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

In the Matter of the First Amended Petition to Revoke Probation Against: **Margaret Melinda Sprague, M.D.** **7257 La Jolla Blvd.** **La Jolla, CA 92037-5437** **Physician's and Surgeon's Certificate No. G 56228,** Respondent.	Case No. 800-2023-095180 OAH No. 2023040600 **FIRST AMENDED PETITION TO REVOKE PROBATION**

PARTIES

1. Reji Varghese (Complainant) brings this First Amended Petition to Revoke Probation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about October 7, 1985, the Medical Board issued Physician's and Surgeon's Certificate No. G 56228 to Margaret Melinda Sprague, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2023, unless renewed.

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3. In an action entitled *In the Matter of the Petition for Reinstatement of Revoked License by Margaret Melinda Sprague, M.D.*, case No. 800-2016-028304, the Board issued a Decision, effective January 18, 2019, in which Respondent's Physician's and Surgeon's Certificate No. G 56228 was reinstated and immediately revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's certificate was placed on probation for a period of 5 years with certain terms and conditions. This Decision, referenced hereinafter as the "2019 Decision", was in effect at all times on or after 5 p.m. on January 18, 2019 and prior to 5 p.m. on January 19, 2023. A true and correct copy of the 2019 Decision is attached hereto as exhibit A and is incorporated by reference as if fully set forth herein.

4. In an action entitled *In the Matter of the First Amended Petition to Revoke Probation Against Margaret Melinda Sprague, M.D.*, case No. 800-2021-080216, the Board issued a Decision, effective 5 p.m. on January 19, 2023, in which the probation ordered in the 2019 Decision was revoked, and the stayed revocation of Respondent's Physician's and Surgeon's Certificate No. G 56228 was imposed. However, that revocation was stayed, and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of 5 years with certain terms and conditions. A true and correct copy of this Decision, referenced hereinafter as the "2023 Decision", is attached hereto as exhibit B and is incorporated by reference as if fully set forth herein.

JURISDICTION

5. This First Amended Petition to Revoke Probation, which supersedes Petition to Revoke Probation No. 800-2023-095180 filed March 14, 2023, is brought before the Board under the authority of its 2019 Decision, its 2023 Decision, and the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

6. Section 2227, subdivision (a) 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.

7. At all times on or after 5 p.m. on January 18, 2019 and prior to 5 p.m. on January 19, 2023, section 1361.51, subdivision (f) of title 16 of the California Code of Regulations stated:

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, the licensee has committed a major violation [of her probation], as defined in section 1361.52, and the Board shall impose any or all of the consequences set forth in section 1361.52, in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance the rehabilitation of the licensee.

8. At all times on or after 5 p.m. on January 18, 2019 and prior to 5 p.m. on January 19, 2023, section 1361.52 of title 16 of the California Code of Regulations stated, in pertinent part:

(a) A licensee who does any of the following shall be deemed to have committed a major violation of his or her probation:

...

(2) Commits multiple minor violations of probation conditions and terms;

...

(5) Fails to undergo biological fluid testing when ordered;

(6) Uses, consumes, ingests, or administers to himself or herself a prohibited substance;

...

(b) If a licensee commits a major violation, the Board will take one or more of the following actions:

...

(2) Increase the frequency of biological fluid testing.

(3) Refer the licensee for further disciplinary action, such as suspension, revocation, or other action as determined by the Board.

...

(e) Nothing in this section shall be considered a limitation on the Board's authority to revoke the probation of a licensee who has violated a term or condition of that probation.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Abstain from Products or Beverages Containing Alcohol)

9. As in effect at all times on or after 5 p.m. on January 18, 2019 and prior to 5 p.m. on January 19, 2023, pursuant to the Board's 2019 Decision, condition 10 of Respondent's probation stated, in pertinent part: "[Respondent] shall abstain completely from the use of products or beverages containing alcohol."

10. As in effect at all times on or after 5 p.m. on January 19, 2023, pursuant to the Board's 2023 Decision, one of the conditions of Respondent's probation has been and is that she "shall abstain completely from the use of products or beverages containing alcohol."

11. Respondent's probation is subject to revocation because she has failed to abstain completely from the use of products or beverages containing alcohol. The facts and circumstances regarding this violation are as follows:

12. On or about December 29, 2022, Respondent provided a biological fluid specimen that subsequently tested positive for the presence of ethyl glucuronide (EtG) and ethyl sulfate (EtS), metabolites of alcohol.

13. On or about January 5, 2023, Respondent provided a biological fluid specimen that subsequently tested positive for the presence of phosphatidyl ethanol (PEth), a metabolite of alcohol.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Submit to Biological Fluid Testing)

14. As in effect at all times on or after 5 p.m. on January 19, 2023, one of the conditions of Respondent's probation has been and is that she submit to "Biological Fluid Testing". Such condition provides, in pertinent part:

> 8. Respondent shall immediately submit to biological fluid testing, at [R]espondent'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, [R]espondent 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... Respondent shall maintain this laboratory or service contract during the period of probation.
>
> ...
>
> 10. If [R]espondent fails to cooperate in a random biological fluid testing program within the specified time frame, [R]espondent shall receive a notification from the board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective....

15. Respondent's probation is subject to revocation because she has failed to comply with her random biological fluid testing program. The facts and circumstances surrounding this violation are as follows:

16. On or about July 25 through 28, 2023, Respondent failed to maintain a current, paid service contract with her biological fluid testing program.

17. On or about July 25, 2023, Respondent failed to submit a biological fluid sample upon the request of her biological testing program.

DISCIPLINARY CONSIDERATIONS

18. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about May 19, 2005, in a prior disciplinary action titled *In the matter of the Accusation Against Margaret M. Sprague, M.D.* before the Board, in Case No. 10-2001-125460, Respondent's Certificate was revoked for unlawful use of controlled substances and impairment of Respondent's ability to practice medicine safely due to her addiction to cocaine. That decision is now final and is incorporated by reference as if fully set forth herein.

19. To further determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about February 6, 2019, the Board issued a CPO finding that Respondent had failed to obey conditions of her probation "by testing positive for the metabolites of alcohol." The CPO provided that "Respondent shall not resume the practice of medicine until

completion of a clinical diagnostic evaluation...and thirty (30) days of negative biological fluid tests...." Respondent complied with the conditions of the February 6, 2019 CPO and the Board terminated the CPO on March 29, 2019.

20. To further determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about April 5, 2019, the Board issued a Citation Order against Respondent because she violated multiple conditions of her probation by:

> ...testing positive for the metabolites of alcohol on January 29, 2019, January 31, 2019, February 3, 2019, February 22, 2019, February 24, 2019 and February 27, 2019.

The Citation Order included a $350 fine and the following order of abatement:

> The Board is ordering you to maintain compliance with all terms and conditions of the Decision placing you on probation. You are given notice that any future violation of your probationary terms and conditions may result in the filing of formal disciplinary action to revoke your probation.

21. To further determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that in a Non-Compliance Letter dated May 29, 2019, a Board Probation Analyst advised Respondent, among other things, that:

> ...[a] recent positive biological fluid sample received by the Board was the result of exposure to product [sic] or substances containing ethyl alcohol. When subject to biological fluid testing it is your responsibility to limit exposure to product [sic] or substances that may cause a positive result.
>
> Failure to cooperate with the Biological Fluid Testing condition is considered a violation of probation. Should you continue to use, consume, or ingest any consumable products you have been instructed by the Board not to use, you may be in violation of the Biological Fluid Testing condition and the Board may take disciplinary action against your license.

22. To further determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about June 20, 2019, the Board issued a Citation Order against Respondent because she violated one or more conditions of her probation by "failing to provide a biological fluid sample on June 1, 2019." The Citation Order included a $700 fine and the following order of abatement:

> The Board is ordering you to maintain compliance with all terms and conditions of the Decision placing you on probation. You are given notice that any future

violation of your probationary terms and conditions may result in the filing of formal disciplinary action to revoke your probation.

23. To further determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about October 23, 2019, the Board issued a Citation Order against Respondent because she violated multiple conditions of her probation by "testing positive for the metabolites of alcohol on July 29, 2019, August 4, 2019, August 27, 2019 and September 1, 2019." The Citation Order included a $1,400 fine and the following Order of Abatement:

> You must undergo a Clinical Diagnostic Evaluation within thirty (30) days of receipt of this Citation Order and maintain thirty (30) days of clean biological fluid testing. Further, the Board is ordering you to maintain compliance with all terms and conditions of the Decision placing you on probation. You are given notice that any future violation of your probationary terms and conditions may result in the filing of formal disciplinary action to revoke your probation.

24. To further determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that in the Board's 2023 Decision, it found the following:

> [ ] On June 1, 2019, [R]espondent ingested champagne, an alcoholic beverage. This constituted a failure to comply with condition number 10 of her probation, and pursuant to California Code of Regulations, title 16, section 1361.52, subdivisions (a)(6), constitutes a major violation of her probation. Pursuant to California Code of Regulations, title 16, section 1361.52, subdivision (b), Respondent's license is subject to discipline.
>
> [ ] On June 28, 2021, [R]espondent failed to undergo biological fluid testing when ordered. This constituted a failure to comply with condition number 5 of her probation, and pursuant to California Code of Regulations, title 16, section 1361.52, subdivisions (a)(5), constitutes a major violation of her probation. Pursuant to California Code of Regulations, title 16, section 1361.52, subdivision (b), [R]espondent's license is subject to discipline.
>
> [ ] On July 7, October 31, and November 8, 2021, positive biological fluid tests evidenced the use of alcohol, a prohibited substance. Within the terms of California Code of Regulations, title 16, section 1361.51, subdivision (f), those positive tests constituted major violations of condition 10 of [R]espondent's probation. Pursuant to California Code of Regulations, title 16, section 1361.52, subdivision (b), [R]espondent's license is subject to discipline.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. G 56228, issued to Respondent Margaret Melinda Sprague, M.D.;

2. Revoking, suspending or denying approval of Respondent Margaret Melinda Sprague, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Margaret Melinda Sprague, M.D., if placed on probation, to pay the costs of probation monitoring; and

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

DATED: AUG 18 2023

REJI VARGHESE
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

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

In the Matter of the Petition for the Reinstatement of Revoked License by: MARGARET MELINDA SPRAGUE, M.D., Petitioner.	Case No. 800-2016-028304 OAH No. 2018021027

DECISION AFTER NON-ADOPTION

Roy W. Hewitt, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on June 1, 2018.

Giovanni F. Mejia, Deputy Attorney General, represented the Office of the Attorney General, State of California, as authorized by Government Code section 11522.

David M. Balfour, Esq. represented Margaret Melinda Sprague, M.D., petitioner. Petitioner was present with counsel throughout the hearing.

Petitioner's testimony, petitioner's statement in support of the petition for reinstatement, documents, and the arguments and observations of counsel for petitioner and the Deputy Attorney General were presented.

The record remained open to permit the parties to submit written closing statements. The statements were received on July 18, 2018. The Deputy Attorney General's written statement was marked as Exhibit 12, and was received as evidence. Petitioner's written statement was marked as Exhibit X, and was received as evidence. The record was closed and the matter was submitted on June 18, 2018.

On July 10, 2018 ALJ Hewitt issued his Proposed Decision. Panel B of the Medical Board of California ("Board") declined to adopt the Proposed Decision and on August 3, 2018 issued its Order of Non-Adoption of Proposed Decision and afforded the parties the opportunity for written argument. Panel B fixed the date of oral argument for October 18, 2018. The Panel having read and considered the administrative record and the written arguments submitted by the parties, and having heard oral argument, hereby renders its decision in this matter.

FACTUAL FINDINGS

1. On October 7, 1985, the Medical Board of Californian (board) issued Physician's and Surgeon's Certificate Number G 56228 to petitioner.

2. On November 25, 2003, an accusation was filed against petitioner. On December 3, 2003, an Interim Order of Suspension-No Practice was issued on an exparte basis and that was upheld on January 13, 2004, after a hearing. Ultimately, a Decision revoking petitioner's certificate was issued that became effective on May 19, 2005. The revocation was based on the following: petitioner violated Business and Professions Code section 2239 (unlawful use of controlled substances, to wit: cocaine); and violated Business and Professions Code section 822 (petitioner was physically ill due to her addiction to cocaine, which affected her competency and impaired her ability to practice medicine safely).

3. On November 19, 2016, petitioner signed, and thereafter submitted to the board, a Petition for Penalty Relief in which she seeks the reinstatement of her revoked certificate.

Rehabilitation

4. The 2005 revocation of petitioner's certificate occurred as a result of her addiction to cocaine. After the revocation petitioner began caring for her elderly mother, who was suffering with Parkinson's disease. Petitioner's mother passed away in 2013 and petitioner's husband passed away in 2014. Thereafter, petitioner focused on her recovery from addiction and her desire to return the practice of child psychiatry.

5. Petitioner maintains her recovery by attending recovery meetings on an average of three days per week, meeting weekly with a physician monitor and participating in random drug testing by checking in every day and providing urine samples as required.

6. Petitioner presented Urine Drug Screening results from random drug testing from November of 2016 through March of 2018. The results supported petitioner's assertion that she has remained clean and sober.

7. Petitioner presented documents showing that from 2014 to the present she has completed approximately 200 Continuing Medical Education (CME) credits.

8. Petitioner presented eight letters in support of her reinstatement. The letters were from colleagues, friends, relatives and therapists.

9. In addition to maintaining her recovery, petitioner obtained treatment for depression. Her treating psychiatrist, Dr. Steven Stahl, reviewed petitioner's history of cocaine addiction and recovery and her battle with depression. Based on petitioner's history and physical examination, Dr. Stahl prescribed Parnate, an MAOI medication.[1] Petitioner has

[1] MAOI medications are incompatible with cocaine. The combination of cocaine and MAOI medication is potentially fatal.

remained on Parnate since 2006 and her depression is "stable and in remission."

10. Dr. Andrea Bower, M.D., a family practitioner who is also in recovery, testified on petitioner's behalf. Dr. Bower is a civilian employee with Naval Branch Health in Kearny Mesa, California. Dr. Bower sees approximately 90 patients per week. In 2014 petitioner asked Dr. Bower to become her AA sponsor. Dr. Bower has been petitioner's sponsor since then. Dr. Bower corroborated petitioner's testimony that petitioner regularly attends Cocaine Anonymous (CA) meetings, Hospital and Institutions Recovery programs, AA meetings, Caduceus recovering physicians AA group meetings; and, in addition, petitioner provides a great deal of volunteer work to support recovery programs. Dr. Bower fully supports petitioner's desire to return to practice and recommended petitioner undergo an assessment at the University of California, San Diego (UCSD) Physician's Assessment and Clinical Education (PACE) Program, a well-known, highly respected, program that evaluates a physician and surgeon's ability to safely return to practice medicine.

UCSD PACE Program

11. Petitioner accepted Dr. Bower's recommendation and underwent a comprehensive evaluation of her competency to safely resume her practice as a child psychiatrist. The conclusions reached by the UCSD PACE Program comprehensive examination/evaluation are set forth in a May 17, 2018, 26-page, PACE report. In pertinent part, the report concluded, as follows:

> Ms. Sprague's overall performance on our comprehensive physician assessment is consistent with a **Pass, Category 3**[2] , . . . given Ms. Sprague's lengthy absence from practicing medicine, coupled with the deficits identified on our evaluation, a number of safeguards should be put in place to ensure patient safety as she returns to practice. Specifically, we recommend the following with respect to Ms. Sprague: 1) her scope of practice should be restricted to the field of psychiatry; 2) she should be prohibited from solo practice for a minimum of two years from the time she resumes practicing and she be required to work only with board certified psychiatrists; 3) she should be required to have a Medical Board of California approved practice monitor for a minimum of three years who is also board certified in psychiatry; 4) our report should be provided to Ms. Sprague's Board-approved

[2] **Category 3** is described by PACE as follows:

> Significant deficiencies were noted. The physician is capable of practicing safely, but may not currently be reaching his/her full potential. Physicians in this category are likely to have broad deficiencies that cover multiple domains and will require a considerable educational investment and occasionally a change in behavior. Recommendations for how to remediate deficiencies will be outlined [in the PACE report].

practice monitor as well as her practice partners so they can continue to work with her on the deficiencies noted above; and 5) she should improve her knowledge of Suboxone, clonidine and lithium through self-study. (Exh. G, AGO-0128)

LEGAL CONCLUSIONS

1. In a proceeding for the restoration of a revoked license, the burden at all times rests on petitioner to prove that she has rehabilitated herself and that she is entitled to have her license restored. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) A person seeking reinstatement of a revoked license must present strong proof of rehabilitation, and the showing must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Bd. of Medical Examiners* (1948) 84 Cal.App.2d, 308, 315-316.)

2. Petitioner clearly and convincingly established that her petition for reinstatement of her certificate should be granted on a probationary basis with terms and conditions of probation in place to ensure her medical/professional skills are current and as necessary to protect the public.

ORDER

The petition of petitioner, Margaret Melinda Sprague, for reinstatement of her certificate is granted. A Physician's and Surgeon's Certificate shall be issued to petitioner. Said certificate shall immediately be revoked, the order of revocation shall be stayed, and petitioner shall be placed on probation for a period of five years on the following conditions:

1. **Medical Evaluation**

Within thirty (30) calendar days of the effective date of this Decision, petitioner shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee indicating petitioner's physical fitness to practice safely. Petitioner shall provide the evaluating physician any information and documentation that the evaluating physician may deem pertinent. Petitioner shall provide the Board or its designee with any and all medical records pertaining to treatment that the Board or its designee deems necessary. Petitioner shall pay the cost of the medical evaluation.

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

2. **Neurocognitive Evaluation**

Within thirty (30) calendar days of the effective date of this Decision, petitioner shall undergo and complete a neurocognitive evaluation by a Board-appointed psychologist licensed by

the California Board of Psychology, who practices neuropsychology, and who shall consider any information provided by the Board or its designee and any other information the psychologist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Any evaluation 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 evaluations and psychological testing.

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

3. **Clinical Diagnostic Evaluations and Reports**

Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, petitioner shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

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

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

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter. If the

evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assigned the matter.

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

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

Petitioner shall not engage in the practice of medicine until notified by the Board or its designee that he/she is fit to practice medicine safely. The period of time that petitioner is not practicing medicine shall not be counted toward completion of the term of probation. Petitioner shall undergo biological fluid testing as required in this Decision at least two (2) times per week while awaiting the notification from the Board if he/she is fit to practice medicine safely.

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

4. **Notice of Employer or Supervisor Information**

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

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

5. **Biological Fluid Testing**

Petitioner shall immediately submit to biological fluid testing, at petitioner's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Petitioner shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Petitioner shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a petitioner to undergo

a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by petitioner.

During the first year of probation, petitioner shall be subject to 52 to 104 random ests. During the second year of probation and for the duration of the probationary term, petitioner shall be subject to 36 to 104 random tests per year. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, petitioner shall contract with a laboratory or service, approved in advance by the Board or its designee, which will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

(a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.

(b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.

(c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.

(d) Its specimen collectors observe the collection of testing specimens.

(e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.

(f) Its testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.

(g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test petitioner on any day of the week.

(h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(i) It maintains testing sites located throughout California.

(j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the petitioner to check in daily

for testing.

(k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if the petitioner holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Petitioner shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and petitioner.

If a biological fluid test result indicates petitioner has used, consumed, ingested, or administered to himself/herself a prohibited substance, the Board shall order petitioner to cease practice and instruct petitioner to leave any place of work where petitioner is practicing medicine or providing medical services. The Board shall immediately notify all of petitioner's employers, supervisors and work monitors, if any, that petitioner may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if petitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his/her treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of petitioner's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by

petitioner and approved by the Board, alcohol, or any other substance petitioner has been instructed by the Board not to use, consume, ingest, or administer to himself/herself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, petitioner has committed a major violation, as defined in section 1361.52(a), and the Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance petitioner's rehabilitation.

6. Substance Abuse Support Group Meetings

Within thirty (30) days of the effective date of this Decision, petitioner shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he/she shall attend for the duration of probation. Petitioner shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Petitioner shall pay all substance abuse support group meeting costs.

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

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

7. Worksite Monitor for Substance-Abusing Licensee

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

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

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

Petitioner shall pay all worksite monitoring costs.

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

The worksite monitor shall verbally report any suspected substance abuse to the Board and petitioner's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; petitioner's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

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

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

8. Violation of Probation Condition for Substance-Abusing Licensees

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

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

(1) Issue an immediate cease-practice order and order petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at petitioner's expense. The cease-practice order issued by the Board or its designee shall state that petitioner must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time petitioner must test negative while undergoing continuous biological fluid testing following issuance of a cease- practice order, a month is defined as thirty calendar (30) days. Petitioner may not resume the practice of medicine until notified in writing by the Board or its designee that he/she may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer petitioner for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

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

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of petitioner;

(4) Order increased documentation;

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

(6) Order petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at petitioner's expense;

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

(C) Nothing in this Decision shall be considered a limitation on the Board's authority to revoke petitioner's probation if he/she has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If petitioner violates probation in any respect, the Board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the

disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

9. **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 the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he/she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

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

10. **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 the final decision on an

accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If 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. If the case is heard by an Administrative Law Judge alone, he/she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, requestfor reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

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

11. **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.

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

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

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

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

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

13. **Psychotherapy**

Within 60 calendar days of the effective date of this Decision, respondent 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, respondent 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. Respondent shall cooperate in providing the

psychotherapist any information and documents that the psychotherapist may deem pertinent.

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

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

14. **Professionalism Program (Ethics)**

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after respondent'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 respondent'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.

Respondent shall submit a certification of successful completion to the Board or its designee not later than fifteen (15) calendars days after successfully completing the program or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

15. **Solo Practice Prohibition**

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

If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. 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.

16. **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.

17. **Supervision of Physician Assistants and Advanced Practice Nurses**

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

18. **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.

19. **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.

20. **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(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.

21. **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.

22. **Non-practice While on Probation**

Petitioner shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If petitioner resides in California and is considered to be in non-practice, petitioner shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve petitioner from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be

considered as a period of non-practice.

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

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

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

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

23. **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.

24. **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.

25. **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.

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26. **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.

This Decision shall become effective at 5:00 pm on January 18, 2019.

IT IS SO ORDERED December 21, 2018.

MICHELLE ANNE BHOLAT, M.D.
VICE CHAIR
PANEL B

Exhibit B

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

In the Matter of the First Amended Accusation Against: Margaret Melinda Sprague, M.D. Physician's and Surgeon's Certificate No. G 56228 Respondent.	Case No.: 800-2021-080216

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 January 19, 2023.

IT IS SO ORDERED: December 20, 2022.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, M.D., Chair
Panel B

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

In the Matter of the First Amended Petition to Revoke Probation against:

MARGARET MELINDA SPRAGUE, M.D.,

Physician's and Surgeon's Certificate No. G 56228,

Respondent.

Agency Case No. 800-2021-080216

OAH No. 2021110356

PROPOSED DECISION

Robert Walker, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 20 through 22, 2022. The proceeding was conducted by video conference.

Giovanni F. Mejia, Deputy Attorney General, represented the complainant, William Prasifka, Executive Director of the Medical Board of California (board).

David M. Balfour, Attorney at Law, represented the respondent, Margaret Melinda Sprague (respondent).

The record was closed and the matter was submitted for decision on June 22, 2022. The record was reopened to request additional information concerning certain exhibits. The parties submitted briefs. Complainant's brief was received on August 22, 2022, and respondent's brief was received on August 25, 2022. The record was closed on August 25, 2022.

AMENDMENT

As a "first cause to revoke probation," complainant alleges that respondent failed to comply with a probationary condition requiring her to abstain from the use of products or beverages containing alcohol. Complainant alleges that biological fluid specimens submitted on July 7, October 31, and November 8, 2021, tested positive for metabolites of alcohol.

At the hearing, complainant amended the "first cause to revoke probation" by adding paragraph 15.1 that alleges: "On or about June 1, 2019, respondent ingested champagne, an alcoholic beverage."

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 7, 1985, the board issued Physician's and Surgeon's Certificate Number G 56228 to respondent. On May 19, 2005, the board revoked respondent's license. Approximately 11 years later, in 2016, respondent filed a petition to reinstate her license. On January 18, 2019, the board granted the petition but immediately revoked the license, stayed the revocation, and placed respondent's

license on probation for five years subject to certain conditions. In 2022, the board determined that respondent had failed to comply with the conditions of her probation. On February 18, 2022, the board filed a first amended petition to revoke probation. which is the subject of this proceeding. As noted above, complainant, at the hearing, further amended the petition to allege the ingestion of champagne on June 1, 2019.

2. Condition 5 of respondent's probation provides:

> Petitioner shall immediately submit to biological fluid testing . . . upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Petitioner shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Petitioner shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a petitioner to undergo a biological fluid test on any day, at any time, including weekends and holidays.
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> [¶] . . . [¶]
>
> If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, petitioner has committed a major violation . . . and the Board shall impose any or all of the consequences set forth in California Code of Regulations, title 16, section] 1361.52 (b), in addition to

any other terms or conditions the Board determines are necessary for public protection or to enhance petitioner's rehabilitation.

3. Condition 10 of respondent's probation provides: "[Respondent] shall abstain completely from the use of products or beverages containing alcohol."

Alcohol Use Was Not a Ground for Revocation of Respondent's License

4. The board revoked respondent's license due to a cocaine addiction.

5. Respondent graduated from the Medical College of Virginia in 1984. She interned at the University of California Irvine. She had a daughter and took a year of maternity leave. She had used cocaine previously, but around the time her daughter was born, respondent began suffering from depression. Her occasional cocaine use escalated into abuse and a disorder. After her maternity leave, she did a psychiatric residency for two years at the University of California San Diego (UCSD), followed by a fellowship in child psychiatry, which she completed in 1990.

6. In the 1990s, respondent entered a residential treatment program at Hazelden, a facility in Minnesota.

7. In 2002 respondent and her husband were divorcing. Respondent's husband told one of respondent's colleagues that respondent had a cocaine disorder, and the colleague reported it to the board.

8. The board placed respondent in a diversion program. Respondent tested positive for cocaine several times, and the board placed an additional condition on her continued participation in the diversion program; she would have to go to a residential

treatment facility. In 2002, respondent went back to Hazelden for six months. After returning from Hazelden, respondent relapsed but was permitted to continue in the diversion program.

9. In 2002, respondent went to Mexico for ibogaine treatment. Ibogaine is a hallucinogen used in indigenous religious ceremonies and has been shown to interrupt cocaine abuse. Respondent continued to test positive for cocaine, and in 2005, the board revoked her license.

10. From 2005 to 2019 respondent did not hold a license. In 2016, she petitioned to have her license reinstated. The board granted the petition, reinstated respondent's license effective January 18, 2019, and placed it on probation.

11. Respondent's cocaine use contributed to her marital problems, and it caused problems between her and her daughter.

12. There is no evidence that respondent has used cocaine since 2014.

Depression Contributed to Respondent's Cocaine Abuse and Her Failure to Comply with the Probationary Condition Requiring Alcohol Abstention

13. As noted above, shortly after respondent graduated from medical school and at around the time she had her daughter, she began suffering from depression. Her depression contributed to her addiction to cocaine and, later, contributed to her lack of success in complying with the probationary condition requiring abstinence from alcohol.

14. Through the years, respondent had a few providers who addressed her depression, and she has been on a variety of medications. In 2020 respondent began seeing Bruce Hubbard, M.D., whom she continues to see monthly.

15. In September 2020, respondent received trans cranial magnetic stimulation (TMS), which was effective. However, she has continued to deal with depression. Her brother died in July 2021, and she struggled with depression in connection with his death. A man with whom she formerly had a romantic relationship contracted pancreatic cancer and was homeless. They had remained friends after their romantic relationship ended, and respondent took him in. Watching him die of cancer was distressing, and again, respondent struggled with depression.

16. Respondent says her depression has never caused her to be unable to practice safely.

Respondent's Biological Fluid Testing

17. Respondent's testing program consists of urine tests and blood tests. Almost all of the findings concerning respondent's tests are based on the declaration and testimony of James L. Ferguson, D.O., and the exhibits to which he referred. Dr. Ferguson is the medial director of recovery management services for Vault Health, formerly FSSolutions. Most of Vault Health's clients are employers or licensing agencies. Vault Health does not operate laboratories to test biological specimens; rather, it acts as a third-party administrator to interface with clients and laboratories. It manages and monitors testing programs. The board contracts with Vault Health to monitor probationers' drug testing programs.

18. Dr. Ferguson graduated from the Philadelphia College of Osteopathic Medicine in 1981. He did post graduate training with the Osteopathic Affiliated

Hospitals of Washington State. He was in private practice in Seattle, Washington, from 1982 to 1985 and was an emergency room physician from 1982 to 1986. He currently is licensed to practice in Maryland. He is a Diplomat, National Board of Osteopathic Examiners; certified by the American Society of Addiction Medicine; and a Diplomat, American Board of Addiction Medicine. He holds an American Society of Addiction Medicine Certificate of Competence and certification as a Medical Review Officer. He has held the position of medical review officer with various organizations. He has published and lectured concerning addiction medicine.

19. Dr. Ferguson testified that Vault Health works with only certified laboratories that employ qualified personnel and use appropriate equipment.

20. Respondent must check every day to determine whether she is required to submit a specimen. When respondent is told she must submit a specimen, she goes to a collection site and, under observation, submits a urine specimen. The specimen is sent to a laboratory, and the laboratory splits it into two specimens – A and B. Initially, only the A specimen is tested. If there is a request for a second test to confirm the accuracy of the first test, a different laboratory tests the second specimen.

21. Jennifer Saucedo is an associate governmental analyst for the board. She monitored respondent's probation, including the biological fluid testing. If a urine specimen tests positive, Ms. Saucedo advises the probationer of that and refers to the date on which the specimen was submitted. Ms. Saucedo asks the probationer to submit a written statement explaining why the test was positive and a plan to ensure that there will be no further positive tests. Ms. Saucedo sends the probationer's statement to Dr. Ferguson, and he responds with his initial opinions concerning the test results and the probationer's explanation. For example, he might observe that the test results indicate a very low level of alcohol. He might opine that the probationer's

explanation is plausible. When Dr. Ferguson is asked to review a test result, he almost always asks that the subject be directed to submit a blood specimen so that a blood test can be done. Even though several days have passed, a blood specimen can provide important information because the window for collecting a blood specimen is much longer than the window for collecting a urine specimen. After Dr. Ferguson receives the results of a blood test, he sends an additional report to Ms. Saucedo.

22. Ms. Saucedo may issue a compliance letter in which she admonishes the probationer that further positive tests may result in disciplinary action. She may recommend that the board issue a cease practice order (CPO) or a citation order.

23. Urine is tested for ethyl glucuronide (EtG) and ethyl sulfate (EtS), metabolites of alcohol.

24. Blood is tested for phosphatidyl ethanol (PEth) a metabolite of alcohol. The results of a blood test are reported in milligrams per milliliter (mg/mL). A test result of 20 to 80 mg/mL is considered to be significant but lower range. A PEth of less than 20 is considered to indicate no significant alcohol use, and laboratories report the result as negative. So, for example, while a PEth of 19 indicates the presence of alcohol, a laboratory would report it as negative.

25. A PEth test is considered to have some advantages over a urine test. Metabolites of alcohol will show up in a urine test only if the specimen was collected within 80 hours after alcohol was consumed. PEth will show up in a blood specimen collected two to four weeks after alcohol was consumed. PEth tests can be more useful in telling whether the quantity of alcohol was significant. Sometimes blood tests are preferred because they will not show a de minimis quantity of alcohol whereas a urine test will show traces of alcohol as positive.

26. A result of 20 PEth or above in a blood test indicates the subject probably consumed two and one-half or more drinks for several days or binged.

Grounds Alleged for Revoking Respondent's Probation

INGESTION OF CHAMPAGNE ON JUNE 1, 2019

27. Respondent testified that, at her nephew's wedding on June 1, 2019, she took a sip of champagne. She said it was only a sip – not a glass. This ingestion of alcohol did not register on a biological fluids test; respondent failed to submit a specimen on June 1, 2019. The board issued a citation order dated June 20, 2019, for respondent's failure to comply with the condition of probation requiring her to submit a specimen.

FAILURE TO SUBMIT A SPECIMEN ON JUNE 28, 2021

28. Two years later, respondent failed to submit a urine specimen on June 28, 2021.

29. Respondent contends the failure to test was not her fault. On June 3, 2021, respondent sent FSSolutions an e-mail notifying them that she planned to travel. The e-mail says, in part: "Here are the dates: June 16 fly to Savannah, GA 31401; June 21 drive to Abingdon VA 24211; [and] June 25 drive to Gatlinburg TN 37738." Shortly before leaving on her trip, she called FSSolutions, and spoke with Janet Harmer. They discussed test sites available in respondent's destinations.

30. On June 28, 2021, while in Tennessee, respondent was told she was required to test. She contends she went to a test site and arrived before 5:00 p.m., but the test site was closed. She submitted a specimen the following morning. On July 16, 2021, respondent sent Ms. Saucedo a statement to this effect.

31. FSSolutions contends it provided respondent with a test site in Elizabethton, Tennessee – BHMA Urgent Care, which was open week-days from 8:00 a.m. to 8:00 p.m. and Saturdays and Sundays from 8:00 a.m. to 6:00 p.m. BHMA was 22 miles from Respondent's Tennessee destination. Respondent contends FSSolutions did not refer her to that test site.

32. Ms. Saucedo wrote a non-compliance report dated August 2, 2021. It provides, in part:

> On June 28, 2021, Dr. Sprague was selected to undergo a biological fluid test . . . .
>
> On June 28, 2021, Dr. Sprague emailed Enforcement Analyst Jennifer Saucedo stating, the testing facility in her area was closed and she would voluntarily submit a urine specimen the following day . . . . Ms. Saucedo replied, stating [that respondent's] Order required her to test on the day selected.

33. Thus, after respondent went to a site and discovered it was closed, she and Ms. Saucedo had an e-mail exchange in which respondent informed Ms. Saucedo that the site was closed and in which Ms. Saucedo admonished respondent that it was her responsibility to test on the date selected. The e-mail exchange is in evidence, and the timeline is confusing. But the apparent confusion is explained by the difference in time zones. There is a three-hour difference between Gatlinburg, Tennessee, and California. Respondent sent her e-mail to Ms. Saucedo at 4:39 p.m. Eastern time, which was 1:39 p.m. Pacific time.

34. When a probationer travels, he or she is responsible for communicating with test sites to be sure one will be available in the event the probationer is required to submit a specimen.

TEST OF SPECIMEN COLLECTED ON JULY 7, 2021

35. Respondent tested positive for PEth in a blood specimen collected July 7, 2021. The result was 45.1 mg/mL, which is in the lower range.

36. One drink is considered to be 1.5 ounces of liquor or five ounces of wine. As noted above, using a cutoff of 20, a PEth of 45.1 indicates that a subject drank two and one-half drinks per day over the course of several days or had a binging episode.

37. In an interview, Nicolas Badre, M.D., asked respondent about the positive result on the specimen collected July 7, 2021. Dr. Badre reported that respondent told him that, before her brother died in July 2021, there were weeks in which she had sips of his beers. She suggested that having those sips of beer may have caused the test result. Dr. Badre reported that respondent told him that, on each of two or three occasions, over the course of several weeks, she drank one-half of a bottle of beer. Dr. Badre reported that respondent's explanation is inconsistent with the test result, which indicates that she likely consumed two and one-half drinks per day for several days or binged.

38. As will be noted below, in respondent's testimony, she told of a different incident of consuming alcohol that may have resulted in the positive test result on the specimen collected on July 7, 2021. It is not surprising that respondent may not know which incident resulted in the positive test result. What is significant, however, with regard to the issue of whether discipline should be imposed, is that there were two incidents of consuming alcohol.

39. The board issued a CPO dated July 28, 2021. The order referred to the positive test of the specimen collected on July 7, 2021, and provided, "the respondent shall not resume the practice of medicine until she undergoes a clinical diagnostic evaluation and has 30 days of negative biological fluid testing."

40. A clinical diagnostic evaluation was completed in August 2021, and on September 21, 2021, the board issued an order terminating the CPO.

TESTS OF SPECIMEN COLLECTED ON OCTOBER 31, 2021

41. A urine specimen collected on October 31, 2021, tested positive for metabolites of alcohol.

42. Respondent contends that she had not had an alcoholic beverage. She wrote that she was fairly sure the positive test for alcohol was due to her eating three pieces of chocolate pie, a birthday present. A friend made the pie and brought it to respondent's home on October 30, 2021, to celebrate respondent's birthday. They each had a piece, and later that night, respondent had a second piece. The next day, respondent had a third piece. When respondent called her friend to thank her for the pie, her friend told her it contained rum.

43. Based on the result of the test of the October 31, 2021, urine specimen, Dr. Ferguson opined that respondent's account was a feasible explanation. The board ordered a blood test. A blood specimen was collected on November 8, 2021, and it tested positive for PEth. Because of that result, Dr. Ferguson was less confident of his original opinion. He wrote that he would not have expected the pie-eating events respondent described to produce a positive result in a blood test, which is not as sensitive as a urine test. However, the level of PEth was so low that he could not say for sure that respondent's explanation was not correct.

44. Dr. Ferguson suggested that there should be a second blood test. A blood specimen was collected on December 1, 2021, and it tested negative. Dr. Ferguson concluded that the negative result supported respondent's explanation that the urine test on October 31, 2021, was the result of respondent's having eaten chocolate pie containing rum on October 30 and 31, 2021.

45. The reason for distinguishing between consumption of alcohol by eating food and consumption by drinking a beverage is that consumption by eating food is less likely to indicate an alcohol use disorder. But ingestion by consuming food containing alcohol constitutes a failure to comply with the probationary condition requiring abstinence from the use of products or beverages containing alcohol. So, for example, if a positive test results from eating chocolate pie, that, nevertheless, is a failure to comply with the condition of probation. The same is true of products absorbed through the skin. Use of such products is not likely to indicate an alcohol use disorder; nevertheless, use of such products is a violation of the condition of probation.

TEST OF SPECIMEN COLLECTED ON NOVEMBER 8, 2021

46. Complainant alleges the positive test of the blood specimen collected on November 8, 2021, as a separate ground for revocation of respondent's probation. But as noted above, that test was to help determine whether the positive test on the specimen collected October 31, 2021, could have been caused by respondent's eating chocolate pie with rum in it. Significantly, there were no positive tests on specimens collected between October 31 and November 8, 2021, and the specimens were collected only eight days apart. So the specimen collected on November 8, 2021, must have related to the use of alcohol on or before October 31, 2021.

47. As noted above, condition 5 of respondent's probation provides: "If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, petitioner has committed a major violation . . . ." Thus, literally, if multiple specimens test positive, that constitutes multiple violations even if the specimens all related to a single incident of alcohol use. As noted above, alcohol metabolites are not detectible in a urine specimen unless the specimen is collected within 80 hours after alcohol was consumed, and it is common for urine tests not to be required within 80 hours of each other. However, an alcohol metabolite will show up in a blood specimen collected two to four weeks after alcohol was consumed, and blood tests often are required within two to four weeks of each other. Therefore it is more common for multiple blood specimens to relate to the same incident of alcohol use than it is for multiple urine specimens to relate to the same incident of alcohol use.

48. While positive tests of multiple specimens related to a single incident of alcohol use constitute multiple violations, it is important to distinguish that circumstance from circumstances in which positive tests are the result of discrete incidents of alcohol use.

Allegations of Matters in Aggravation

49. Complainant alleges a number of matters – not as grounds for revoking respondent's probation – but as matters that should be considered in determining the level of discipline to be imposed. As matters in aggravation, complainant alleges the following: The May 19, 2005, revocation of respondent's license due to her addiction to cocaine. Respondent's failure to submit a biological fluid specimen on June 1, 2019. And finally, 10 occasions in 2019 when biological fluid specimens tested positive for metabolites of alcohol.

REVOCATION OF RESPONDENT'S LICENSE

50. As noted above, on May 19, 2005, the board revoked respondent's license for unlawful use of cocaine and impairment of respondent's ability to practice medicine safely due to her addiction to cocaine.

JUNE 1, 2019, FAILURE TO SUBMIT A BIOLOGICAL FLUID SPECIMEN

51. As noted above, respondent failed to comply with a condition of her probation by failing to submit a biological fluid specimen on June 1, 2019.

SPECIMENS COLLECTED ON JANUARY 29 AND 31, 2019

52. Urine specimens collected on January 29 and 31, 2019, tested positive at very low levels.

53. Dr. Ferguson said, because the specimens were collected within 48 hours of each other, he could not rule out the possibility that they were more related to each other than usual. The implication of his statement is that the two test results may have been produced by a single use of a product containing alcohol.

54. Respondent wrote a statement dated February 6, 2019. She wrote that the positive test of the specimen collected on January 29, 2019, can be accounted for by an incident in which she inadvertently took a couple of sips of coffee that, unbeknownst to her, had Bailey's Irish Cream in it. A friend had prepared the coffee for himself and set it down on a counter in the kitchen. Respondent wrote that she could not think of why the test on the specimen collected January 31, 2019, was positive. She wrote that, after the incident, she gave the Irish Cream to her friend and threw away the mouthwash she had been using.

55. Dr. Ferguson sent Ms. Saucedo an e-mail dated February 8, 2019. He wrote that he could not say respondent's explanation was not correct.

SPECIMEN COLLECTED ON FEBRUARY 3, 2019.

56. A urine specimen collected February 3, 2019, tested positive at a very low level.

57. Respondent wrote that, during late January and early February 2019, she had a vaginal yeast infection and used a vaginal wipe that has phenoxyethanol as an ingredient. Respondent declared that, in the future, she would be more careful about being familiar with the list of ingredients to be avoided.

58. On February 20, 2019, Dr. Ferguson sent an e-mail to Ms. Saucedo. He wrote that absorption through mucus membrane is much more efficient than absorption through the skin, so he could not rule out respondent's explanation. But he requested a blood test. A blood specimen was collected on February 22, 2019. It tested positive with a PEth of 53 ng/mL. In a March 4, 2019, e-mail to Ms. Saucedo, Dr. Ferguson wrote, "As her positive results continue to accumulate, it becomes harder and harder to accept explanations such as absorption through mucus membrane." Dr. Ferguson finally concluded that he did not believe that use of a commercial vaginal wipe such as Vagisil would cause a positive PEth. He wrote, also, however, that the test result of 53 PEth on the blood specimen collected February 22, 2019, may have been partially the result of respondent's consumption of rum cake on February 21, 2019.

FEBRUARY 6, 2019, CEASE PRACTICE ORDER

59. On February 6, 2019, which was less than three weeks after respondent's license was reinstated, the board issued a CPO because respondent had failed to

comply with a condition of her probation by testing positive for metabolites of alcohol. Specimens collected on January 29 and 31, 2019, and February 3, 2019, had tested positive.

SPECIMEN COLLECTED ON FEBRUARY 22, 2019.

60. A urine specimen collected on February 22, 2019, tested positive. The result was at a very low level. The specimen was a dilute specimen, and the initial test result was negative. However, Dr. Ferguson testified that concentrations of EtG and EtS in a dilute specimen can be normalized by a series of calculations. In this case a confirmation report notes a positive result for EtG and EtS. Dr. Ferguson testified that some of the positive results in the period in which this specimen was submitted could have been caused by episodes of dermal absorption.

SPECIMEN COLLECTED ON FEBRUARY 24, 2019.

61. A urine specimen collected on February 24, 2019, tested positive. The result was at a very low level.

62. On March 2, 2019, respondent sent an e-mail to Ms. Saucedo stating that on February 21, 2019, she went to the home of a longstanding friend. Her friend had baked a rum cake. Respondent assumed that, because it had been baked, there would be no alcohol left in it. It tasted a little "alcohol-y" but respondent chose to ignore that because she was just enjoying the time with her best friend. On March 1, 2019, respondent talked with her friend, who told respondent that, after the cake was baked, she put a generous dollop of rum in the topping. Respondent wrote that she was very distressed by this.

63. Dr. Ferguson wrote that the positive test result on the specimen collected February 24, 2019, was at a very low level, and respondent's eating rum cake on February 21, 2019, cannot be ruled out as a cause. Dr. Ferguson recommended a blood test.

SPECIMEN COLLECTED ON FEBRUARY 27, 2019.

64. A urine specimen collected on February 27, 2019, tested positive. Dr. Ferguson said the marker was at a very low level. He recommended a blood test. A test on a blood specimen collected on March 15, 2019, was negative.

65. On March 21, 2019, Ms. Saucedo sent Dr. Ferguson an e-mail in which she noted that the test on the March 15, 2019, specimen was negative. However, she focused on the history of positive tests. She asked, "[I]s the concerning number of continuing positives evidence of substance abuse?" Dr. Ferguson did not endorse Ms. Saucedo's suggestion that there was evidence of substance abuse. Rather, he said, "I'd have to answer your question by saying the continued EtG positives are indicative of a lack of compliance with the program that requires abstinence from any alcohol."

APRIL 5, 2019, CITATION ORDER

66. On April 5, 2019, the board issued a citation order because respondent had failed to comply with a condition of her probation on multiple occasions, i.e., she tested positive for metabolites of alcohol on specimens collected on January 29, January 31, February 3, February 22, February 24, and February 27, 2019. The citation order included a $350 fine and an order of abatement.

MAY 29, 2019, NON-COMPLIANCE LETTER

67. In a May 29, 2019, non-compliance letter, Ms. Saucedo advised respondent that, among other things, a recent test showed respondent had been exposed to products or substances containing alcohol and that it is respondent's responsibility to limit such exposure. Ms. Saucedo further advised that failure to comply with the biological fluid condition of respondent's probation is a violation of probation and can result in disciplinary action.

SPECIMEN COLLECTED ON JULY 29, 2019

68. A dilute urine specimen collected July 29, 2019, was determined to be positive for metabolites.

SPECIMEN COLLECTED ON AUGUST 4, 2019

69. A dilute urine specimen collected August 4, 2019, tested positive.

70. On August 30, 2019, Dr. Ferguson wrote "[T]he 8/4 result is positive for EtG/EtS at levels that – when normalized for creatinine – are consistent with some kind of ingestion. I would recommend a PEth [blood test] to be sure it is negative."

71. Ms. Saucedo sent Dr. Ferguson an e-mail in which she said, [T]he 8-8-19 PEth (blood) was negative." Dr. Ferguson replied, "I see that, but the EtG [urine] is still positive." Dr. Ferguson said he believed the negative blood test "trumped the positive urine test" and is consistent with some form of possibly accidental ingestion other than drinking.

SPECIMEN COLLECTED ON AUGUST 27, 2019

72. A dilute urine specimen collected August 27, 2019, tested positive.

Respondent sent Ms. Saucedo a letter dated September 5, 2019, in which she said the test on the specimen collected August 27, 2019, may have been positive because she and a friend went to a French restaurant where respondent had chicken with a sauce and chocolate mousse.

73. In a September 19, 2019, e-mail to Ms. Saucedo, Dr. Ferguson wrote that the subsequent blood test results "go along with [respondent's explanation] but we need to hope she becomes more careful about what she eats."

SPECIMEN COLLECTED ON SEPTEMBER 1, 2019

74 A dilute urine specimen collected September 1, 2019, tested positive.

75. Dr, Ferguson said, "Respondent's bio fluid testing results from July through September 2019 were consistent with some form of possibly accidental alcohol ingestion other than drinking.

OCTOBER 23, 2019, CITATION ORDER

76. On October 23, 2019, the board issued a citation order because respondent had failed to comply with a condition of her probation on multiple occasions, i.e., she tested positive for metabolites of alcohol on specimens collected on July 29, August 4, August 27, and September 1, 2019. The citation order included a $1,400 fine and an order of abatement.

Dr. Badre's Report on His Clinical Diagnostic Evaluation

77. In the CPO dated July 28, 2021, the board required respondent to undergo a clinical diagnostic evaluation before she could resume practice. Dr. Badre conducted an evaluation on August 20, 2021.

78. Dr. Badre is a psychiatrist; he was licensed to practice in California in 2012. In 2011, Dr Badre graduated from the University of Kentucky Medical School. He did a four-year psychiatry residency at UCSD. In 2014 through 2015, he was the chief resident in the outpatient psychiatric services program at UCSD. In 2015, he was in a fellowship program at the San Diego Psychoanalytic Center. He has published and lectured extensively on psychiatric issues. He currently is in private practice and serves as a forensic psychiatrist for the San Diego County Forensic Evaluation Unit.

79. At the request of the board, Dr. Badre reviewed respondent's records and, on August 20, 2021, performed a clinical diagnostic evaluation. Dr. Badre interviewed respondent for over two hours and spent one and one-half hours administering psychometric tests. The purpose was to determine whether respondent had a mental condition, in particular, a substance use disorder, that could interfere with her ability to practice medicine safely.

80. Dr. Badre found no evidence of an alcohol use disorder. And he found no evidence that respondent's continued practice of medicine posed a present danger or threat to the public. Dr. Badre diagnosed a cocaine use disorder in remission and major depressive disorder.

81. In Dr. Badre's findings and opinions, he noted that respondent performed intelligently in the psychiatric interview and psychometric testing for over three and one-half hours. He said that is significant evidence of her ability to practice medicine safely. The psychometric testing did not show evidence of severe mental illness. The evidence does not suggest that respondent has had a relapse in her cocaine use disorder. Respondent has not tested positive for cocaine. She did test positive for alcohol, and in view of her history of cocaine use disorder and the board's probationary condition of alcohol abstinence, her use of alcohol is a sign of poor

insight and judgment. Further, Dr. Badre opined that respondent exhibits no apparent signs of cognitive disorder.

82. Dr. Badre opined that respondent was able to safely practice medicine. In summary, he concluded the following: respondent has a cocaine use disorder, in remission; there is no evidence of a relapse. There is no evidence that respondent has an alcohol use disorder. Nonetheless, her history of cocaine use disorder and the board's probationary condition of alcohol abstinence warrant sobriety from alcohol. Her use of alcohol is indicative of limited judgment and insight; therefore, she should be referred to some additional treatment for her substance use disorder.

83. Dr. Badre did not find evidence that respondent's continued practice poses a danger to the public. Respondent's appropriate presentation during the evaluation is evidence of her continued practice being a low risk. Respondent is able to practice medicine safely at this time as long as her practice does not interfere with her treatment recommendations and the safeguards the board has delineated.

84. After receiving Dr. Badre's report, the board terminated the CPO. As noted above, the order of termination is dated September 21, 2021.

Dr. Badre's Testimony

85. Dr. Badre elaborated on his written report. He was asked to confirm the conclusion he documented in his report that respondent does not have an alcohol use disorder. Dr. Badre confirmed that conclusion as of August 20, 2021, the date of his evaluation. However, he added that he did not know whether he would reach the same conclusion if he evaluated respondent currently. When Dr. Badre evaluated respondent in August 2021, he considered her use of alcohol in spite of having a history of cocaine use disorder, and he considered the board's probationary condition of alcohol

abstinence. He concluded that respondent's consumption of alcohol simply evidenced poor insight and judgment. But there has been a subsequent incident of testing positive That evidences not only a failure to conform to social and professional obligations but, also, continued use of alcohol. If Dr. Badre were to evaluate respondent currently, he would have to consider the continued use of alcohol.

86. However, other matters also would have to be considered as part of a reevaluation. If respondent has followed Dr. Badre's recommendation to complete an outpatient program for depression and substance use disorder for at least one month, at for example, Alvarado Parkway Institute, that would have to be considered. If she has had regular psychiatric meetings with Dr. Hubbard, continued with 12-step meetings, continued with PEth monitoring, those things would have to be considered. Respondent's having added SoberLink[1] to her program would have to be considered; A good record with SoberLink is very strong evidence of abstinence. With all of these things to consider, Dr. Badre does not know whether he would change the opinion he expressed in August 2021.

87. Dr. Badre repeated the observation he made in his report. His evaluations are stressful for the subject. Respondent's ability to perform intelligently for over three and one-half hours in the psychiatric interview and psychometric testing is significant evidence of her ability to practice medicine safely.

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[1] The SoberLink device randomly advises when one is required to take a test, i.e., breath into the device. At the time one breathes into the device, it takes the person's photograph. Between two and four times a day, the device advises the user to take a test.

88. Dr. Badre saw no evidence of mental issues that might prevent respondent from practicing medicine safely. He saw no evidence of a relapse regarding respondent's cocaine use disorder. He saw no evidence of an alcohol use disorder. He saw no evidence of a cognitive disorder.

89. The fact that respondent has a cocaine use disorder, in remission, warrants a requirement that she abstain from the use of products or beverages containing alcohol. Use of a substance other than cocaine increases the risk of a relapse in the cocaine disorder. Thus, consuming alcohol is a risk factor for relapsing in the cocaine disorder. Dr. Badre avoided recommending a residential treatment program because he concluded that would be detrimental to respondent's recovery. He recommended that respondent participate in an outpatient program for depression and substance use disorder for at least one month or until cleared. Alvarado Parkway Institute has such a program with evening meetings twice a week. If she participated in that program, she could continue to work.

Evidence from Bruce Hubbard, M.D

90. Dr. Hubbard wrote a letter dated June 6, 2022, and testified. Dr. Hubbard is licensed by the State of California and has practiced psychiatry for 40 years. He began treating respondent in 2020 for resistant depression. He sees her once a month for therapy and to monitor her depression. Dr. Hubbard is aware of respondent's positive tests for alcohol and the petition to revoke her probation and license. He is aware of her past cocaine dependence. Respondent has complied with all of Dr. Hubbard's recommendations.

91. In addition to psychotherapy, respondent has completed two courses of 36 treatments each of TMS with good results, and as of June 2022, she was completing

a third course of treatment. TMS is a treatment for depression for patients who do not respond to medication. It stimulates neurons in particular areas of the brain. One advantage of the treatment is that it does not interfere with a patient's ability to function socially and work.

92. Dr. Hubbard has never seen respondent impaired. Based on respondent's history and Dr. Hubbard's clinical assessment, he opines that respondent does not have an alcohol use disorder, and her continued practice does not pose a danger to the public. With psychotherapy and TMS for depression, respondent's prognosis is very good. Dr. Hubbard sees no reason for respondent's license being revoked.

Evidence from Patricia Lindquist, Ph.D.

93. Dr. Lindquist wrote a letter dated June 1, 2022. Dr. Lindquist is a clinical psychologist, licensed by the State of California. She has been seeing respondent weekly since March 3, 2022. They have worked on grief issues related to the petition to revoke respondent's probation, her inability to obtain employment, and the death of her brother.

94. Dr. Lindquist is aware that respondent has had positive tests for alcohol during her probation. Dr. Lindquist has not seen respondent impaired and has not seen clinical evidence of an alcohol use disorder.

Evidence from Ann Glassmoyer, M.A

95. Ms. Glassmoyer wrote a letter dated May 31, 2022, and testified. Ms. Glassmoyer holds a master's degree in clinical psychology and is a clinical social worker, licensed by the State of California. She is a special investigator for the Board of

Behavioral Sciences. She is a marriage and family counsellor and a drug and alcohol counselor.

96. Ms. Glassmoyer is employed by the UCSD Department of Psychiatry in the health care for professionals program (HPP). She facilitates 12-step meetings for physicians. The program provides support and monitoring for physicians recovering from substance use disorders. In March 2020 they began using Zoom for video conference meetings. Ms. Glassmoyer also maintains a private practice in which she monitors individuals' participation in drug testing programs.

97. In May 2014, respondent was preparing to petition the board for reinstatement of her license. She engaged Ms. Glassmoyer to administer a random, biological fluid testing program. Respondent disclosed that she had been in recovery from a cocaine use disorder since September 2002. She contended that she had never had an alcohol abuse problem. Nevertheless, she became involved in the HPP and agreed to remain abstinent from the use of all substances, including alcohol. While respondent entered into an HPP agreement, she was not qualified to participate in the weekly 12-step meetings so long as her license was revoked. Respondent participated in a Spectrum testing program from June 2014 to May 2015, August 2015 to January 2016, and June 2016 to November 2018. The breaks in testing – from May to August 2015 and from January to June 2016 – were caused by financial hardship that prevented respondent from paying for the testing program. She was tested for substances on a standard, federal list, including opioids, alcohol, cannabis, and psychoactive drugs. She terminated her participation in November 2018 when she learned that her license was going to be reinstated and placed on probation with a condition that required her to participate in a board-approved testing program. In the Spectrum testing program, respondent called in daily to determine whether she was

selected to be tested. She was selected approximately twice a week, but the selections were random. On days she was selected, she presented at a collection facility to provide a biological fluid specimen. In the Spectrum program, all of respondent's tests were negative.

98. Between November 4, 2016, and May 17, 2017, respondent also tested with Affinity OnLINE Solutions – in addition to testing with Spectrum. There was no evidence as to why she was testing with both Spectrum and Affinity. There were Spectrum tests on specimens collected November 21 and December 5, 2016, that were negative; however, there was an Affinity test on a specimen collected December 1, 2016, that was positive. All of the other Affinity tests were negative. There is a memorandum dated May 25, 2017, from Ms. Glassmoyer to Steve Landuyt in which Ms. Glassmoyer wrote:

> [Respondent] had a positive EtG test on December 1, 2016. The EtG test detects metabolites in the urine as a result of exposure to alcohol. [Respondent] denies consuming alcohol and attributes the positive test results to the possibility of consuming fermented tea. [Respondent] was counseled about the importance of checking labels and has not had a positive test result since.

99. Ms. Glassmoyer testified that she could not remember the memorandum and did not recognize the name Steve Landuyt.

100. When respondent's license was reinstated, she began participating in the weekly HPP meetings. Respondent shared her history, took directions, and offered support to others. She was forthcoming. She was well liked. When respondent was

traveling and unable to attend a weekly meeting, she and Ms. Glassmoyer talked on the phone.

101. Respondent was diligent in attempting to find work in spite of the fact that her license was on probation.

102. In 2019, respondent reported to the HPP group that she had tested positive for the use of alcohol.

103. In 2021, respondent's brother died and a close friend, a man with whom she formerly had a romantic relationship, died. With the onset of COVID, respondent found it impossible to work because of the conditions in her probation. One condition required respondent to have a practice monitor, and with COVID isolation, that was almost impossible.

104. In early 2022, respondent reported that the board was seeking to revoke her probation and license. In an attempt to maintain her license, respondent began attending additional 12-step meetings and, in March 2022, began using a SoberLink device to document her abstinence from the use of alcohol. The SoberLink program was in addition to the testing she was doing with the board-approved testing program. She tested three times per day. From March 1, 2022, to May 31, 2022, respondent was tested 262 times; 260 of the tests were "compliant." Two tests were non-compliant. Ms. Glassmoyer receives text message reports from SoberLink. When she received the messages concerning non-compliant tests, she inquired of SoberLink. In both cases, she was told the problem was with identification; in each case, the lack of light prevented facial recognition. In each case, the alcohol count was .000. Respondent continues to test with SoberLink, and Ms. Glassmoyer continues to monitor her participation.

105 Respondent has told Ms. Glassmoyer about two occasions on which she drank an alcoholic beverage – once at a wedding and once with her family after her brother's death.

106. Respondent also sought treatment for symptoms of depression and, in spite of the financial stress, has complied with all assessments the board mandated. Respondent has continued to attend the weekly HPP meetings regularly.

Evidence from William D. Koltun, M,D.

107. Dr. Koltun wrote an undated letter and testified. Dr. Koltun is licensed to practice in California. He practiced obstetrics and gynecology from 1980 to 1995. He had a clinical research practice from 1995 to 2017. He retired in 2017. He currently is the medial director of CRASH, a non-profit organization to promote the recovery and treatment of people in San Diego who are incarcerated – an underserved population.

108. Dr. Koltun has known respondent for five years and has never seen her impaired in any way. He has never seen an indication that she used drugs or alcohol. Dr. Koltun and respondent attend the same, weekly 12-step meeting. Dr. Koltun said he can attest to respondent's moral character and commitment to recovery.

109. Many CRASH clients suffer from both addiction and mental health problems. For several months respondent has volunteered her services by giving informative talks to CRASH counselors on various mental health disorders. She has done this work without any requirement that she perform community service. Her talks have helped counselors understand the interaction between mental illness and addiction. Respondent has a great fount of knowledge and experience in the interface of treating mental health disorders and addiction. Dr. Koltun and respondent

frequently talk about clients and about issues that arise at CRASH. Clients are referred out for treatment; CRASH does not provide medical services.

110. Respondent told Dr. Koltun that she has had positive alcohol tests, and Dr. Koltun understands why the board needs to place conditions on respondent's license. However, in view of the need for respondent's unique ability to serve the community, it would be tragic to revoke her license.

Evidence from Phillip Milgram, M,D.

111. Dr. Milgram wrote an undated letter and testified. Dr. Milgram is licensed to practice in California. His main practice area is in addiction medicine and detoxification. He treats withdrawal with vitamins administered intravenously, and he provides support and counselling. Treatments usually take place over 10 to 14 days.

112. Dr. Milgram has known respondent for approximately five years. They met when respondent started attending the Wednesday evening HPP meetings. Respondent attends every week; she has missed very few meetings. She participates fully. In 2019, she told the group that she had positive alcohol tests, and the participants discussed that. Respondent obtained therapy and went away for a residential recovery treatment program.

113. Dr. Milgram asked respondent to work with him. During 2019 and into March 2020, respondent came to Dr. Milgram's office and consulted with patients. She and Dr. Milgram would discuss appropriate treatment and management. She came approximately three to five times per month. She had an independent financial arrangement with the patients. Because of COVID, that arrangement ended in March 2020.

114. Dr. Milgram never suspected that respondent was using alcohol. Dr. Milgram and respondent are friends, but they are honest with each other and call each other on their weaknesses. Respondent did not tell Dr. Milgram she had eaten rum cake until after she tested positive. She did tell him about having a beer; she admitted she should not have done that.

115. Perfect Moments Recovery asked Dr. Milgram to recommend a psychiatrist, and he recommended respondent.

Evidence from Andrea Bower, M.D.

116. Dr. Bower is licensed to practice in California. In 2019, Dr. Bower retired from her position as a family medicine physician with the Naval Branch Health Clinic Clairmont in San Diego. Currently, she works part time with two telehealth companies. Dr. Bower met respondent briefly in 2002 when they were in a board diversion program. They became reacquainted in 2016 when respondent began attending a caduceus 12-step meeting in Carlsbad. In 2016, Dr. Bower became respondent's 12-step sponsor, and respondent worked the steps. For a number of months, they met once a month at Dr. Bower's home and weekly at the caduceus meetings. When they could not meet in person because of COVID, they talked on the phone regularly. Now that both are vaccinated for COVID, they, again, meet in person. In addition to attending the caduceus meetings, respondent attended meetings of the physician wellness program in San Diego.

117. Respondent told Dr. Bower about testing positive for alcohol and told her that, on one occasion, she drank a bottle of beer. Respondent acknowledged that she had not been careful enough about avoiding alcohol. Respondent is committed to her recovery from her cocaine addiction. For years, she has had very little earnings and

has spent everything she has on programs to sustain her recovery. Recently, she had TMS therapy. She sees a psychologist regularly. And she participates in a SoberLink program. She has a strong desire to provide psychiatric services to children in the community.

118. Dr. Bower has never seen respondent impaired or under the influence. When they have talked on the phone, Dr. Bower has never heard respondent slurring her words or sounding confused.

119. Dr. Bower believes respondent is safe to practice.

120. Dr. Bower has told respondent that it is essential that she comply with the board's requirements – including maintaining absolute abstinence from the use of alcohol. Dr. Bower believes respondent has come to understand that she must be rigorous in complying with the board's requirements.

Evidence from Mindy Flanagan

121. Mindy Flanagan wrote a letter dated May 30, 2022, and testified. Ms. Flanagan recently retired from her position as a manager for UCSD Extension. She now operates a business called Tour Freely. Ms. Flanagan has known respondent for over 50 years. They met in seventh grade at Bishop's School in La Jolla. They are close friends.

122. Respondent has provided support for Ms. Flanagan. As early as middle school, respondent has guided and supported Ms. Flanagan through losses and challenges. In high school, respondent qualified for the humanities gifted program, but initially, Ms. Flanagan did not. Respondent encouraged Ms. Flanagan and told her she

belonged in the program. With respondent's encouragement, Ms. Flanagan made a case for herself and was accepted.

123. Ms. Flanagan was devastated by respondent's addiction to cocaine. The addiction was insidious and completely out of character for respondent. Ms. Flanagan is delighted with respondent's long-term recovery.

124. Ms. Flanagan is aware of respondent's depression, which respondent has dealt with aggressively with TMS therapy and help from her psychiatrist.

125. Ms. Flanagan and respondent get together at least twice per month. They take long walks together and go to the farmers' market. At social gatherings with other friends, respondent does not drink. For years, Ms. Flanagan has not seen anything to suggest that respondent was using drugs or alcohol. In all the years they have known each other, respondent has never had a problem with alcohol. Ms. Flanagan has never seen respondent intoxicated.

Respondent's Testimony

126. In 1990, after respondent completed her internship in child psychiatry, she worked for the County of San Diego in an outpatient clinic for special education students. She became the medical director of that clinic. She started developing a private practice in which she saw both adult and child clients. Between 1994 and 2002, she worked only in the private practice she and her husband developed. Respondent provided a substantial amount of psychotherapy to children. She also treated patients with psycho pharmacology. At the same time, she was raising her daughter. In 1995, respondent began psychiatric training in an institute in San Diego. In connection with that training, she was psychoanalyzed, but she did not complete that training.

127. Respondent used cocaine in the 1980s but not extensively. In approximately 1995, she accelerated her use of cocaine. In the 1990s respondent entered a residential treatment program at Hazelden in Minnesota. By 2000 her marriage was not going well. She was experiencing depression, and she was becoming addicted to cocaine. In approximately 2002, she began participating in a board diversion program. Respondent tested positive for cocaine and the board required her to go to a residential treatment facility. In 2002, she went back to Hazelden for six months. After returning from Hazelden, respondent relapsed but was permitted to continue in the diversion program. In 2002, respondent began ibogaine treatment; she did not have $30,000 to pay for that treatment in the United States, so she went to Mexico, where it was much less expensive. Respondent continued to test positive for cocaine, and in 2005, the board revoked her license.

128. For approximately 13 years, respondent did not hold a license. During that period, respondent's mother was diagnosed with Parkinson's disease, and respondent spent a substantial amount of time in Princeton, New Jersey, caring for her mother. Respondent's step-father paid respondent to care for her mother. In 2006, respondent began seeing Dr. Stall, who recommended monoamine oxidase inhibitors as an anti-depressant. And they helped respondent deal with her depression. She met and married her second husband. Respondent's mother died in 2013. Her second husband died in 2014.

129. In 2016, respondent filed a petition to have her license reinstated. She attended courses in the Physician Assessment and Clinical Education (PACE) program. She took the psychiatry board review course and the psycho-pharmacology course. Respondent engaged Ms. Glassmoyer to document her sobriety. She attended meetings of cocaine anonymous. Respondent volunteered at the Salvation Army

women's recovery center and worked in the National City jail for a while. The board granted her petition to have her license reinstated but conditioned respondent's probationary license on her having certain examinations, including a neuropsychological examination. Respondent passed the examinations, and the board granted a probationary license effective January 2019.

130. Respondent acknowledges that, for the first eight months of her probation, i.e., January through August 2019, she was not vigilant about complying with the condition requiring abstinence from alcohol. During that period, there were times when she became careless. Respondent was accustomed to being careful about avoiding cocaine, but she had never had an alcohol problem and was not careful about avoiding things that contained alcohol. Through her work with Dr. Lindquist and others, respondent has come to question whether she had a problem with her sense of self-worth. She has come to question whether her lack of focus on complying with the alcohol abstinence requirement came from doubting that she was worth the effort to take care of herself. Respondent is grateful that she found the SoberLink program because it has helped her focus on her commitment to abstain from the use of all products that contain alcohol. In addition to using SoberLink, respondent has sharpened her focus by increasing the number of 12-step meetings she attends and by meeting with Dr. Lindquist weekly. Respondent plans to continue with all of these supports.

131. For 22 months, i.e., from September 2019 through June 2021, there is no evidence that respondent used products containing alcohol. There were no positive tests during those 22 months. And she was able to accomplish that in spite of having to deal with some stressful and depressing events. In the fall of 2020, respondent's former boyfriend, with whom she continued to maintain a friendship, came to live in

her home because he had pancreatic cancer and had no place to live. He died in February 2021. Also, in early 2021, respondent's brother was extremely ill, and he died in July 2021.

132. There were two occasions in 2021 when respondent was careless about consuming alcohol. A urine specimen collected July 7, 2021, tested positive for metabolites of alcohol. As noted above, the first one-half of 2021 was a stressful and depressing time for respondent. Respondent testified that, on July 7, she and her current boyfriend were visiting friends in Florida, and at dinner, she drank some beer and, probably, some ginger ale with vodka. A urine specimen collected October 31, 2021, tested positive for metabolites of alcohol. Respondent contends she had not had an alcoholic beverage. She was fairly sure the positive test for alcohol was due to her eating three pieces of chocolate pie, a birthday present. A friend made the pie and brought it to respondent's home on October 30, 2021, to celebrate respondent's birthday.

133. Respondent has tried to obtain employment in order to comply with the condition of her probation requiring her to work at least 40 hours per month. In 2019 and 2020, she worked with Dr. Milgram, but because of COVID, that arrangement ended in March 2020. In July 2019, she began working in a Los Angeles mental health clinic, and having that work was important to her. Unfortunately, that employment ended in May 2020 at the beginning of the COVID pandemic. In January 2021, she got a position with a tele-help platform, but that did not work out. Later in 2021, respondent got a position with the San Diego County Health Clinic, but on July 28, 2021, the board issued a CPO. Respondent is pursuing the possibility of obtaining employment with Pathways, a company that contracts with psychiatric clinics. They need a psychiatrist, and they are not opposed to employing someone who is on

probation. Respondent has talked with the medical director, and hopes to obtain a position in which she can work in child psychiatry.

134. Respondent asked her current boyfriend not to drink in respondent's presence, and he has been very good about that. If he wants to have a bottle of beer, he has it when respondent is not present. He has been very supportive.

135. Respondent plans to continue seeing Dr. Hubbard and Dr. Lindquist. Respondent has found online groups and usually attends six meetings per week. She plans to continue with SoberLink. She has completed a third course of 36 treatments of TMS with Dr. Hubbard. Dr. Badre recommended a further treatment program, and respondent completed that on October 18, 2021. In addition to the other 12-step meetings she attends, she continues with a Sunday smart-recovery meeting.

136. Respondent has complied with the condition of her probation that requires additional hours of continuing medical education.

137. In the future, respondent will comply fully with the condition that she abstain from the use of products that contain alcohol. She is committed to focusing on the critical importance of complying with the board's requirements.

Specific Findings Concerning Grounds to Impose Discipline

138. On June 1, 2019, respondent ingested champagne at a wedding. Respondent testified that it was only a sip – not a glass.

139. On June 28, 2021, respondent failed to submit a biological fluid specimen. Respondent went to a specimen collection site and discovered it was closed. She and Ms. Saucedo had an e-mail exchange in which respondent informed Ms. Saucedo that the site was closed and in which Ms. Saucedo admonished respondent

that it was her responsibility to test on the date selected. Respondent submitted a specimen the following morning.

140. Respondent tested positive for PEth in a blood specimen collected July 7, 2021. The result was 45.1 mg/mL, which is in the lower range. Respondent has reported two incidents of alcohol consumption that may have resulted in the positive results. She told Dr. Badre that, before her brother died, there were two or three occasions when she took sips of his beers. However, in her testimony, when asked about the positive test on the specimen collected in July 2021, she testified that she and her current boyfriend visited friends in Florida, and she drank beer and, perhaps, some ginger ale with vodka.

141. In 2021, there were two more positive test results; they were from specimens collected on October 31 and November 8, 2021. But the test on the blood specimen collected November 8, 2021, was to confirm the results of the test on the urine specimen collected October 31, 2021, and while it is not absolutely certain, Dr. Ferguson suggested that it is very possible that they were related to a single incident of alcohol use.

142. It is remarkable that, in the middle of respondent's testing history, there was a period of almost two years when there were no positive test results. There were a number of positives in 2019; all of the tests alleged as matters in aggravation were in 2019. But beginning on September 2, 2019, through July 6, 2021, – a period of 22 months -- there were no positive test results.

143. Since November 8, 2021, all of respondent's tests have been negative for metabolites of alcohol.

144. Based on the evidence presented, it is found that: Placing respondent on probation is likely to lead to her rehabilitation, and that can be done consistent with protecting the public.

Specific Findings Concerning Matters in Aggravation

145. If it is determined that discipline should be imposed, the following matters should be considered in determining the degree of discipline.

146. On May 19, 2005, the board revoked respondent's license because of her addiction to cocaine.

147. On June 1, 2019, respondent failed to submit a biological fluid specimen.

148. Between January 29 and September 1, 2019, there were 10 occasions when test results on biological fluid specimens were positive.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that the charges in the petition to revoke probation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 582; Evid. Code, § 500.)

2. The standard of proof in an administrative proceeding seeking to suspend or revoke a license that requires substantial education, training, and testing, is "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

Statutory and Regulatory Authority

3. Business and Professions Code section 2229 provides, in part:

> (a) Protection of the public shall be the highest priority for the Division of Medical Quality, . . . [or] an administrative law judge of the Medical Quality Hearing Panel in exercising their disciplinary authority.
>
> (b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel [or] the division . . . 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.
>
> (c) It is the intent of the Legislature that the division, . . . and the enforcement program shall seek out those licensees who have demonstrated deficiencies in competency and then take those actions as are indicated, with priority given to those measures, including further education, restrictions from practice, or other means, that will remove those deficiencies. Where rehabilitation and protection are inconsistent, protection shall be paramount.

4. California Code of Regulations, title 16, section 1361.52, subdivisions (a), (b), (c) and (e), provide, in part:

(a) A licensee who does any of the following shall be deemed to have committed a major violation of his or her probation:

[¶] . . . [¶]

(2) Commits multiple minor violations of probation conditions and terms;

[¶] . . . [¶]

(5) Fails to undergo biological fluid testing when ordered;

(6) Uses, consumes, ingests, or administers to himself or herself a prohibited substance;

[¶] . . . [¶]

(b) If a licensee commits a major violation, the Board will take one or more of the following actions:

(1) Issue an immediate cease-practice order and order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee. Any order issued by the Board pursuant to this subsection shall state that the licensee must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice.

(2) Increase the frequency of biological fluid testing.

(3) Refer the licensee for further disciplinary action, such as suspension, revocation, or other action as determined by the Board.

(c) A licensee who does any of the following shall be deemed to have committed a minor violation of his or her probation:

[¶] . . . [¶]

(4) Fails to comply with any term or condition of his or her probation that does not impair public safety.

[¶] . . . [¶]

(e) Nothing in this section shall be considered a limitation on the Board's authority to revoke the probation of a licensee who has violated a term or condition of that probation.

5. California Code of Regulations, title 16, section 1361.51, subdivision (f), provides:

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in section 1361.52, and the Board shall impose any or all of the consequences set forth in section 1361.52, in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance the rehabilitation of the licensee.

Conditions of Respondent's Probation

6. Condition 5 of respondent's probation provides, in part:

> [Respondent] shall immediately submit to biological fluid testing . . . upon request of the Board or its designee. . . . [Respondent] shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. [Respondent] shall be tested on the date of the notification as directed by the Board or its designee. The Board my order [respondent]to undergo a biological fluid test on any day, at any time, including weekends and holidays . . . .

7. Condition 10 of respondent's probation provides, in part:

> [Respondent] shall abstain completely from the use of products or beverages containing alcohol.

Grounds to Impose Discipline

8. Within the terms of California Code of Regulations, title 16, sections 1361.51 and 1361.52, respondent has violated conditions of her probation. The board contends that the appropriate discipline is revocation of respondent's probation; revocation or suspension of her license; revocation, suspension, or denial of her authority to supervise physicians' assistants and advanced practice nurses; and if respondent is placed on probation, ordering her to pay the costs of probation.

9. On June 1, 2019, respondent ingested champagne, an alcoholic beverage. This constituted a failure to comply with condition number 10 of her

probation, and pursuant to California Code of Regulations, title 16, section 1361.52, subdivisions (a)(6), constitutes a major violation of her probation. Pursuant to California Code of Regulations, title 16, section1361.52, subdivision (b), respondent's license is subject to discipline.

10. On June 28, 2021, respondent failed to undergo biological fluid testing when ordered. This constituted a failure to comply with condition number 5 of her probation, and pursuant to California Code of Regulations, title 16, section 1361.52, subdivisions (a)(5), constitutes a major violation of her probation. Pursuant to California Code of Regulations, title 16, section 1361.52, subdivision (b), respondent's license is subject to discipline.

11. On July 7, October 31, and November 8, 2021, positive biological fluid tests evidenced the use of alcohol, a prohibited substance. Within the terms of California Code of Regulations, title 16, section 1361.51, subdivision (f), those positive tests constituted major violations of condition 10 of respondent's probation. Pursuant to California Code of Regulations, title 16, section 1361.52, subdivision (b), respondent's license is subject to discipline.

Matters in Aggravation

12. On May 19, 2005, the board revoked respondent's certificate for unlawful use of controlled substances and impairment of her ability to practice medicine safely due to her addiction to cocaine.

13. On June 1, 2019, respondent failed to undergo biological fluid testing when ordered. This constituted a failure to comply with condition number 5 of her probation, and pursuant to California Code of Regulations, title 16, section 1361.52, subdivisions (a)(5), constitutes a major violation of her probation.

14. On January 29, January 31, February 3, February 22, February 24, February 27, July 29, August 4, August 27, and September 1, 2019, positive biological fluid tests evidenced the use of alcohol, a prohibited substance. Within the terms of California Code of Regulations, title 16, section 1361.51, subdivision (f), those positive tests constituted major violations of condition 10 of respondent's probation.

Evaluation

15. The evidence does not support a revocation of respondent's license. Her license was placed on probation because of a cocaine addiction. Respondent's cocaine use disorder has been in remission for many years. There is no evidence of her having used cocaine since 2014.

16. When a person has a substance abuse disorder, it is appropriate to condition a probationary license on abstinence from use of all substances that can lead to dependence and abuse. Dr. Badre said the fact that respondent has a cocaine use disorder, in remission, warrants a requirement that she abstain from the use of products or beverages containing alcohol. Use of a substance other than cocaine increases the risk of a relapse in the cocaine disorder. So in respondent's case, it was and is appropriate to condition her probation on abstinence from the use of alcohol. For at least two reasons, it is imperative that she comply with that condition. First, consuming alcohol could contribute to a relapse in her recovery. Second, in order to demonstrate a commitment to recovery and rehabilitation, probationers must comply with the board's conditions of probation. So respondent's failure to abstain completely from the use of products or beverages containing alcohol is a matter of great concern. However, in this case, a few factors support the conclusion that respondent should be given another opportunity to abstain. She should be given another opportunity to demonstrate that she can and will comply scrupulously with the board's conditions.

17. First, it bears emphasizing that alcohol had nothing to do with the grounds for revoking respondent's license.

18. Using products that contain alcohol and eating food that contains alcohol constitute failures to comply with the abstinence requirement, but in terms of the danger to recovery, they are of much less concern than consuming alcoholic beverages. And the evidence is that respondent consumed alcoholic beverages on only a few occasions, and when her tests were positive, they were for very low levels of metabolites of alcohol. This does not excuse respondent's failure to abstain from the use of products and beverages that contain alcohol, but it is important that she drank alcoholic beverages on only a few occasions. The evidence is consistent with her drinking an alcoholic beverage approximately five or six times over a period of two and one-half years. She had less than a glass of champagne at a wedding in June 2019. She had some drinks of beer with her brother before he died in July 2021. She had beer and perhaps ginger ale with vodka with her current boyfriend at dinner in Florida in July 2021. It also is important that the positive tests, no matter what the source of the alcohol, were all at very low levels of metabolites of alcohol.

19. Dr. Ferguson concluded that the low levels of metabolites were consistent with tests detecting alcohol in coffee, rum cake, and chocolate pie. He also concluded that certain pairs of tests may have related to single uses of products containing alcohol. The presence of metabolites of alcohol in the October 31, 2021, urine sample and the test result on the presence of metabolites of alcohol the November 8, 2021, blood sample may have resulted from a single incident of using a product containing alcohol. The presence of metabolites of alcohol in the January 29 and January 31, 2019, samples may have resulted from a single use of a product containing alcohol. The presence of metabolites of alcohol in the February 22 and

February 24, 2019, samples may have resulted from a single use of a product containing alcohol.

20. Ms. Saucedo sent Dr. Ferguson an e-mail in which she asked, "[I]s the concerning number of continuing positives evidence of substance abuse?" Dr. Ferguson did not endorse Ms. Saucedo's suggestion that there was evidence of substance abuse. Rather, he said, "I'd have to answer your question by saying the continued EtG positives are indicative of a lack of compliance with the program that requires abstinence from any alcohol."

21. The evidence is consistent with respondent's not having an alcohol disorder, and the evidence is consistent with a conclusion that most of the positive tests resulted simply from her careless use of products containing alcohol. That would not suggest that her probation should be reinstated if one were to expect that she would continue down that same careless path. But there is substantial evidence that respondent has made a commitment to take the alcohol abstention condition seriously. Respondent began seeing Dr. Hubbard in 2020 for psychotherapy. She sees him once per month. On August 20, 2021, Dr. Badre recommended that respondent complete a one-month outpatient program for depression and substance use disorder at Alvarado Parkway Institute. Respondent completed that program on October 18, 2021. On March 3, 2022, respondent began seeing Dr. Lindquist once per week for psychological counselling. In March 2022, respondent began using a SoberLink device to document her abstinence from alcohol. The SoberLink program is in addition to the testing with the board-approved program. Respondent has not had a positive test since November 8, 2021.

22. Respondent testified that she plans to continue seeing Dr. Hubbard and Dr. Lindquist. Respondent has found online groups and usually attends six meetings

per week. She plans to continue with SoberLink. She has completed a third course of 36 treatments of TMS with Dr. Hubbard. In addition to the other 12-step meetings she attends, she continues with the Sunday smart-recovery meeting. Respondent has complied with the condition of her probation that requires additional hours of continuing medical education. Respondent declared that, in the future, she will comply fully with the condition that she abstain from the use of products or beverages that contain alcohol. She is committed to focusing on the critical importance of complying with the board's requirements. Respondent's testimony was highly credible.

23. This record supports a conclusion that respondent's license should be placed on probation again. Business and Professions Code section 2229, subdivision (b), provides that, when rehabilitation is possible, consistent with protection of the public, the board "shall take action that is calculated to aid in the rehabilitation of the licensee . . . ." The language the Legislature chose is mandatory – "shall."

24. Because of the numerous matters in aggravation and because grounds for revocation occurred as recently as 2021, it is determined that the period of probation should be five years, i.e., in effect, no credit should be given for the three and one-half years respondent has spent on probation.

The Appropriate Conditions of Probation

25. The standard conditions of probation should be imposed; there is no reason to deviate from any of those.

26. Optional conditions that should be included are: Abstain from controlled substances, abstain from alcohol, biological fluid testing, and community service. In view of respondent's irresponsible attitude regarding the board's conditions of probation, it is appropriate to require an ethics course.

27. In Dr. Badre's evaluation, respondent demonstrated her ability to practice safely. Respondent's ability to perform intelligently for over three and one-half hours in the psychiatric interview and psychometric testing is significant evidence of her ability to practice medicine safely.

28. Dr. Badre saw no evidence of mental issues that might prevent respondent from practicing medicine safely. He saw no evidence of a relapse regarding respondent's cocaine use disorder. He saw no evidence of an alcohol use disorder. He saw no evidence of a cognitive disorder.

29. As a related but separate matter, the board, in early 2022, required respondent to enroll in and pass a competency evaluation. The board required that because respondent had not been able to find employment in order to satisfy the probationary condition requiring her to practice at least 40 hours per month. Respondent took a competency examination in March 2022, but as of the date of the hearing in this mater, the results were pending. She must satisfy the board's requirement before she can practice, thus there is no need to add a competency evaluation to the conditions of probation.

30. However because of respondent's history of depression and her testimony that her depression contributed to her inability to focus on complying with the board's conditions, psychotherapy should be required.

ORDER

By a decision dated January 18, 2019, the board reinstated and immediately revoked certificate G 56228 issued to respondent, Margaret Melinda Sprague, M.D. However, the board stayed the revocation and placed respondent's certificate on

probation. The probation is revoked, and the stayed revocation of respondent's certificate is imposed. However, that revocation is stayed, and respondent's certificate is placed on probation for five years on the following terms and conditions.

CONTROLLED SUBSTANCES - ABSTAIN FROM USE

1. Respondent 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 respondent by another practitioner for a bona fide illness or condition.

2. Within 15 calendar days of receiving any lawfully prescribed medications, respondent 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.

3. If respondent 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, respondent shall receive a notification from the board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the board within 30 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the board shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. If the case is heard by an Administrative Law

Judge alone, he or she shall forward a Proposed Decision to the board within 15 days of submission of the matter. Within 15 days of receipt by the board of the Administrative Law Judge's proposed decision, the board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the board, the board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the board. The cessation of practice shall not apply to the reduction of the probationary time period.

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

ALCOHOL - ABSTAIN FROM USE

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

6. If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the board within 30 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the board shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates

to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the board within 15 days of submission of the matter. Within 15 days of receipt by the board of the Administrative Law Judge's proposed decision, the board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the board, the board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the board. The cessation of practice shall not apply to the reduction of the probationary time period.

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

BIOLOGICAL FLUID TESTING

8. Respondent shall immediately submit to biological fluid testing, at respondent'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, respondent 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. Respondent shall maintain this laboratory or service contract during the period of probation.

9. A certified copy of any laboratory test result may be received in evidence in any proceedings between the board and respondent.

10. If respondent fails to cooperate in a random biological fluid testing program within the specified time frame, respondent shall receive a notification from the board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the board within 30 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the board shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the board within 15 days of submission of the matter. Within 15 days of receipt by the board of the Administrative Law Judge's proposed decision, the board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the board, the board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the board. The cessation of practice shall not apply to the reduction of the probationary time period.

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

COMMUNITY SERVICE - FREE SERVICES

12. Within 60 calendar days of the effective date of this decision, respondent shall submit to the board or its designee for prior approval a community service plan in which respondent shall within the first two years of probation, provide 10 hours of free medical or nonmedical services to a community or non-profit organization. If the term of probation is designated for two years or less, the community service hours must be completed not later than six months prior to the completion of probation.

13. Prior to engaging in any community service respondent shall provide a true copy of the decision(s) to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where respondent provides community service and shall submit proof of compliance to the board or its designee within 15 calendar days. This condition shall also apply to any change(s) in community service.

14. Community service performed prior to the effective date of the decision shall not be accepted in fulfillment of this condition.

PROFESSIONALISM PROGRAM (ETHICS COURSE)

15. Within 60 calendar days of the effective date of this decision, respondent shall enroll in a professionalism program, that meets the requirements of California Code of Regulations, title 16, section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after

attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

16. 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.

17. Respondent 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.

PSYCHOTHERAPY

18. Within 60 calendar days of the effective date of this decision, respondent 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, respondent 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.

19. 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. Respondent

shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

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

21. Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

MEDICAL EVALUATION AND TREATMENT

22. Within 30 calendar days of the effective date of this decision, and on a periodic basis thereafter as may be required by the board or its designee, respondent shall undergo a medical evaluation by a board-appointed physician who shall consider any information provided by the board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the board or its designee. Respondent shall provide the evaluating physician any information and documentation that the evaluating physician may deem pertinent.

23. Following the evaluation, respondent shall comply with all restrictions or conditions recommended by the evaluating physician within 15 calendar days after being notified by the board or its designee. If respondent is required by the board or its designee to undergo medical treatment, respondent shall within 30 calendar days

of the requirement notice, submit to the board or its designee for prior approval the name and qualifications of a California licensed treating physician of respondent's choice. Upon approval of the treating physician, respondent shall within 15 calendar days undertake medical treatment and shall continue such treatment until further notice from the board or its designee.

24. The treating physician shall consider any information provided by the board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit quarterly reports to the board or its designee indicating whether or not respondent is capable of practicing medicine safely.

25. Respondent shall provide the board or its designee with any and all medical records pertaining to treatment, the board or its designee deems necessary.

26. If, prior to the completion of probation, respondent is found to be physically incapable of resuming the practice of medicine without restrictions, the board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the board determines that respondent is physically capable of resuming the practice of medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

NOTIFICATION

27. Within seven days of the effective date of this decision, respondent 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 respondent, at any other facility where respondent 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 respondent. Respondent shall submit proof of compliance to the board or its designee within 15 calendar days.

28. This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES

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

OBEY ALL LAWS

30. Respondent 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.

QUARTERLY DECLARATIONS

31. Respondent 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.

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

GENERAL PROBATION REQUIREMENTS

33. Compliance with Probation Unit: Respondent shall comply with the board's probation unit.

34. Address Changes: Respondent shall, at all times, keep the board informed of respondent'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(b).

35. Place of Practice: Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

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

37. Travel or Residence Outside California: Respondent 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 respondent should leave the State of California to reside or to practice respondent shall notify the board or its designee in writing 30 calendar days prior to the dates of departure and return.

INTERVIEW WITH THE BOARD OR ITS DESIGNEE

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

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NON-PRACTICE WHILE ON PROBATION

39. Respondent 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 respondent's return to practice. Non-practice is defined as any period of time respondent 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 respondent resides in California and is considered to be in non-practice, respondent 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 respondent 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.

40. In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent 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.

41. Respondent'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.

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

COMPLETION OF PROBATION

43. Respondent 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, respondent's certificate shall be fully restored.

VIOLATION OF PROBATION

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

LICENSE SURRENDER

45. Following the effective date of this decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his or her

license. The board reserves the right to evaluate respondent'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, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

PROBATION MONITORING COSTS

46. Respondent 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: September 20, 2022

Robert Walker
Robert Walker (Sep 20, 2022 11:07 PDT)
ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings