Code section 182, subdivision (a)(4); three counts of false representation or concealment to obtain benefits, in violation of Unemployment Code section 2101; 15 counts of grand theft, in violation of Penal Code section 487, subdivision (a); and 17 counts of insurance fraud, in violation of Insurance Code section 1871.1 and Penal Code section 550, subdivision (a)(1). The jury found that petitioner conspired to commit insurance fraud in violation of Penal Code section 550, to commit grand theft in violation of Penal Code section 487, and to commit false certification of medical condition in violation of Insurance Code section 2116.[2] All of the crimes petitioner committed were felonies. Petitioner was sentenced to serve three years in state prison.

[2] A hole-punch in the court document makes it unclear whether the jury also found that petitioner conspired to commit the crime of fraudulent filing for state disability benefits, in violation of Unemployment Code section 2101.

7. The circumstances leading to these convictions were not fully developed at hearing: the second amended complaint, on which the convictions were obtained, was not offered into evidence, and detailed testimony on this issue was not elicited. It is clear, however, that petitioner's criminal conduct arose out of his medical practice; that his misconduct occurred over a period of years, from 1992 to 1995; and that petitioner realized over $100,000 in fraudulent gains. In 2011, petitioner was interviewed by a Board investigator, who summarized petitioner's statement about his crimes as follows:

> [Petitioner] had taken over an office. The people at the office were already involved in the fraud and he seized the opportunity to cash in on the fraud. He was falsifying disability, ordering excessive treatment, not rendering treatment, and he was instrumental [in] sending false bills to the insurance companies and in conspiracy with the management companies.

8. Petitioner was committed to state prison in 2001. He was granted an early release in 2003, due to good behavior, placed on parole, and then discharged from parole on June 1, 2004. Petitioner's parole agent reports that petitioner conducted himself well on parole, that he maintained a positive attitude, and that he appeared to be sincere in his efforts to change his life.

9. After surrendering his certificate in 2001, petitioner applied to the Board for reinstatement in 2005. Following a hearing, the Board denied his petition. The Board found, among other things, that petitioner did not accept responsibility for his crimes, to the point that he did not admit wrongdoing, and that he had not made full restitution to the victims of his crimes.

Petitioner's evidence

10. Petitioner appears to believe, or at least he believed at one time, that his criminal misconduct was a consequence of his drug and alcohol addiction. He said as much to Richard S. Sandor, M.D., in 2008 and 2009, in the course of an "Addiction Medicine/Psychiatric Evaluation" that Dr. Sandor was performing. He told Dr. Sandor that when he was committing the crimes, he was attending AA meetings but he was not applying himself to the steps of AA, that he was abstinent but not in recovery. In his July 21, 2010 report, Dr. Sandor accepts petitioner's view. He writes: "Speaking somewhat dispassionately, Mr. Harris's case represents an extraordinary example of how addictive thinking and attitudes can continue even though an individual has become abstinent. . . ."

When his criminal conduct began in 1992, petitioner had been abstinent from alcohol and illegal drugs for five years. Petitioner's contention that his abstinence was superficial is not questioned. But neither petitioner nor Dr. Sandor explains why a superficial abstinence would cause an individual to engage in fraud, and conspiracy to commit fraud, over a period of almost three years. Their assertion that petitioner's criminal misconduct was a consequence of his addiction is not persuasive.

11. Although petitioner believes, or believed at one time, that his crimes were the result of his addiction, petitioner now accepts responsibility for his conduct. He acknowledges that he is, in his words, "a guilty man," that he committed the crimes because he was greedy, and that when he committed the crimes he "didn't care."

Petitioner feels that he was not able to accept responsibility for his crimes for many years because he was in "big-time denial" about his criminal misconduct. He credits AA for the change in his thinking. Some people "get the program" quickly, petitioner testified, but in his case it took years. In that time, AA has taught him that personal honesty would free him from selfishness and "self-centered directives." It has taken him many years of blaming others to come to the conclusion that "[his] troubles are [his] own making." Now, petitioner states, he has learned that people who are honest can succeed in the program. He states, "It's kind of laughable the extent I went to to blame others when I was the criminal." Petitioner feels that dishonesty and greed now have "no part in [his] life."

Petitioner's testimony on these points appeared to be sincere.

12. Petitioner attends AA meetings regularly and often, as he has for many years. He has assumed leadership roles at meetings and has sponsored others. McKinley Moore has been petitioner's AA sponsor for the past 11 or 12 years, and has known him since the mid-1980's. Moore testified that he and petitioner have exchanged "confessions" as part of working one of the 12 steps, and petitioner expressed shame and remorse to Moore for his criminal activity. Betty Sears, a licensed registered nurse, has been an active participant in AA for over 35 years. She met petitioner in AA in 1994 or 1996, and she has also been one of his sponsors. Sears testified that petitioner has been very open with her, and has talked to her about his pain and guilt.

13. Henry S. Johnson, M.D., and Robert Habbestad, M.D., appeared at hearing and also wrote letters of support for petitioner.

Dr. Johnson has known petitioner since they worked together at MLK Hospital. He knows that petitioner went to prison, but does not know the details of his crimes. Dr. Johnson stated that petitioner has expressed remorse to him for his crimes. Dr. Johnson has always had a good opinion of petitioner as an "honorable person who keeps his word." He would like to see petitioner rejoin the medical profession.

Dr. Habbestad has known petitioner since they were in the diversion program together in the late 1980's. Dr. Habbestad is familiar with petitioner's criminal history. He has heard petitioner express deep regret and remorse over his behavior. Dr. Habbestad believes that petitioner has been fully rehabilitated from his crimes and that he should be allowed to return to practicing medicine.

14. Michael Johnson and petitioner have been friends since the third grade. Johnson testified at hearing. Johnson knows that petitioner went to prison, but has never discussed with petitioner the details of his crimes; he never wanted to know. Johnson

believes that petitioner was always honest and that, if anything, his crimes may reflect poor recordkeeping, but not dishonesty. Johnson believes that petitioner's longstanding sobriety is "amazing," and that he has rehabilitated himself.

15. Petitioner has been informed that he has fully satisfied his restitution obligation of over $100,000. On May 6, 2011, petitioner called the Office of Victim Services for the California Department of Correction and Rehabilitation, and was informed that he had an outstanding balance of about $32,000. Several days later, however, in a memorandum from Inmate Trust/Parolee Cashier L. Bowman dated May 11, 2011, petitioner was informed that his case "is completely paid off." The evidence does not explain this sudden change in petitioner's obligation.

16. Since his release from prison, petitioner has worked in a number of different temporary positions, as a computer technician, a grant developer, and a janitor. He has also taught medical assistants at several vocational colleges: at United Education Institutes, from July 2005 to August 2006; at International Career Development Center, Inc., from February to September 2004, and again from June to July 2006; and for Charter College from March 2007 to May 2010. According to petitioner, Charter College terminated his employment due to his student evaluations, and International Career Development Center, Inc., laid him off "suddenly" without giving him a reason. Now, petitioner is working as a courier for a messenger service. The record does not include any references from petitioner's post-incarceration employers.

17. Petitioner has performed many hours of volunteer service since his release from prison. For about two years, he conducted study sessions in AA principles every week for the R.I.G.H.T. program, a community-based recovery program for alcoholics and addicts. Petitioner's work there ended when the program was discontinued. From 2010 to 2012, petitioner was part of a "Skid Row Ministry" that brought medication, clothes and food to the homeless. Petitioner regularly volunteers for AA.

18. In a short letter dated July 1, 2010, Walter W. Murrell, Ph.D., writes that he provided supportive psychotherapy to petitioner from December 2005 to February 2008. During that time, Dr. Murrell saw petitioner 23 times. Dr. Murrell writes that petitioner "did not indicate suicidal or homicidal ideation, nor any psychotic features."

19. Psychiatrist Rodney D. Collins, M.D., saw petitioner monthly, apparently for psychotherapy, for about two and one-half years beginning in May 2009. Dr. Collins met petitioner in the 1990's, when they were both in the Board's diversion program.

Dr. Collins performed a psychological evaluation of petitioner on April 24, 2010, and wrote a report that bears the same date. Dr. Collins took a history from petitioner and performed a mental status evaluation. Dr. Collins's only Axis I diagnosis is "poly-substance dependence in remission." He concluded that petitioner

> seems psychologically and physically sound. He appears to be a humbled man who has certainly learned to make lemonade by overcoming some of the challenges he has dealt with in his life. Often it is through these challenges that one grows in character and becomes a stronger more solid individual. Dr. Harris does not require medication at this time. He comes with my highest recommendation to return back into the field of Medicine under the appropriate supervision and retraining, which he is willing to do as specified by the Medical Board of California.

Dr. Collins testified to the same effect at hearing.

20. As discussed above, Dr. Sandor believes that a poor recovery from alcohol and drug addiction led to petitioner's criminal misconduct. While that contention is not persuasive, the quality of petitioner's recovery is relevant to whether petitioner can be trusted to practice safely. In his July 21, 2010 report, Dr. Sandor opines:

> I believe he is in genuine recovery from his addictions and see no evidence of a concurrent psychiatric disorder. As long as he remains active in 12-step work, his chances of maintaining abstinence are very good, and the chance that he will return to illegal behavior very low.

Dr. Sandor's opinion on these points is persuasive.

21. Petitioner's professional plans in the event his certificate is reinstated are tentative and somewhat vague. He and Registered Nurse Sears, who works for True Care Home Health, Inc., have discussed the possibility of petitioner working as a "Mobile MD" to homebound patients. Petitioner is also interested in treating professionals with abuse and addiction issues. And he has had discussions with James Mays, M.D., about taking over Dr. Mays's practice when he retires; Dr. Mays operates two clinics in the Los Angeles area and has been experiencing health problems. Petitioner and Dr. Mays have discussed the possibility of Dr. Mays acting as petitioner's monitor, while Dr. Mays goes into semi-retirement.

22. Petitioner testified that he has tried to stay current in medicine. The record includes numerous certificates for CME credits earned in 2004, 2005, and 2010, and certificates for 75 credits in 2014.

23. Petitioner appreciates that it has been many years since he practiced. He is willing to comply with any conditions the Board might impose under a probationary license.

24. By order dated December 4, 2013, the Los Angeles Superior Court granted petitioner a Certificate of Rehabilitation pursuant to Penal Code section 4852.13.

LEGAL CONCLUSIONS

1. When it acts on a petition for reinstatement of a surrendered certificate, 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." (Bus. & Prof. Code, § 2307, subd. (e).)

2. The burden of proof is on petitioner to demonstrate that he is sufficiently rehabilitated so that it would not be contrary to the public interest to grant his petition for reinstatement. Protection of the public is the Board's highest priority. (Bus. & Prof. Code, § 2229, subd. (a).) Wherever it is possible to do so, however, the Legislature has directed the Board to exercise its disciplinary authority in a manner that is calculated to aid in the rehabilitation of the licensee. (Bus. & Prof. Code, § 2229, subd. (b).)

3. Evidence of rehabilitation must be judged in relation to the severity of the misconduct, and the misconduct in this case is egregious: petitioner used his medical certificate to commit fraud for personal gain. This was not an isolated instance of misconduct, but fraud, and conspiracy to commit fraud, that continued over several years, stopping only with petitioner's arrest.

4. The fundamental issue raised by petitioner's convictions is his rehabilitation from crimes of dishonesty. On that issue, petitioner's showing is weak in some respects. For the most part, petitioner's references are friends and colleagues who knew him long before he committed the crimes at issue here, who formulated the belief long ago that he is honest, and who continue to believe that he is honest despite his criminal convictions. Petitioner emphasizes the quality of his recovery from addiction over the last several years, and the quality of his recovery is not questioned. However, as petitioner did not persuasively establish a link between a poor recovery and committing fraud, the quality of his recovery does not necessarily establish his honesty.

5. Still, the question is whether petitioner's rehabilitation is sufficient to allow him to return to practice, while still protecting the public. That question can be answered affirmatively, with appropriate probation conditions in place. It has been almost 20 years since petitioner's arrest, over 10 years since he was released from prison, and almost 10 years since he successfully completed parole. There is no evidence of any subsequent misconduct in that time. Although it took many years for him to do so, petitioner acknowledges responsibility for his crimes, and his acknowledgement seems sincere. Petitioner has come to believe that the principles of AA demand a high level of personal honesty, and his commitment to those principles is evident. Petitioner's effort to seek, and obtain, a certificate of rehabilitation from Superior Court is commendable. And while it does not mitigate petitioner's criminal conduct, there is no evidence of any patient harm. Petitioner is now 66 years old, and he has suffered severe consequences for his crimes. Provided that he maintains his sobriety, it is unlikely that he will reoffend. In short, while petitioner's rehabilitation is not complete, it has progressed sufficiently to grant him a

probationary certificate, subject to appropriate terms and conditions. Among other things, petitioner will be required to complete a clinical assessment before resuming practice; abstain from the use of alcohol and controlled substances; complete an ethics course; submit to random biological fluid testing; and retain a practice and billing monitor.

ORDER

The petition for reinstatement of Physician's and Surgeon's Certificate No. A 39781 issued to petitioner Henry D. Harris is granted; however, the certificate is immediately revoked, the revocation is stayed, and petitioner is placed on probation for seven (7) years upon the following terms and conditions:

1. 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. Petitioner shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner stipulates to a later hearing. A decision shall be received from the administrative law judge or the Board within 15 days unless good cause can be shown for the delay. 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 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

2. 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. Petitioner shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If 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. A decision shall be received from the administrative law judge or the Board within 15 days unless good cause can be shown for the delay. 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 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

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. 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. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours 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 petitioner fails to cooperate in a random biological fluid testing program within the specified time frame, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition

to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner stipulates to a later hearing. A decision shall be received from the administrative law judge or the Board within 15 days unless good cause can be shown for the delay. 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 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

4. 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 California Code of Regulations, title 16, section 1358. 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.

5. Clinical Training Program

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University

of California - San Diego School of Medicine ("Program"). 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 program comprised of a two-day assessment of petitioner's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to petitioner's area of practice in which petitioner was alleged to be deficient, and at minimum, a 40-hour program of clinical education in the area of practice in which petitioner was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Petitioner shall pay all expenses associated with the clinical training program.

Based on petitioner's performance and test results in the assessment and clinical education, 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, treatment for any medical condition, treatment for any psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with Program recommendations.

At the completion of any additional educational or clinical training, petitioner shall submit to and pass an examination. Determination as to whether petitioner successfully completed the examination or successfully completed the 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, except that petitioner may practice in a clinical training program approved by the Board or its designee. Petitioner's practice of medicine shall be restricted only to that which is required by the approved training program.

6. Monitoring - Practice/Billing

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 and billing monitor(s), 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 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 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 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 (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.

7. Notification

Within seven (7) 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.

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

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

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.

12. 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.

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, 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.

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: May 14, 2014

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings