

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

**In the Matter of the Petition for )  
Penalty Relief of: )**

**Ruth Anna Rodgers, M.D. )**

**Case No. 800-2016-026034**

**Physician's and Surgeon's )  
Certificate No. A 80909 )**

**Petitioner )**  
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**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 December 8, 2017.**

**IT IS SO ORDERED November 9, 2017.**

**MEDICAL BOARD OF CALIFORNIA**

By:   
\_\_\_\_\_  
**Kristina Lawson, J.D., Chair  
Panel B**

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

In the Matter of the Petition for  
Penalty Relief of:

RUTH ANNA RODGERS, M.D.

Physician's and Surgeon's Certificate  
No. A80909

Petitioner.

Case No. 800-2016-026034

OAH No. 2017041083

**PROPOSED DECISION**

Mary-Margaret Anderson, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on August 7, 2017, in Oakland, California.

Cheryl Ruggiero, Attorney at Law, represented Petitioner Ruth Anna Rodgers, M.D., who was present.

David Carr, Deputy Attorney General, represented the Office of the Attorney General, Department of Justice.

The record closed on August 7, 2017.

**FACTUAL FINDINGS**

1. On October 25, 2002, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A80909 to Ruth Anna Rodgers, M.D. (Petitioner). Respondent is board certified in anesthesia.

*Background*

2. On October 13, 2014, an Interim Order was issued by an Administrative Law Judge suspending Petitioner's certificate for violations of the Medical Practice Act. An Accusation against Petitioner was subsequently filed.

3. Effective March 19, 2015, the Board adopted a Stipulated Settlement and Disciplinary Order resolving the Accusation that was agreed to by Petitioner and the Board's Executive Director. Pursuant to the Order, Petitioner's certificate was revoked, but the revocation was stayed, and the certificate was placed on a probationary status for five years, under certain terms and conditions. The probationary term is currently scheduled to end on March 19, 2020.

4. The Board's disciplinary action was grounded in two findings of unprofessional conduct. The first, use of dangerous drugs in a self-injurious manner, involved Petitioner's use of Ativan,<sup>1</sup> ketamine,<sup>2</sup> and a small amount of alcohol, on the same evening. When Petitioner's husband believed her to be unresponsive at approximately 10:45 p.m., he called 911 and Petitioner was briefly hospitalized. The second finding was wrongful possession of dangerous drugs. Petitioner did not have a prescription for the ketamine and she also possessed sealed vials of Fentanyl.<sup>3</sup>

5. On August 31, 2016, Petitioner signed a Petition for Penalty Relief, requesting two of the probationary conditions be modified or clarified. This hearing followed.

*Relevant probation conditions and request for penalty relief*

6. Condition No. 1 states:

CONTROLLED SUBSTANCES – SURRENDER OF DEA PERMIT. Respondent is prohibited from practicing medicine until Respondent provides documentary proof to the Board or its designee that Respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any state prescription forms and all controlled substances order forms. Thereafter, Respondent shall not reapply for a new DEA permit without the prior written consent of the Board or its designee.

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<sup>1</sup> Ativan is a trade name for lorazepam, which is a dangerous drug as defined in section 4022 of the Business and Professions Code, and a Schedule IV controlled substance as defined in section 11057, subdivision (d), of the Health and Safety Code.

<sup>2</sup> Ketamine is a dangerous drug as defined in section 4022 of the Business and Professions Code, and a Schedule III controlled substance and a narcotic as defined by section 11056 of the Health and Safety Code.

<sup>3</sup> Fentanyl is a dangerous drug as defined in section 4022 of the Business and Professions Code, and a Schedule III controlled substance and a narcotic as defined by section 11055, subdivision (c)(8), of the Health and Safety Code.

Petitioner requests that Probation Condition No. 1 be removed, which will allow her to obtain a DEA permit and to practice in her specialty of anesthesia while on probation.

7. Condition No. 3 states in pertinent part:

CONTROLLED SUBSTANCES – ABSTAIN FROM USE.

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.

Another Condition, No. 7, required Petitioner to “undergo and complete a psychiatric evaluation . . . by a Board-appointed board certified psychiatrist” who would provide a written evaluation report to the Board. It required Petitioner to “comply with all restrictions or conditions recommended by the evaluating psychiatrist . . . .” In compliance with Condition No. 7, Petitioner was evaluated by Board-appointed psychiatrist Salma Khan, M.D. Dr. Khan recommended that Petitioner not be permitted to take controlled substances, even if lawfully prescribed.<sup>4</sup>

Petitioner requests that she no longer be subject to this modification of Condition No. 3, and instead that it apply as originally written, so that she can take medications lawfully prescribed by her physicians.

*Petitioner’s description of underlying events*

8. In May of 2014, Petitioner was employed as an anesthesiologist by the Veterans Administration (VA). She had requested a leave of absence for medical reasons, but was initially refused. At the time, Petitioner was suffering from a variety of medical symptoms without knowledge of the cause. The symptoms included abdominal pain, nausea, fatigue, diarrhea, and overall malaise. Petitioner thought the symptoms were related to colon surgery in 2001, but this proved not to be the case. Her gastroenterologist prescribed antibiotics without good effect. Petitioner continued to work 50 to 60 hours per week, while caring for a very troubled daughter, as well as her son and husband. She was flying regularly to Denver and Georgia to care for her former Olympic coach and her father, who were both seriously ill.

On May 10, Petitioner was on medical leave from the VA and was very depressed. She had a very difficult day at home, and took two half tablets of Ativan. A friend arrived and they went out to dinner, where she drank one-half of a beer. Petitioner was still upset when she got home, and took two more half tablets of Ativan. She had a small amount of

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<sup>4</sup> Dr. Khan’s report was not submitted in evidence.

ketamine left from a medical mission trip to Peru. As she had discussed taking ketamine for depression with her psychiatrist, she took perhaps one-half teaspoon mixed with water. She did not have a prescription for the ketamine, but did have one for the Ativan, which she took as prescribed. Petitioner went to bed and the next thing she remembers is waking up in an ambulance. Her husband had called 911. She was given IV fluids and her blood pressure was very low. Petitioner was admitted to the hospital and discharged approximately one hour later.

9. A police investigation ensued. An officer came to Petitioner's home and asked to see all her medications. Petitioner gave the officer the ketamine vial, Ativan, antibiotics, and anti-depressants. She also gave her two sealed bottles of Fentanyl, which she kept in her wilderness travel kit. They had not been opened and had expired. Petitioner had the Fentanyl for use if she needed to set a fracture or intubate a patient on a medical mission trip. She surrendered her DEA permit to the officers at their request. A criminal complaint was filed against Petitioner for illegal possession of drugs, but the complaint was dismissed in January 2015.

10. When Petitioner's employer, the VA, heard about these matters, it undertook an investigation. Petitioner was told that if she completed a 30-day treatment program that her job would be protected. She enrolled at Hazelton Springbrook in Oregon and attended the program for about 10 days in August 2014. Petitioner felt pressured to admit that she was an addict and did not care for the program. She transferred to Alta Mira, an inpatient center in Sausalito. She was still quite physically ill.

*Petitioner's evidence of rehabilitation and current condition*

11. In addition to the recommendation described in Finding 7, Dr. Salma Khan, required Petitioner to attend another 30-day residential treatment program. Petitioner completed the Promises program in October of 2015.

12. Petitioner sought, pursuant to Probation Condition No. 1, for the Board to approve her application to renew her DEA permit. A Board representative told her that this would occur when Petitioner had a job that required the permit. Despite such job offers, the permission has not been forthcoming. The situation has been confusing. Potential employers sent letters to the Board, and the Board's representative told Petitioner to reapply. But then a DEA agent called and told her that the Medical Board had contacted them to make sure Petitioner withdrew the application.

Petitioner was able to obtain a job as a primary care physician in Lodi beginning in February of 2017. Her employer is hoping that she will be granted the permit soon.

13. Meanwhile, in approximately September 2015, Petitioner was diagnosed with Addison's disease. Since being diagnosed and receiving treatment, Petitioner's health is greatly improved.

14. Petitioner has complied with and completed the conditions of her probation. She completed a professionalism course at the University of California at Irvine and enrolled in a practice monitoring program. Petitioner participates in the required random testing program for drugs and alcohol, checking daily whether she is called to provide a sample for testing. She reported that she had one positive test for alcohol after drinking eggnog with vanilla extract.

15. No probation report concerning Petitioner's progress on probation was submitted in evidence. Petitioner submitted evidence showing that she has received three citations from the Board for missing tests. For the first two, she paid fines of \$350 and \$700, respectively. The third missed test occurred during a cross-country flight. On January 23, 2017, Petitioner emailed Board staff to ask if it was acceptable to test the day following the flight. It does not appear she received a response to her inquiry until January 30. But she tested the day after she arrived home and the results were negative.

On February 7, 2015, the Board issued a Cease Practice Order based on the third missed test. On February 17, 2017, the San Francisco Superior Court issued a stay order, and on April 17, 2017, the Board issued a citation fining Petitioner \$1,000 for the missed test.

16. This matter has resulted in financial difficulties for Petitioner and her family. Each of the 30-day programs cost \$30,000. She pays \$20,000 per year for the practice monitoring. The biological fluid monitoring costs \$500 per month. She pays approximately \$1,200 per month for psychiatrist visits, and additional amounts for attorney's fees. The family is in debt. Petitioner makes approximately one-third of what she earned as an anesthesiologist.

17. Petitioner was calm and collected while testifying. She presented her version of the events and progress on probation in a forthright manner, consistent with one who is telling the truth. She was a credible witness.

*Expert opinion evidence*

DAVID L. SMITH, M.D.

18. David L. Smith, M.D., has been Petitioner's psychiatrist for over 17 years, treating her for Major Depressive Disorder and Attention Deficit Disorder. He is board certified and specializes in psychiatric medication. Dr. Smith completed a psychiatric internship and residency at Stanford Medical School. He also completed a fellowship in psychopharmacology and mood disorders at Stanford. Dr. Smith has conducted a private practice in Palo Alto since 1999.

19. Dr. Smith signed his first declaration concerning Petitioner's mental condition on September 30, 2014. He noted awareness of the May 2014 incident, which he described as an: "isolated attempt at medicated self-treatment for depression . . ." He opined that Petitioner's depression was well managed at the time, but the "unusually heavy burden of

additional stressors, including the illness and deaths of several loved ones, particularly difficult challenges with her children, and her own severe health issues . . . together quite overwhelmed her . . . .”

As regards the ketamine use, Dr. Smith noted that he had referred Petitioner to another physician for an evaluation and assessment for the use of ketamine for her depression.

Dr. Smith opined that Petitioner demonstrated good insight into the causes for the behavior and clearly regretted it. He noted that they discussed the incident in ongoing treatment, and overall, he believes her ability to practice anesthesiology is not negatively affected by her psychiatric health. He also noted that Petitioner has not evidenced a substance abuse problem in the many years he has treated her.

20. In a letter dated August 30, 2016, Dr. Smith wrote to support Petitioner’s petition to modify probation. He opined that for Petitioner to function at her best, she should be allowed to take prescribed medications, including Adderall and Ativan. He wrote that Petitioner never abused or misused the drugs, and that she has medical conditions that require such treatment. Dr. Smith repeated his opinion that Petitioner is safe and competent to practice medicine.

21. In a declaration dated July 20, 2017, Dr. Smith reiterated some of the opinions previously expressed. He again opined that Petitioner does not have an addiction disorder. He recommended she be allowed to take prescription medications. In addition, Dr. Smith wrote that he sees no clinical need for a workplace monitor. He again recommended that Petitioner be permitted to return to practice anesthesiology and that she be allowed to obtain a DEA permit.

DAVID KAN, M.D.

22. David Kan, M.D., is Petitioner’s Board-approved treating psychiatrist. Dr. Kan is board certified in general and forensic psychiatry and addiction medicine. He completed a residency and fellowship at the University of California, San Francisco, and is a member of the faculty of its Department of Psychiatry. Dr. Kan ran the Opioid Treatment Program at the VA Medical Center in San Francisco from 2004 to 2015, and has been in private practice since that time. He wrote a letter to the Board dated August 30, 2016, signed a declaration dated July 7, 2017, and testified at hearing.

23. Dr. Kan was acquainted with Petitioner when they both worked at the VA, and reports that she was held in excellent regard there. Since June 2015, he has seen Petitioner in weekly psychotherapy as required by her probation conditions. He has reviewed Petitioner’s disciplinary file and also records from two other addiction specialists, Dr. Skipper from Promises, whom he describes as a leader in assessing substance abuse in physicians, and Dr. Batki of Alta Mira. Neither of these physicians opined that Petitioner suffers from a substance abuse disorder; they opined that she does not. Dr. Kan agrees.

Dr. Kan noted that Petitioner's diagnosed physical conditions include hypothyroidism and Addison's Disease. These conditions can cause or exacerbate anxiety. He diagnosed Petitioner with Major Depressive Disorder, under generally good control, and in remission with medication. His Attention Deficit Disorder diagnosis is based on her complete history, as well as his observation of a level of inattentiveness that arose on occasion during their sessions together.

Dr. Kan believes that the events of May 2016 were an anomaly in Petitioner's history.

[She] has never had a Substance Use Disorder of any sort. She had an episode of problematic substance use that combined with undiagnosed Addison's disease that led to emergency department care. She has not used any illicit substances since then as evidenced by frequent, random testing . . . .

Dr. Kan opined that there is nothing to prevent Petitioner from practicing within the standard of care. He recommends that her DEA permit be reinstated and that for her mental well-being, she be allowed to take prescribed medications.

LYNN BERTRAM, M.D.

24. Lynn Bertram, M.D., is board certified in psychiatry and addiction psychiatry. She is in private practice in Orinda. Board staff referred Petitioner to Dr. Bertram in October 2016, and requested an evaluation of Petitioner's ability to practice medicine safely. She saw Petitioner for a total of three hours, and authored a report dated February 27, 2017. Dr. Bertram reviewed materials that included the disciplinary file, and evaluations by Dr. Khan, Dr. Kan's records, and discharge summaries from Promises Treatment Centers and the Alta Mira Recovery Program.

25. Dr. Bertram agreed with the other physicians that Petitioner does not have a substance abuse disorder. She also found no evidence of Attention Deficit Disorder, noting that it manifests during childhood and that Petitioner had a successful academic career. Dr. Bertram agreed with the diagnosis of Major Depression, and qualified it as severe and recurrent. She noted incidents of suicidal ideation and a mental health hold in 2014 that Petitioner would not discuss. Dr. Bertram described Petitioner as having "many of the demographics of patients who are at a high risk of suicide," and noted that "lorazepam and other benzodiazepines disinhibit patients and make it much more likely that they will act out, overdose, or harm themselves." She opined also that Petitioner's "life is impaired by her depression and low frustration tolerance." In order to practice safely, she recommended Petitioner engage in weekly, in-person, psychiatric treatment; take no controlled substances either illicit or prescribed; submit to random drug testing, and engage a "worksite monitor to assess if she is distracted by depression." In addition, Petitioner should no longer be required to attend 12-step meetings. In other words, she recommends probation conditions that are in place, except for the 12-step meetings.



26. Dr. Bertram noted that Petitioner was requesting reinstatement of her DEA permit, but did not render an opinion about the request.

27. Dr. Bertram's opinions do not impress as solidly fact-based and her report reads as somewhat biased against Petitioner. She mentions "low frustration tolerance" several times, but it is unclear what this conclusion is based upon. She also characterizes Petitioner in essence as oppositional, and infers lack of integrity in what she describes as Petitioner's failure to live up to her probation agreement with the Board by bringing this action. For example, she wrote:

[Petitioner] shows no insight into her contribution to the situation she is in. She agreed to probation and the terms of that probation with the Medical Board and now she seeks to fight with them on many of the conditions. Her judgment is mixed. On the one hand she showed poor judgment when she overdosed on Ativan, Ketamine and alcohol. On the other hand, she had requested time off from her job for "stress" and was aware she was doing poorly. She is fighting with the Medical Board after initially agreeing to probation terms with them.

In a "Summary of Presenting Problem," Dr. Bertram wrote in part:

[Petitioner] consented to terms and conditions of probation with the Medical Board that included consent to an evaluation and agreement to follow the recommendations from that evaluation. Not liking the conclusions and recommendations put forth in that evaluation, [Petitioner] disagreed [with] the diagnosis and effectively recanted her agreement with the Board by challenging the diagnosis and the restrictions imposed as a result of that diagnosis.

This summary reads unduly harsh. There is nothing unacceptable about a probationer requesting a change in probation conditions. And it implies that there was only one diagnosis, when several other physicians found no substance abuse. There was no evidence that Petitioner is "fighting with the Medical Board." These statements negatively affect the perception of objectivity and impartiality. And although she briefly described Petitioner's extensive physical problems, she did not appear to consider them in her analysis.

28. In other sections, Dr. Bertram noted the differences in diagnoses and recommendations of the various physicians involved. In that regard, she noted that treating physicians are focused on the patient, whereas she and Dr. Khan are focused on the public interest. Even if that was accepted as wholly accurate, Dr. Kan is, like Dr. Bertram, involved at the request of the Board and approved as Petitioner's treating psychiatrist. Dr. Smith and Dr. Kan agree with the issuance of a DEA permit to Petitioner and with her taking prescribed

medication, including controlled substances. Dr. Bertram's opinions were much less persuasive than those of Petitioner's treating psychiatrists, Dr. Smith and Dr. Kan, and are accorded little weight.

*Petitioner's additional evidence*

29. Michael MacQuarrie, M.D., is board certified in emergency medicine, and testified in support of Petitioner. He is the Director of Medical Emergency Services for Incline Village, Nevada, and Assistant Director of Medical Emergency Services for the town of Truckee. Petitioner worked under Dr. MacQuarrie at Tahoe Forest Hospital for four years. He felt she provided excellent care and tried to talk Petitioner into staying, but she left to pursue a specialty in anesthesiology.

Dr. MacQuarrie is aware of Petitioner's disciplinary history and the events of May 2014. Despite this, he has offered her a position. He feels that Petitioner's circumstances arose from medical problems, and noted that "Addison's disease kills people." His medical group would like to employ Petitioner, but can only do so if she obtains her DEA permit.

## LEGAL CONCLUSION

1. The burden of proof in this matter is on Petitioner to show by clear and convincing evidence that her probation terms should be modified. Business and Professions Code section 2307, subdivision (e), provides that in considering a petition for modification of penalty, "all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability" may be considered.

2. There is no question that Petitioner suffers from depression. In 2014, she also suffered from enormous personal problems, including Addison's disease, which was late to be diagnosed and treated. On one terrible day she made a big mistake in what to her, were desperate circumstances. She also was in violation of drug laws by her possession of ketamine and Fentanyl. Petitioner has since admitted wrongdoing and agreed to probationary terms with serious conditions. She has been almost completely successful on probation. Her request now, approximately half-way through her term, is modest. Despite nearly unanimous expert opinions that she does not have a substance abuse disorder, she is not requesting an end to random testing. She desires a DEA permit so that she can practice anesthesiology and to take medications as prescribed by her physicians to assist her to function at her best.

It is concluded that Petitioner has met her burden. Although public protection is the Board's paramount concern and charge, the purpose of these proceedings is also to rehabilitate physicians. Allowing Petitioner to practice anesthesiology and to take prescribed medications will aid in her rehabilitation and eventual practice with an unrestricted, fully

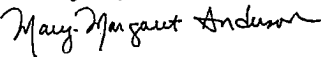
restored certificate. She will remain on probation, and the Board will be able to observe the quality of her practice in her specialty and whether she uses prescribed medications responsibly. The request is reasonable and supported by clear and convincing evidence, and there appears to be little to no discernable risk to the public. Therefore, the request will be granted.

### ORDER

The petition of Petitioner Ruth Anna Rodgers, M.D., for penalty relief is granted, and the Disciplinary Order effective March 19, 2015, is modified as follows:

1. Condition No. 1 is deleted. Petitioner may reapply for a DEA permit. The Board shall assist with Petitioner's application as necessary.
2. Condition No. 3 is affirmed as written. Petitioner may take medications lawfully prescribed to Petitioner by another practitioner for a bona fide illness or condition.

DATED: August 24, 2017

DocuSigned by:  
  
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MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings