

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

**In the Matter of the Accusation/** )  
**Petition to Revoke Probation** )  
**Against:** )  
)  
)  
**Andrew Isaac Abrams, M.D.** )  
)  
**Physician's and Surgeon's** )  
**Certificate No. A 122956** )  
)  
**Respondent** )  
\_\_\_\_\_ )

Case No. 800-2016-024626

**DECISION**

**The attached Stipulated Surrender of License and Order 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 13, 2016.**

**IT IS SO ORDERED December 6, 2016.**

**MEDICAL BOARD OF CALIFORNIA**

By:   
**Kimberly Kirchmeyer**  
**Executive Director**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ROBERT MCKIM BELL  
Supervising Deputy Attorney General  
3 CHRIS LEONG  
Deputy Attorney General  
4 State Bar No. 141079  
California Department of Justice  
5 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
6 Telephone: (213) 897-2575  
Facsimile: (213) 897-9395  
7 E-mail: chris.leong@doj.ca.gov  
*Attorneys for Complainant*

8 **BEFORE THE**  
9 **MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation/Petition to  
12 Revoke Probation Against:

13 **ANDREW ISAAC ABRAMS, M.D.**  
14 **2440 East Glenn Street, #3204**  
**Tucson, AZ 85719**

15 **Physician's and Surgeon's Certificate**  
**No. A122956**

16 Respondent.

Case No. 800-2016-024626

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

17  
18 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
19 interest and the responsibility of the Medical Board of California (Board) of the Department of  
20 Consumer Affairs, the parties hereby agree to the following Stipulated Surrender and Disciplinary  
21 Order which will be submitted to the Board for approval and adoption as the final disposition of  
22 the Accusation/Petition to Revoke Probation.

23 PARTIES

24 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Board. She  
25 brought this action solely in her official capacity and is represented in this matter by Kamala D.  
26 Harris, Attorney General of the State of California, by Chris Leong, Deputy Attorney General.

27 2. ANDREW ISAAC ABRAMS, M.D. (Respondent) is representing himself in this  
28 proceeding and has chosen not to exercise his right to be represented by counsel.





1 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A122956,  
2 issued to Respondent ANDREW ISAAC ABRAMS, M.D., is surrendered and accepted by the  
3 Medical Board of California.

4 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the  
5 acceptance of the surrendered license by the Board shall constitute the imposition of discipline  
6 against Respondent. This stipulation constitutes a record of the discipline and shall become a part  
7 of Respondent's license history with the Medical Board of California.

8 2. Respondent shall lose all rights and privileges as a Physician and Surgeon in  
9 California as of the effective date of the Board's Decision and Order.

10 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was  
11 issued, his wall certificate on or before the effective date of the Decision and Order.

12 4. If Respondent ever files an application for licensure or a petition for reinstatement in  
13 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must  
14 comply with all the laws, regulations and procedures for reinstatement of a revoked license in  
15 effect at the time the petition is filed, and all of the charges and allegations contained in  
16 Accusation/Petition to Revoke Probation No. 800-2016-024626 shall be deemed to be true,  
17 correct and admitted by Respondent when the Board determines whether to grant or deny the  
18 petition.

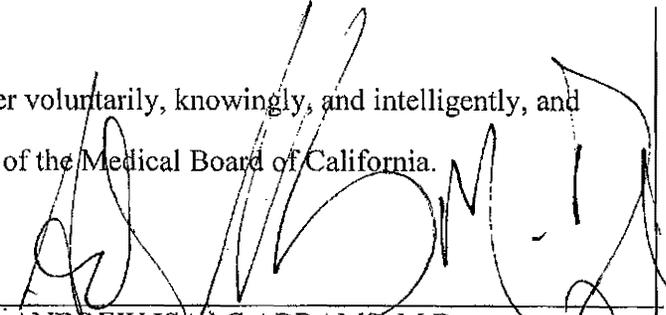
19 5. If Respondent should ever apply or reapply for a new license or certification, or  
20 petition for reinstatement of a license, by any other health care licensing agency in the State of  
21 California, all of the charges and allegations contained in Accusation/Petition to Revoke  
22 Probation, No. 800-2016-024626 shall be deemed to be true, correct, and admitted by Respondent  
23 for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict  
24 licensure.

25 ACCEPTANCE

26 I have carefully read the Stipulated Surrender of License and Order. I understand the  
27 stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into  
28

1 this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and  
2 agree to be bound by the Decision and Order of the Medical Board of California.

3  
4 DATED: 11/02/16

  
5 ANDREW ISAAC ABRAMS, M.D.  
6 Respondent

7 ENDORSEMENT

8 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted  
9 for consideration by the Medical Board of California of the Department of Consumer Affairs.

10 Dated: 11/18/16

Respectfully submitted,

11 KAMALA D. HARRIS  
12 Attorney General of California  
13 ROBERT MCKIM BELL  
14 Supervising Deputy Attorney General



15 CHRIS LEONG  
16 Deputy Attorney General  
17 Attorneys for Complainant

18 LA2016502393  
19 62165412.doc

**Exhibit A**

**Accusation/Petition to Revoke Probation No. 800-2016-024626**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

KAMALA D. HARRIS  
Attorney General of California  
ROBERT MCKIM BELL  
Supervising Deputy Attorney General  
CHRIS LEONG  
Deputy Attorney General  
State Bar No. 141079  
California Department of Justice  
300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 576-7776  
Facsimile: (213) 897-1071  
*Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO October 26 20 16  
BY R. Firdaus ANALYST

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

In the Matter of the Accusation and Petition to  
Revoke Probation Against:  
**ANDREW ISAAC ABRAMS, M.D.,**  
2440 E. Glenn Street, Apt. 3204  
Tucson, AZ 85719  
  
Physician's and Surgeon's Certificate No.  
A122956  
  
Respondent.

Case No. 800-2016-024626  
OAH No. 2016090379  
**ACCUSATION AND PETITION TO  
REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant), brings this Accusation and Petition to Revoke Probation solely in her official capacity as Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.
2. On or about September 21, 2012, the Board issued Physician's and Surgeon's Certificate No. A122956 to Andrew Isaac Abrams, M.D. (Respondent). The Physician and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and expires on February 29, 2018, unless renewed.
3. In a disciplinary action entitled "In the Matter of the Statement of Issues

1 Against Andrew I. Abrams" Case No. 20-2011-216264, the Board issued a Decision After Non-  
2 Adoption, effective September 21, 2012, in which Respondent's application for a Physician's and  
3 Surgeon's Certificate was denied. However, the denial was stayed and Respondent's Physician's  
4 and Surgeon's Certificate was issued and placed on probation for a period of three (3) years with  
5 certain terms and conditions. A copy of that Decision After Non-Adoption is attached as Exhibit  
6 A and is incorporated by reference.

7 4. In a disciplinary action entitled "In the Matter of Investigation Against  
8 Andrew I. Abrams, M.D.," Case No. 800-2015-014128, the Office of Administrative Hearings  
9 (OAH) issued an Ex Parte Interim Suspension Order, effective September 16, 2016, in which  
10 Respondent's Physician's and Surgeon's Certificate was suspended.

#### 11 JURISDICTION

12 5. This Accusation and Petition to Revoke Probation solely is brought before  
13 the Board under the authority of the following sections of the Business and Professions Code  
14 (Code).

15 6. Section 2004 of the Code states:

16 "The Board shall have the responsibility for the following:

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

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

20 "(c) Carrying out disciplinary actions appropriate to findings made by a medical  
21 quality review committee, the division, or an administrative law judge.

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

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

26 7. Section 2227 of the Code states, in pertinent part:

27 "(a) A licensee whose matter has been heard by an administrative law judge of  
28 the Medical Quality Hearing Panel as designated in Section 11371 of the Government

1 Code, or whose default has been entered, and who is found guilty may, in accordance with  
2 the provisions of this chapter:

3 “(1) Have his or her license revoked upon order of the division.

4 “(2) Have his or her right to practice suspended for a period not to  
5 exceed one year upon order of the division.

6 “(3) Be placed on probation and be required to pay the costs of  
7 probation monitoring upon order of the division.

8 “(4) Be publicly reprimanded by the division.

9 “(5) Have any other action taken in relation to discipline as the division  
10 or an administrative law judge may deem proper.”

11 8. Section 820 of the Code states:

12 “Whenever it appears that any person holding a license, certificate or permit under  
13 this division or under any initiative act referred to in this division may be unable to practice  
14 his or her profession safely because the licentiate's ability to practice is impaired due to  
15 mental illness, or physical illness affecting competency, the licensing agency may order the  
16 licentiate to be examined by one or more physicians and surgeons or psychologists  
17 designated by the agency. The report of the examiners shall be made available to the  
18 licentiate and may be received as direct evidence in proceedings conducted pursuant to  
19 Section 822.”

20 9. Section 822 of the Code states, in pertinent part:

21 “If a licensing agency determines that its licentiate's ability to practice his or her  
22 profession safely is impaired because the licentiate is mentally ill, or physically ill  
23 affecting competency, the licensing agency may take action by any one of the following  
24 methods:

25 “(a) Revoking the licentiate's certificate or license.

26 “(b) Suspending the licentiate's right to practice.

27 “(c) Placing the licentiate on probation.

28 “(d) Taking such other action in relation to the licentiate as the licensing agency in

1 its discretion deems proper.

2 "The licensing agency shall not reinstate a revoked or suspended certificate or  
3 license until it has received competent evidence of the absence or control of the condition  
4 which caused its action and until it is satisfied that with due regard for the public health  
5 and safety the person's right to practice his or her profession may be reinstated."

6 CAUSE FOR DISCIPLINE

7 (Mental Illness and/or Physical Illness Affecting Competency)

8 10. Respondent's Physician's and Surgeon's Certificate is subject to discipline  
9 under section 822 of the Code, in that his ability to practice medicine safely is impaired because  
10 he is mentally or physically ill affecting competency, as more particularly alleged hereinafter:

11 11. On May 27, 2015, the Board received a Consumer Complaint Form that  
12 was filed by a former friend of Respondent, M.M.<sup>1</sup>, regarding Respondent. Respondent  
13 threatened to kill M.M. On or about May 26, 2015, Respondent called M.M. and left a phone  
14 message that included the following:

15 ". . .you're going to pay for it with your life, [M.M.]. We don't play games you play shit  
16 head. Bye [M.M.]. Kiss, your family good bye. And it's just a matter [sic] of time. I don't  
17 care who the fuck...I'm called DNI...that means Director of National Intelligence under  
18 Clapper and Petraeus...."

19 M.M. obtained a restraining order through a court in Tucson, Arizona.

20 12. On July 2, 2015, the Board received a Consumer Complaint Form that was  
21 filed by a patient of Respondent, A.B., regarding Respondent. A.B. had applied for a medical  
22 cannabis card from 420 Evaluations medical marijuana clinic. On July 2, 2015, she had a bizarre,  
23 short interview with Respondent. She also observed him pacing outside the clinic and crossing a  
24 busy street without watching for traffic. Respondent told her to move her keys because of their  
25 magnetic force and looked at her in a strange way. He also told her that surgical patients try to  
26 give him the Human Immunodeficiency Virus (HIV). He also falsely claimed to be the lead

27 \_\_\_\_\_  
28 <sup>1</sup> Names are reduced to initials for privacy.

1 scientist for the companies that make the retroviral medication.

2 13. On or about June 22, 2015, Respondent hit a colleague (S.D., M.D.) on the  
3 head from behind while S.D. was in his car and bit his finger, causing a ½ inch cut and bleeding.  
4 Respondent said to S.D., "I am going to kill you! You're dead!" Respondent also stated, "I am  
5 going to come back and kill you!"

6 14. Respondent has a history of psychiatric encounters. He was evaluated by  
7 an outpatient mental health team at the Betty Ford Clinic over the course of three days after his  
8 license was placed in probationary status in May, 2012. Respondent saw a psychiatrist while  
9 being treated for pneumonia, in the winter of 2015 at the medical-surgical service of Maui  
10 Memorial Hospital in Hawaii.

11 15. Medical records from Maui Memorial indicate that on or about December  
12 27, 2015, Respondent was found to be suffering from a "depressive disorder" with "strong  
13 bipolar tendencies." He was being treated for a serious lung infection. Respondent had insisted  
14 on going outside for fresh air. The medical staff explained to Respondent that he needs to stay  
15 on the floor; and gave him a sitter for his safety. The medical staff advised Respondent to stay  
16 on the floor for his own health and safety. Respondent was very irritable, and claimed that he  
17 was a doctor and was fine. Respondent insisted on leaving after several attempts to talk him into  
18 staying. Respondent signed out of Maui Memorial Hospital despite having a lung abscess.  
19 Respondent then had himself readmitted the same day.

20 16. Maui Memorial records reflect that on or about December, 23, 2015,  
21 Respondent's mother was interviewed by a social worker (SW) at Maui Memorial. She reported  
22 that Respondent had been a cannabis doctor in California but due to his psychotic  
23 behaviors/mental illness he was close to losing his medical license, that Respondent had two 10-  
24 day psychiatric hospitalizations in the last 3 years, and that after Respondent became homeless in  
25 California, he had moved to Maui in about August 2015 and resided with her brother but was  
26 unable to return to California due to his erratic behaviors.

27 17. Maui Memorial records indicated that Respondent's physician, Dr. L.S.,  
28 had noted that Respondent was delusional, and refused oral olanzapine, and that he had been

1 prescribed IM Seroquel, a bipolar disorder medication.

2 18. Medical records for Respondent note that on or about December 30, 2015,  
3 he had hallucinations, delusional disorder, cannabis abuse and hypothyroidism. Urine toxicology  
4 was positive only for cannabis. Also his thyroid stimulating hormone (TSH) test result of over  
5 100, was well above the normal range for healthy adults.

6 19. Maui Memorial records show that on or about January 2, 2016, Respondent  
7 was found smoking cannabis in his hospital room. Further, on or about January 9, 2016, he was  
8 noted to have "delusional thoughts." Also, on or about January 21, 2016, he was discharged  
9 home on olanzapine 10 mg at bedtime for delusional disorder or bipolar disorder.

10 20. Respondent was evaluated by a board certified psychiatrist, Dr. M.K. Dr.  
11 M.K. viewed Respondent's behavior with M.M. as demonstrating homicidal rage, irrational and  
12 grandiose delusions and scatological verbiage. Dr. M.K. viewed the circumstances with A.B. as  
13 reflecting threatening, irrational and delusional thoughts and agitated behavior on Respondent's  
14 part. Dr. M.K. stated:

15 "The delusional, agitated non-cooperative behavior of Respondent in the initial two weeks  
16 in Maui Memorial Hospital may be secondary to his life threatening lung abscess, the low  
17 oxygen, pain medications, and his, septic condition. He required intubation. He almost  
18 died. In a medical hospital consultation psychiatrists frequently observe patients who are  
19 delirious or confused due to life threatening illness."

20 21. Dr. M.K. also reported that while Respondent was a gentleman in his  
21 interview, his Jekyll and Hyde presentation is a danger to patients. Though it is possible for a  
22 person to have recurring episodes of mania, bipolar illness, or recurring episodes of  
23 schizophrenia, the most likely etiology of repetitive psychotic episodes is substance abuse.  
24 Cannabis in sensitive individuals can cause psychosis with agitation, hallucinations and delusions.  
25 Amphetamines also frequently cause dangerous, agitated, grandiose behavior. Respondent's flip  
26 from sanity and calmness to insanity and rage impairs his safety and reliability as a physician.

27 22. Dr. M.K. stated that Respondent lacks self-awareness and failed to comply  
28 with medication regimens that were prescribed. Respondent has mental impairment. He also has

1 lack of judgment and insight that could endanger a patient. His poor judgment endangered  
2 himself.

3           23.     Dr. M.K. stated that Respondent rationalized, minimized and projected  
4 blame. Respondent had an explanation for every observation of his bizarre behavior, usually  
5 blaming the observer for being untruthful. Respondent claimed that "Everybody else is wrong."  
6 This includes his parents and doctors. Dr. M.K. concluded that with Respondent's mind set, it is  
7 futile to attempt rehabilitation or treatment.

8           24.     Dr. M.K.'s summary and recommendation is as follows:  
9           "[Respondent] cannot safely practice medicine at this time. Though appearing pleasant,  
10 intelligent, rational and appropriate at the time of the interview, he has a well-documented  
11 history of recurring, severe psychotic episodes, during, which he is threatening, illogical  
12 and delusional. Because he currently denies that he has had any psychiatric difficulties,  
13 and lacks insight, and has refused treatment for psychosis, I doubt that his pattern of  
14 psychosis will remit in the near future."

15           25.     Respondent was also examined by Dr. J.G., a board certified internist and  
16 addiction specialist.

17           26.     Dr. J.G. stated with respect to the Maui Memorial hospitalization:  
18           "This was an extremely serious, life-threatening illness, complicated by [Respondent's]  
19 bizarre behavior and intermittent refusal to comply with treatment. He had not taken his  
20 thyroid medication for months, which placed him at further risk. His parents described a  
21 long history of serious psychiatric illness, including two recent psychiatric  
22 hospitalizations. The record states that [Respondent] had been homeless for an extended  
23 period of time. His failure to come into the hospital until three weeks after his injury  
24 greatly aggravated the severity of his illness and placed his life in grave danger. Smoking  
25 marijuana in the hospital room was further evidence of his poor judgment and inadvertent  
26 danger to self."

27           27.     Dr. J.G. noted that during his exam Respondent categorically denied the  
28 allegations of M.M., A.B., S.D. and the medical staff at Maui Memorial Medical Center. Dr.

1 J.G. did not find Respondent's denials credible. Dr. J.G. concluded that Respondent is clearly a  
2 danger to self and others and is incapable of practicing medicine safely. He indicated it would be  
3 impractical to try to monitor, oversee, or treat him.

4 **CAUSE TO REVOKE PROBATION**

5 (Failure to Obey All Laws)

6 28. At all times after the effective date of Respondent's probation, Condition 5  
7 of the Board's Decision After Non-Adoption, "In the Matter of Statement of Issues Against  
8 Andrew I. Abrams," Case No. 20-2011-216264, effective September 21, 2012, stated:

9 "Applicant shall obey all federal, state and local laws, and all rules governing the  
10 practice of medicine in California and remain in full compliance with any court ordered  
11 criminal probation, payments, and other orders."

12 29. At all times after the effective date of Respondent's probation, Condition 12  
13 of the Board's Decision After Non-Adoption, "In the Matter of the Statement of Issues Against  
14 Andrew I. Abrams," Case No. 20-2011-216264, effective September 21, 2012, stated:

15 "VIOLATION OF PROBATION. Failure to fully comply with any term or condition of  
16 probation is a violation of probation. If applicant violates probation in any respect, the  
17 Board, after giving applicant notice and the opportunity to be heard, may revoke probation  
18 and terminate the probationary license. If an Accusation, or Petition to Revoke Probation is  
19 filed against applicant during probation, the Board or its designee shall have continuing  
20 jurisdiction until the matter is final, and the period of probation shall be extended until the  
21 matter is final."

22 30. Respondent's probation is subject to revocation because he failed to  
23 comply with Probation Condition 5, referenced above, in that he is in violation of Business and  
24 Professions Code sections 822, in that due to mental impairment he is unsafe to practice medicine  
25 and represents a clear and present danger to the welfare of the public at large. The circumstances  
26 are as follows:

27 31. The facts and circumstances set forth in the Cause for Discipline above are  
28 incorporated herein as if fully set forth.

1 PRIOR DISCIPLINE

2 32. In a disciplinary action "In the Matter of the Statement of Issues Against  
3 Andrew I. Abrams," Case No. 20-2011-216264, the Board issued a Decision After Non-  
4 Adoption, effective September 21, 2012, in which Respondent's application for a Physician's and  
5 Surgeon's Certificate was denied. However, the denial was stayed and Respondent's Physician's  
6 and Surgeon's Certificate was issued and placed on probation for a period of three (3) years with  
7 certain terms and conditions.

8 PRAYER

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

- 11 1. Revoking the probation that was granted by the Medical Board of California in Case  
12 No. 20-2011-216264 and imposing the disciplinary order that was stayed thereby revoking  
13 Physician's and Surgeon's Certificate No. A 122956 issued to Andrew Isaac Abrams, M.D.;
- 14 2. Revoking or suspending Physician's and Surgeon's Certificate No. A 122956 issued  
15 to Andrew Isaac Abrams, M.D.;
- 16 3. Revoking, suspending or denying approval of Andrew Isaac Abrams, M.D.'s  
17 authority to supervise physician assistants, pursuant to section 3527 of the Code;
- 18 4. Ordering Andrew Isaac Abrams, M.D., if placed on probation, to pay the Medical  
19 Board of California the costs of probation monitoring; and
- 20 5. Taking such other and further action as deemed necessary and proper.

21  
22  
23 DATED: October 26, 2016

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

24  
25  
26 LA2016502393  
27 62135434.docx

# **EXHIBIT A**

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

In the Matter of the Statement of Issues  
Against:

ANDREW I. ABRAMS,

Applicant.

Case No. 20-2011-216264

OAH No. 2012010273

DECISION AFTER NON-ADOPTION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on February 27, 2012, in Oakland, California.

Lawrence Mercer, Deputy Attorney General, represented Complainant Linda K. Whitney, Executive Director of the Medical Board of California.

Marvin Firestone, M.D., Attorney at Law, represented Applicant Andrew I. Abrams.

The record closed on February 27, 2012, and a Proposed Decision was issued on March 28, 2012. On May 14, 2012, the Panel A (Panel) of the Board issued an Order of Non-Adoption of the Proposed Decision, and both parties waived oral argument before the Panel. The Panel considered the written arguments submitted by the Applicant and Complainant in closed session on July 19, 2012. The time for receiving oral and written argument having expired, and having considered the entire record, including the transcripts, the Panel hereby makes and enters this Decision as its decision in the above-captioned matter.

FACTUAL FINDINGS

1. Complainant Linda K. Whitney issued the Statement of Issues in her official capacity as Executive Director of the Medical Board of California (Board).

2. On January 18, 2011, the Board received an initial application for a physician's and surgeon's certificate from Andrew I. Abrams (Applicant). The application was signed under a statement certifying the answers to questions as correct under penalty of perjury. On April 5, 2011, Applicant submitted additional information. On August 9, 2011, the Board denied the application, and Applicant appealed.

3. In a Statement of Issues signed December 20, 2011, Complainant alleges cause to deny Applicant's application based on a variety of Business and Professions Code violations, including a criminal conviction, excessive consumption of alcohol and dishonesty. This hearing followed.

*Criminal conviction*

4. On May 26, 2009, in the Albany City Court, Albany County, New York, Applicant was convicted of a violation of "section VTL-1192.1-01," "Driving While Ability Impaired." His sentence included a \$300 fine and completion of the Drinking Driver Program.

The conviction followed Applicant's arrest on May 22, 2009. On that date, the vehicle he was driving was observed to be weaving, and he was stopped by police. He did not pass a field sobriety test and his blood alcohol level was subsequently determined to be 0.14 percent. The arresting officer wrote in the report that Applicant "begged not to be arrested," and said that "he shouldn't be arrested because he just graduated med. school and shouldn't be treated like the average person who gets arrested for DWI."

5. Because he had been accepted into a surgical residency program in California, Applicant requested of the New York court that he be allowed to attend a DUI program in California. This request was granted, and Applicant enrolled in the "Wet Reckless" program at the Academy of Defensive Driving in Newport Beach. On July 1, 2009, the New York Department of Motor Vehicles issued Applicant an interim license (also described as a conditional license) with an expiration date of February 26, 2014. Applicant did not complete the program, however, and by order dated November 9, 2009, the New York court authorized him to re-enroll.

*Application disclosures*

6. Question number 23 on the Board's application asks: "Have you ever been convicted of, or pled guilty or nolo contendere to ANY offense in any state in the United States or foreign country?" Applicant checked the box marked "yes."

Following the question is a lengthy explanation of the type of information that is required to be disclosed. It states:

This includes a citation, infraction, misdemeanor and/or felony, etc. If "YES" attach a list of each offense by arrest and conviction dates, violation, and court of jurisdiction (name and address). Matters in which you were diverted, deferred, pardoned, pled nolo contendere, or if the conviction was later expunged from the record of the court or set aside under Penal Code Section 1203.4 MUST be disclosed. If you are awaiting judgment and sentencing following entry of a plea or jury verdict, you MUST disclose the conviction; you are entitled to submit evidence that you have been rehabilitated. Serious traffic convictions such as reckless driving, driving under the influence of alcohol and/or drugs, hit and run,

evading a police officer, failure to appear, driving while the license is suspended or revoked MUST be reported. This list is not all-inclusive. If in doubt as to whether a conviction should be disclosed, it is better to disclose the conviction on the application.

For each conviction disclosed, you must submit with the application certified copies of the arresting agency report, certified copies of the court documents, and a descriptive explanation of the circumstances surrounding the conviction or disciplinary action (i.e., dates and location of incident and all circumstances surrounding the incident). This letter must accompany the application. If documents were purged by arresting agency and/or court, a letter of explanation from these agencies is required.

7. Applicant's original submission included a document entitled "Criminal/Traffic Record History." In the document, Applicant listed eight traffic encounters and described each one. In February 2011, Board staff asked for additional documents. On April 11, 2011, Applicant submitted copies of court records, and a revised list and statement. Applicant has committed six traffic violations since he was licensed to drive in Arizona in 1997. In addition, in 1999 he was cited in Arizona for two offenses and was convicted in New York as described in Finding 4. As regards the 1999 citation, he wrote "I did not at the time or now smoke marijuana." As regards the 2009 conviction, he wrote "Not only do I not drink while driving but I do not drink at all."

8. On April 11, 2011, Board staff mentioned to Applicant that he had no California driver's license. Applicant believed that his New York license was sufficient, but the next day, he obtained a California license.

9. It appears that Applicant did not submit every required document with his initial application. But there was no evidence that he lied to or intended to deceive the Board.

#### *Evaluation*

10. Board staff next requested Applicant undergo a comprehensive psychiatric and fitness-for-duty evaluation at a board-approved facility. Applicant chose the Betty Ford Center's Clinical Diagnostic Evaluations Program (CDE). He underwent the evaluation on May 16 through 18, 2011.

The CDE evaluation was very thorough, and the report is 38 pages long. Applicant was seen by four professions, including an addiction medicine physician, a psychiatrist, a psychologist and the CDE program director. The evaluation included administration of testing instruments including the MicroCog Assessment of Cognitive Functioning; the WAIS-IV; the MMPI-2-RF; and the MCMIU-III; as well as blood and urine screening. Friends, family members and colleagues were interviewed by telephone.

11. The evaluation team was "not able to substantiate a substance use disorder using DSM-IV-TR criteria." Accordingly, no diagnosis under AXIS I: Clinical Disorders, was made.

The team did not recommend "chemical dependency treatment or therapeutic monitoring," and concluded that "none of the information available to us at this time would preclude [Applicant] from practicing medicine safely."

12. There were, however, two areas of concern reported by the evaluation team. First, it was noted that Applicant's urine screen revealed alcohol use more recently than he had initially reported. Applicant had stated originally that he had last consumed alcohol a week prior. When asked about the urinalysis results, Applicant acknowledged that he had consumed a beer on the weekend immediately preceding his evaluation. As regards these facts, the report states:

None of the information we reviewed suggested that his decision to drink prior to his evaluation was a sign that he could not resist the urge to drink. His reluctance to be more forthcoming was in keeping with the anxiety he exhibited throughout the evaluation process. For instance, [Applicant's] behavior during the WAIS-IV was noteworthy for his need for approval and sensitivity to the examiner's reactions. While this and other aspects of his personality type . . . may present challenges to his professional adjustment, his presentation was not indicative of substance-related impairment.

13. The second area of concern involved the amount of alcohol Applicant reported to the evaluators that he consumed the night of his DUI arrest. It appears that each interviewer asked him for the details of his consumption that night, and the details varied somewhat. On May 16, 2011, the team psychiatrist reports that Applicant stated as follows:

[Applicant] reports that it was the night of his graduation party from medical school. He reports that from 7 p.m. until about 2 a.m. he drank a number of drinks. Initially, he said it might be four or five drinks, then he did report later that it could have been more. However, it appears to have been a lot more than that. He reports that he left the party approximately 11 or 12 o'clock, got home, slept for about an hour or two hours. He maybe had a drink or two at home. Maybe had five drinks at the party. He reports then maybe a couple of other drinks at home, and then he went to sleep. A friend called and he then drove and was pulled over and had a Breathalyzer of 0.14.

Later in his report, the psychiatrist opined that Applicant "tends to be a bit evasive at times and not necessarily giving a consistent story when talking about how much he drank the night he got the DUI, and also when asked questions about his multiple speeding tickets."

On May 17, 2011, the team psychologist described Applicant's self-report as follows:

[Applicant] was graduating from medical school and the ceremony was done around 4-5 P.M. He was to have dinner with his parents and their respective spouses. There was some celebratory drinking before dinner and then drinking with and after dinner. He went home to sleep after dinner, planning to continue to

celebrate with his friends. He went to a bar around 10:30 and drank a couple more tall beers as well as shots. He was 'tanked,' and walked home. He went to sleep again and received a call, asking him to come to a party and to bring his beer. He got into his car around 3:30 A.M. He knew he was intoxicated. He was looking for a street he was not familiar with. He was squinting and using his car lights to light up the street signs. He was pulled over, asked to get out of his car and given a field sobriety test. His Breathalyzer reading was 0.14%. He was taken to the drunk tank and then walked home.

#### *Applicant's evidence*

14. Applicant, born February 26, 1980, is currently 32 years of age. He initially contemplated following his father into a legal career, but changed his goal to medicine while in college. Applicant studied Spanish in Mexico, and was inspired by the poverty he saw to change majors. He subsequently worked in a neuroscience research laboratory and as a volunteer at a trauma center on Saturdays. After graduating from the University of Arizona at Tucson, Applicant continued working in research until he was accepted into medical school. At that time, however, he was diagnosed with thyroid cancer, and underwent a thyroidectomy, which delayed his admission.

Applicant's experiences as a cancer patient led him to aspire to train as a surgical oncologist. Surgical residencies are very competitive, so he sought to enrich his application in various ways. Applicant re-started the surgical club at the school, won a trip to Toronto based on his work providing cancer patients with comfort and psychological support, and worked in Hawaii with members of the indigenous population who suffer from diabetes. Applicant also used an inheritance to twice travel to Uganda on medical missions, where he participated in the care of over 2,000 patients. Applicant was subsequently accepted into a residency program at the University of California at Irvine Medical Center, to follow his graduation from the Albany Medical College in Albany, New York, in May 2009.

15. Applicant acknowledges a rather complicated history concerning his driving privilege in New York state. He received a traffic ticket in 2007, and mailed in a check to pay it, which was cashed. In 2008, he was pulled over for speeding and learned that his license was suspended; he had apparently paid an incorrect amount for the prior ticket. He also had an "expired inspection ticket." This all led to two brief administrative suspensions.

16. Applicant was arrested once before, on April 3, 1999, when he was 19 years old and a college student. He was with friends and they were pulled over by police. A pipe for smoking marijuana was found in the area of the car where he was sitting and there was alcohol in the trunk. Applicant described his decision to be with these particular friends as bad judgment. He was not smoking marijuana or drinking alcohol and was not charged with doing either of those things. Records from the Tucson, Arizona, City Court reveal that Applicant was cited for two offenses: "drug paraphernalia violation" and "liquor-to minor by licensee." The citations were dismissed after Applicant completed a diversion program.

17. With his acceptance into a residency program in California came the requirement that he obtain licensure here as a physician. Applicant explained his background in his application packet to the best of his ability. He obtained his driving records from Arizona and New York, and "tried to write an explanation." Applicant does not condone marijuana use but experimented with it a handful of times when he was much younger. He believes that his statement that he does not smoke marijuana was accurate. Similarly, he did not mean to represent to the Board that he permanently discontinued all use of alcohol after 2009. Rather, he did not drink at all for a period of time following the DUI.

Surrounding the DUI incident for Applicant is a great deal of shame and embarrassment. The whole process has been painful and extremely difficult. During the CDE evaluation process, he was not trying to deceive the evaluators, but he was very nervous. Applicant has answered questions from many people about his drinking the night of the DUI. The "initial history taker" for the CDE conducted a pre-intake telephone interview. At that time, he was asked when the last time was that he consumed alcohol. This was on a Tuesday, and he reported he had one drink "about a week ago." He then drank a beer over the weekend, and when he was asked on Monday if the previous statement was correct, he said it was. The circumstances were a Mexican meal at a restaurant on the Friday night, when he drank a Corona beer. Applicant lied, and he regrets it. Again, he points to his embarrassment and shame.

While Applicant may have been shamed and embarrassed, the Panel finds that those feelings do not justify the telling of falsehoods. Applicant had an obligation to tell the evaluators the unblemished truth, for it is Applicant's burden to demonstrate fitness for licensure.

18. Applicant testified as follows about the DUI incident. He initially went to a celebratory dinner with his parents, then went home. Friends invited him to join them, and he went out again. Later, he made the decision to drive his car to a friend's house, which he describes as driving while intoxicated and a "horrible decision" that put society at risk.

In a written statement to the Board, Applicant wrote:

Not only did I endanger my life but I endangered the life of others who could have been harmed or killed by my actions. Choosing to drive while impaired was the worst decision of my life and something that I'm ashamed of and feel horrible about to this day. Having volunteered in trauma surgery for years and currently as a surgical resident at a large trauma center I've seen first hand the horrendous impact that drunk driving has on society and innocent victims. The societal cost is mind numbing and I was part of this terrible cycle.

Words cannot describe the feeling of letting down society, our professional standard, my family and friends, and myself. This has been a life lesson that has shaped who I am today.

19. As regards fulfilling the requirements of his DUI conviction, Applicant reports that he did not complete the DUI course in a timely manner. He had just started his residency here, and had difficulty obtaining the needed time off to attend the course. He therefore was

terminated, and had to reapply. He has now finished the course.

20. Applicant attended the Institute for Medical Quality Professionalism course on November 12 and 13, 2011. Completion fulfills the ethics course condition for physicians on probation to the Board. A letter confirms that he has participated in 20 hours of the program, including the two-day course on law and ethics. Completion of the course is not possible until he has completed the longitudinal follow-up requirements, given six and twelve months later. Applicant asserts that he will complete those requirements. He attended the course to reinforce his knowledge of the duty of physicians to be ethical.

21. The fallout from the DUI conviction, including the denial of California licensure, has been devastating to Applicant's career. He had to resign from his residency, and lost two years of training. Presently, he is working in a research position concerning pancreatic cancer. He is hopeful that he will be accepted back at UC Irvine and will be given some credit for what he completed. To that end, he would accept any probationary terms imposed if he could obtain a license. He also added that he has "learned tremendous lessons" from the DUI and from not being as forthcoming about the situation as he could have been. He asks for the opportunity to prove himself and to continue working towards his goal to become a surgical oncologist. The Panel shall grant him that opportunity albeit with a probationary license.

22. Applicant testified in a sincere and forthcoming manner, consistent with credibility. He gave every indication, by his demeanor and manner while testifying, that he was answering the questions honestly. It was clear that it has taken Applicant time to come to grips with the fact that he became intoxicated and drove a car, and with all of the ramifications of that conduct on his life and career. But it was also clear that he has now done so and he was convincing in his assertions that he has learned "tremendous lessons" from this whole experience.

23. Applicant submitted 14 letters of reference, 11 of which were from physicians in a wide variety of specialties. The authors all attest to Applicant's general good character and commitment to medicine. The letter from Brian A. Mailey, M.D., is illustrative. Dr. Mailey is a plastic surgery fellow at the University of California, San Diego. He first worked with Applicant on the trauma surgery rotation in July 2009. On October 9, 2011, Dr. Mailey wrote, in pertinent part:

[Applicant] exhibited competence, dedication and enthusiasm; he was always a pleasure to have around . . . . [He] was one of our most reliable and consistent residents . . . with an admirable work ethic.

On the night of medical school graduation, [Applicant] made an error in judgment while driving intoxicated. It is clear to me he carries tremendous shame, and guilt for these actions. He stated it was a terrible mistake and realizes the seriousness, destructive nature, and unprofessional aspect of his decision. I consider this lapse in judgment to be out of character for [Applicant] and not an accurate representation of himself. In addition I have never heard or suspected substance abuse issues . . . .

24. Applicant has suffered because of the decisions that he made regarding the consumption of alcoholic beverages and the operation of a motor vehicle, as well as his failure to provide accurate and complete information during the application process. However, the Board's mission is consumer protection, and when the Board exercises its licensing function, consumer protection is its highest priority.

## LEGAL CONCLUSIONS

### *Causes for denial*

1. Pursuant to Business and Professions Code section 480, the Board may deny an application for a certificate if an applicant has been convicted of a substantially related crime (subd. (a)(1)), "done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or herself . . ." (subd. (a)(2)), or "done any act that if done by [a licensed physician] would be grounds for suspension or revocation of the license if the act is "substantially related to the qualifications, functions, or duties" of the practice of medicine (subd. (a)(3)).

2. Unprofessional conduct is grounds for discipline of a physician's certificate pursuant to Business and Professions Code section 2234. Unprofessional conduct includes, but is not limited to, violations, attempted violations, and aiding and abetting violations, of the Medical Practice Act (Bus. & Prof. Code, § 2234, subd. (a)), the commission of any substantially related dishonest or corrupt act (Bus. & Prof. Code, § 2234, subd. (e)), any act which would have warranted denial of a certificate (Bus. & Prof. Code, § 2234, subd. (f)), conviction of a substantially related crime (Bus. & Prof. Code, § 2236, subd. (a)), and consumption of alcoholic beverages in a manner or to the extent that it is dangerous to himself or others (Bus. & Prof. Code, § 2239, subd. (a)).

### *Criminal conviction*

3. Pursuant to Business and Professions Code section 480, subdivision (a)(1), the Board may deny an application for a certificate if an applicant has been convicted of a crime that is "substantially related to the qualifications, functions, or duties" of the practice of medicine. Pursuant to Business and Professions Code section 2236, subdivision (a), conviction of a substantially related crime constitutes unprofessional conduct within the meaning of Business and Professions Code section 2234. Cause to deny licensure based upon these provisions exists by reason of the matters set forth in Finding 4.

### *Unsafe consumption of alcohol*

4. Pursuant to Business and Professions Code section 2239, consumption of alcoholic beverages in a manner or to the extent that it is dangerous to himself or others constitutes unprofessional conduct within the meaning of Business and Professions Code section 2234. Cause to deny licensure based upon that provision exists by reason of the matters set forth

in Finding 4.

*Dishonesty or corruption*

5. Complainant alleges grounds for denial in that Applicant engaged in dishonest conduct related to his application, arguing that he employed "a pattern of dishonest acts calculated to obtain a medical license." The conduct described includes his description of marijuana and alcohol use in statements to the Board, and his inaccurate report of alcohol use to the CDE evaluators. Applicant admitted lying to the CDE when he did not reveal having a beer the weekend before he was evaluated, and the other statements were not adequately explained. The Board's application asks for a great deal of detail, and Applicant provided it. Although it was not provided in a very efficient manner, and some of his statements regarding his illegal conduct were not as forthcoming as would be desirable, in light of all that Applicant was dealing with at the time, his conduct may be viewed as perhaps somewhat understandable but it is certainly not justified. Therefore, the Panel finds that Applicant's actions do rise to the level of dishonesty that would support the denial of licensure. Accordingly, cause to deny licensure pursuant to Business and Professions Code sections 480, subdivision (a)(2), and 2234, subdivision (e), was established.

*Discussion*

6. Complainant has demonstrated cause to deny licensure by reason of Applicant's criminal conviction, dishonesty and dangerous use of alcohol. The burden therefore shifts to Applicant to show that, despite these facts, it would be in the public interest to license him to practice medicine in California. The somewhat incomplete manner with which Applicant handled his initial reports of his background to the Board and his failure to timely address various traffic violations in the past is of significant concern. There is also evidence of an arrogant attitude, which is particularly inappropriate in the context of an arrest for drunk driving.

The Panel finds that Applicant has met his burden for licensure but an unrestricted license is not appropriate under these circumstances. While Applicant shown a significant change in attitude from that previously exhibited, the Panel is not persuaded that the issuance of a 'free and clear' license honors its obligation of consumer protection.

Applicant's extensive evaluation, which he underwent voluntarily, determined that he does not have a substance abuse problem. The evaluators concluded that he is fit to practice medicine. There is no doubt that Applicant is very remorseful for his conduct. Applicant has indeed paid a tremendous price, financially and emotionally, for his transgressions, and there is every reason to believe that the difficult lessons he has learned will inform his future conduct. However, when considering the denial of a license, does not place a great deal of weight on the plight of the applicant but rather the protection of the public. (See Bus. & Prof. Code, § 2001.1, see also Cal.Code Regs., tit. 16, § 1309.)

Complainant contends that if a license is granted, it should be probationary and require abstinence from alcohol, random testing, and psychotherapy. The evidence, however, does not support all of these suggestions. The record contains the results of a thorough evaluation of

Applicant's fitness to practice medicine, the conclusions of which are undisputed. Applicant indeed drank too much alcohol and drove a vehicle in 2009, but it appears that this was an isolated incident; he does not have an on-going problem with excessive alcohol use. Requiring Applicant to abstain from alcohol completely and to submit to random testing is not warranted on this record. Similarly, the fact that the assessment team recommended counseling is an insufficient basis from which to condition licensure as a physician upon obtaining such counseling.

The Panel has determined that a probationary license with completion of a professionalism course is appropriate in this case. As set forth above, the terms and conditions of the probationary license will not contain random biological testing, abstention from alcohol and psychotherapy because the evaluation did not recommend such items.

#### ORDER

IT IS ORDERED THAT Andrew I. Abrams, Applicant, be issued a physician's and surgeon's license on a probationary basis, subject to the following terms and conditions:

- 1) The Applicant is placed on probation for a period of three (3) years and probation shall begin on the date the probationary certificate is issued.
- 2) PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar days of the effective date of this decision, applicant shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Applicant shall participate in and successfully complete that program. Applicant shall provide any information and documents that the program may deem pertinent. Applicant shall successfully complete the classroom component of the program not later than (6) six months after applicant'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 applicant'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 Decision, 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. Applicant shall submit a certification of successful completion to the Board or its designee no later than fifteen (15) calendar days after successfully completing the program, or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

As Applicant has taken but not completed an acceptable professionalism course, he need not repeat the course unless he does not complete the course with the timeframe specified herein.

3) NOTIFICATION. Prior to engaging in the practice of medicine, applicant shall provide a true copy of the Stipulation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to applicant, at any other facility where applicant 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 applicant. Applicant shall submit proof of compliance to the Board or its designee within fifteen (15) calendar days.

4) SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, applicant is prohibited from supervising physician assistants.

5) OBEY ALL LAWS. Applicant shall obey all federal, state and local laws, and all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

6) QUARTERLY DECLARATIONS. Applicant shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation. Applicant shall submit quarterly declarations not later than ten (10) calendar days after the end of the preceding quarter.

7) GENERAL PROBATION REQUIREMENTS. Applicant shall comply with the Board's probation unit and all terms and conditions of this decision.

Applicant shall, at all times, keep the Board informed of his 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).

Applicant shall not engage in the practice of medicine in applicant's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility. Applicant shall maintain a current and renewed California physician's and surgeon's probationary license. Applicant 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 applicant should leave the State of California to reside or to practice, applicant shall notify the Board or its designee in writing thirty (30) calendar days prior to the dates of departure and return.

8) INTERVIEW WITH BOARD OR ITS DESIGNEE. Applicant shall be available in person for interviews either at applicant's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

9) NON-PRACTICE WHILE ON PROBATION. Applicant shall notify the Board or designee in writing within fifteen (15) calendar days of any periods of non-practice lasting more

than thirty (30) calendar days and within fifteen (15) calendar days of applicant's return to practice. Non-practice is defined as any period of time applicant is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. A Board-order suspension of practice shall not be considered as a period of non-practice.

In the event applicant's period of non-practice while on probation exceeds eighteen (18) calendar months, applicant shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine. Applicant's period of non-practice while on probation shall not exceed two (2) years. Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve 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 and General Probation Unit Compliance.

10) EVALUATION PRIOR TO TERMINATION OF PROBATION. The Medical Board of California reserves the right to evaluate the applicant's probationary history at or near the end of the probationary period and to exercise its discretion whether to grant a clear license without conditions, or to take any other action deemed appropriate and reasonable under the circumstances.

11) COMPLETION OF PROBATION. Applicant 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, applicant's certificate shall be fully restored.

12) VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If applicant violates probation in any respect, the Board, after giving applicant notice and the opportunity to be heard, may revoke probation and terminate the probationary license. If an Accusation or Petition to Revoke Probation is filed against applicant during probation, the Board or its designee shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

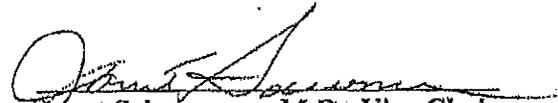
13) LICENSE SURRENDER. Following the effective date of this Stipulation, if applicant ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, applicant may request to surrender his or her license. The Board reserves the right to evaluate 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, applicant shall within fifteen (15) calendar days deliver applicant's wallet and wall certificate to the Board or its designee and applicant shall no longer practice medicine. Applicant 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.

14) PROBATION MONITORING COSTS. Applicant shall pay all 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. Failure to pay costs within thirty (30) calendar days of the due date is a violation of probation.

This Decision shall become effective on September 21, 2012.

IT IS SO ORDERED this 22nd day of August, 2012.

  
Janet Salomonson, M.D., Vice Chair  
Panel A

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

In the Matter of the Statement of Issues ) Case No.: 20-2011-216264  
Against: )  
) OAH No.: 2012010273  
ANDREW I. ABRAMS. )  
)  
)  
Applicant. )

ORDER OF NON-ADOPTION  
OF PROPOSED DECISION

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been non-adopted. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit, including any argument directed to the question of whether it is consistent with the public interest to issue the applicant a license. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

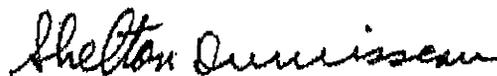
To order a copy of the transcript, please contact Janice Williams of Diamond Court Reporters, 1107 2nd St, #210, Sacramento, CA 95814. Their phone number is 916-498-9288. To order a copy of the exhibits at 10 cents per page, please submit a written request to this Board.

**In addition to written argument, oral argument will be scheduled if any party files with the Board within 20 days from the date of this notice a written request for oral argument.** If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA  
2005 Evergreen Street, Suite 1200  
Sacramento, CA 95815-3831  
Attention: John Yelchak

Dated: May 14, 2012



Shelton Duruisseau, Ph.D., Chairperson  
Panel A

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

In the Matter of the Statement of Issues  
Against:

ANDREW I. ABRAMS,

Applicant.

Case No. 20-2011-216264

OAH No. 2012010273

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on February 27, 2012, in Oakland, California.

Lawrence Mercer, Deputy Attorney General, represented Complainant Linda K. Whitney, Executive Director of the Medical Board of California.

Marvin Firestone, M.D., Attorney at Law, represented Applicant Andrew I. Abrams.

The record closed on February 27, 2012.

FACTUAL FINDINGS

1. Complainant Linda K. Whitney issued the Statement of Issues in her official capacity as Executive Director of the Medical Board of California (Board).

2. On January 18, 2011, the Board received an initial application for a physician's and surgeon's certificate from Andrew I. Abrams (Applicant). The application was signed under a statement certifying the answers to questions as correct under penalty of perjury. On April 5, 2011, Applicant submitted additional information. On August 9, 2011, the Board denied the application, and Applicant appealed.

3. In a Statement of Issues signed December 20, 2011, Complainant alleges cause to deny Applicant's application based on a variety of Business and Professions Code violations, including a criminal conviction, excessive consumption of alcohol and dishonesty. This hearing followed.

*Criminal conviction*

4. On May 26, 2009, in the Albany City Court, Albany County, New York, Applicant was convicted of a violation of "section VTL-1192.1-01," "Driving While Ability Impaired." His sentence included a \$300 fine and completion of the Drinking Driver Program.

The conviction followed Applicant's arrest on May 22, 2009. On that date, the vehicle he was driving was observed to be weaving, and he was stopped by police. He did not pass a field sobriety test and his blood alcohol level was subsequently determined to be 0.14 percent. The arresting officer wrote in the report that Applicant "begged not to be arrested," and said that "he shouldn't be arrested because he just graduated med. school and shouldn't be treated like the average person who gets arrested for DWI."

5. Because he had been accepted into a surgical residency program in California, Applicant requested of the New York court that he be allowed to attend a DUI program in California. This request was granted, and Applicant enrolled in the "Wet Reckless" program at the Academy of Defensive Driving in Newport Beach. On July 1, 2009, the New York Department of Motor Vehicles issued Applicant an interim license (also described as a conditional license) with an expiration date of February 26, 2014. Applicant did not complete the program, however, and by order dated November 9, 2009, the New York court authorized him to re-enroll.

*Application disclosures*

6. Question number 23 on the Board's application asks: "Have you ever been convicted of, or pled guilty or nolo contendere to ANY offense in any state in the United States or foreign country?" Applicant checked the box marked "yes."

Following the question is a lengthy explanation of the type of information that is required to be disclosed. It states:

This includes a citation, infraction, misdemeanor and/or felony, etc. If "YES" attach a list of each offense by arrest and conviction dates, violation, and court of jurisdiction (name and address). Matters in which you were diverted, deferred, pardoned, pled nolo contendere, or if the conviction was later expunged from the record of the court or set aside under Penal Code Section 1203.4 MUST be disclosed. If you are awaiting judgment and sentencing following entry of a plea or jury verdict, you MUST disclose the conviction; you are entitled to submit evidence that you have been rehabilitated. Serious traffic convictions such as reckless driving, driving under the influence of alcohol and/or drugs, hit and run, evading a police officer, failure to appear, driving while the license is suspended or revoked MUST be reported. This list is

not all-inclusive. If in doubt as to whether a conviction should be disclosed, it is better to disclose the conviction on the application.

For each conviction disclosed, you must submit with the application certified copies of the arresting agency report, certified copies of the court documents, and a descriptive explanation of the circumstances surrounding the conviction or disciplinary action (i.e., dates and location of incident and all circumstances surrounding the incident). This letter must accompany the application. If documents were purged by arresting agency and/or court, a letter of explanation from these agencies is required.

7. Applicant's original submission included a document entitled "Criminal/Traffic Record History." In the document, Applicant listed eight traffic encounters and described each one. In February 2011, Board staff asked for additional documents. On April 11, 2011, Applicant submitted copies of court records, and a revised list and statement. Applicant has committed six traffic violations since he was licensed to drive in Arizona in 1997. In addition, in 1999 he was cited in Arizona for two offenses and was convicted in New York as described in Finding 4. As regards the 1999 citation, he wrote "I did not at the time or now smoke marijuana." As regards the 2009 conviction, he wrote "Not only do I not drink while driving but I do not drink at all."

8. On April 11, 2011, Board staff mentioned to Applicant that he had no California driver's license. Applicant believed that his New York license was sufficient, but the next day, he obtained a California license.

9. It appears that Applicant did not submit every required document with his initial application. But there was no evidence that he lied to or intended to deceive the Board.

#### *Evaluation*

10. Board staff next requested Applicant undergo a comprehensive psychiatric and fitness-for-duty evaluation at a board-approved facility. Applicant chose the Betty Ford Center's Clinical Diagnostic Evaluations Program (CDE). He underwent the evaluation on May 16 through 18, 2011.

The CDE evaluation was very thorough, and the report is 38 pages long. Applicant was seen by four professions, including an addiction medicine physician, a psychiatrist, a psychologist and the CDE program director. The evaluation included administration of testing instruments including the MicroCog Assessment of Cognitive Functioning; the WAIS-IV; the MMPI-2-RF; and the MCMIU-III; as well as blood and urine screening. Friends, family members and colleagues were interviewed by telephone.

11. The evaluation team was "not able to substantiate a substance use disorder using DSM-IV-TR criteria." Accordingly, no diagnosis under AXIS I: Clinical Disorders, was made.

The team did not recommend "chemical dependency treatment or therapeutic monitoring," and concluded that "none of the information available to us at this time would preclude [Applicant] from practicing medicine safely."

12. There were, however, two areas of concern reported by the evaluation team. First, it was noted that Applicant's urine screen revealed alcohol use more recently than he had initially reported. Applicant had stated originally that he had last consumed alcohol a week prior. When asked about the urinalysis results, Applicant acknowledged that he had consumed a beer on the weekend immediately preceding his evaluation. As regards these facts, the report states:

None of the information we reviewed suggested that his decision to drink prior to his evaluation was a sign that he could not resist the urge to drink. His reluctance to be more forthcoming was in keeping with the anxiety he exhibited throughout the evaluation process. For instance, [Applicant's] behavior during the WAIS-IV was noteworthy for his need for approval and sensitivity to the examiner's reactions. While this and other aspects of his personality type . . . may present challenges to his professional adjustment, his presentation was not indicative of substance-related impairment.

13. The second area of concern involved the amount of alcohol Applicant reported to the evaluators that he consumed the night of his DUI arrest. It appears that each interviewer asked him for the details of his consumption that night, and the details varied somewhat. On May 16, 2011, the team psychiatrist reports that Applicant stated as follows:

[Applicant] reports that it was the night of his graduation party from medical school. He reports that from 7 p.m. until about 2 a.m. he drank a number of drinks. Initially, he said it might be four or five drinks, then he did report later that it could have been more. However, it appears to have been a lot more than that. He reports that he left the party approximately 11 or 12 o'clock, got home, slept for about an hour or two hours. He maybe had a drink or two at home. Maybe had five drinks at the party. He reports then maybe a couple of other drinks at home, and then he went to sleep. A friend called and he then drove and was pulled over and had a Breathalyzer of 0.14.

Later in his report, the psychiatrist opined that Applicant "tends to be a bit evasive at times and not necessarily giving a consistent story when talking about how much he drank the night he got the DUI, and also when asked questions about his multiple speeding tickets."

On May 17, 2011, the team psychologist described Applicant's self-report as follows:

[Applicant] was graduating from medical school and the ceremony was done around 4-5 P.M. He was to have dinner with his parents and their respective spouses. There was some celebratory drinking before dinner and then drinking with and after dinner. He went home to sleep after dinner, planning to continue to celebrate with his friends. He went to a bar around 10:30 and drank a couple more tall beers as well as shots. He was 'tanked,' and walked home. He went to sleep again and received a call, asking him to come to a party and to bring his beer. He got into his car around 3:30 A.M. He knew he was intoxicated. He was looking for a street he was not familiar with. He was squinting and using his car lights to light up the street signs. He was pulled over, asked to get out of his car and given a field sobriety test. His Breathalyzer reading was 0.14%. He was taken to the drunk tank and then walked home.

*Applicant's evidence*

14. Applicant, born February 26, 1980, is currently 32 years of age. He initially contemplated following his father into a legal career, but changed his goal to medicine while in college. Applicant studied Spanish in Mexico, and was inspired by the poverty he saw to change majors. He subsequently worked in a neuroscience research laboratory and as a volunteer at a trauma center on Saturdays. After graduating from the University of Arizona at Tucson, Applicant continued working in research until he was accepted into medical school. At that time, however, he was diagnosed with thyroid cancer, and underwent a thyroidectomy, which delayed his admission.

Applicant's experiences as a cancer patient led him to aspire to train as a surgical oncologist. Surgical residencies are very competitive, so he sought to enrich his application in various ways. Applicant re-started the surgical club at the school, won a trip to Toronto based on his work providing cancer patients with comfort and psychological support, and worked in Hawaii with members of the indigenous population who suffer from diabetes. Applicant also used an inheritance to twice travel to Uganda on medical missions, where he participated in the care of over 2,000 patients. Applicant was subsequently accepted into a residency program at the University of California at Irvine Medical Center, to follow his graduation from the Albany Medical College in Albany, New York, in May 2009.

15. Applicant acknowledges a rather complicated history concerning his driving privilege in New York state. He received a traffic ticket in 2007, and mailed in a check to pay it, which was cashed. In 2008, he was pulled over for speeding and learned that his license was suspended; he had apparently paid an incorrect amount for the prior ticket. He also had an "expired inspection ticket." This all led to two brief administrative suspensions.

16. Applicant was arrested once before, on April 3, 1999, when he was 19 years old and a college student. He was with friends and they were pulled over by police. A pipe for smoking marijuana was found in the area of the car where he was sitting and there was alcohol in the trunk. Applicant described his decision to be with these particular friends as bad judgment. He was not smoking marijuana or drinking alcohol and was not charged with doing either of those things. Records from the Tucson, Arizona, City Court reveal that Applicant was cited for two offenses: "drug paraphernalia violation" and "liquor-to minor by licensee." The citations were dismissed after Applicant completed a diversion program.

17. With his acceptance into a residency program in California came the requirement that he obtain licensure here as a physician. Applicant explained his background in his application packet to the best of his ability. He obtained his driving records from Arizona and New York, and "tried to write an explanation." Applicant does not condone marijuana use but experimented with it a handful of times when he was much younger. He believes that his statement that he does not smoke marijuana was accurate. Similarly, he did not mean to represent to the Board that he permanently discontinued all use of alcohol after 2009. Rather, he did not drink at all for a period of time following the DUI.

Surrounding the DUI incident for Applicant is a great deal of shame and embarrassment. The whole process has been painful and extremely difficult. During the CDE evaluation process, he was not trying to deceive the evaluators, but he was very nervous. Applicant has answered questions from many people about his drinking the night of the DUI. The "initial history taker" for the CDE conducted a pre-intake telephone interview. At that time, he was asked when the last time was that he consumed alcohol. This was on a Tuesday, and he reported he had one drink "about a week ago." He then drank a beer over the weekend, and when he was asked on Monday if the previous statement was correct, he said it was. The circumstances were a Mexican meal at a restaurant on the Friday night, when he drank a Corona beer. Applicant lied, and he regrets it. Again, he points to his embarrassment and shame.

18. Applicant testified as follows about the DUI incident. He initially went to a celebratory dinner with his parents, then went home. Friends invited him to join them, and he went out again. Later, he made the decision to drive his car to a friend's house, which he describes as driving while intoxicated and a "horrible decision" that put society at risk.

In a written statement to the Board, Applicant wrote:

Not only did I endanger my life but I endangered the life of others who could have been harmed or killed by my actions. Choosing to drive while impaired was the worst decision of my life and something that I'm ashamed of and feel horrible about to this day. Having volunteered in trauma surgery for years and currently as a surgical resident at a large trauma center I've seen first hand the horrendous impact that drunk driving has on society and innocent victims. The societal cost is mind numbing and I was part of this terrible cycle.

Words cannot describe the feeling of letting down society, our professional standard, my family and friends, and myself. This has been a life lesson that has shaped who I am today.

19. As regards fulfilling the requirements of his DUI conviction, Applicant reports that he did not complete the DUI course in a timely manner. He had just started his residency here, and had difficulty obtaining the needed time off to attend the course. He therefore was terminated, and had to reapply. He has now finished the course.

20. Applicant attended the Institute for Medical Quality Professionalism course on November 12 and 13, 2011. Completion fulfills the ethics course condition for physicians on probation to the Board. A letter confirms that he has participated in 20 hours of the program, including the two-day course on law and ethics. Completion of the course is not possible until he has completed the longitudinal follow-up requirements, given six and twelve months later. Applicant asserts that he will complete those requirements. He attended the course to reinforce his knowledge of the duty of physicians to be ethical.

21. The fallout from the DUI conviction, including the denial of California licensure, has been devastating to Applicant's career. He had to resign from his residency, and lost two years of training. Presently, he is working in a research position concerning pancreatic cancer. He is hopeful that he will be accepted back at UC Irvine and will be given some credit for what he completed. To that end, he would accept any probationary terms imposed if he could obtain a license. He also added that he has "learned tremendous lessons" from the DUI and from not being as forthcoming about the situation as he could have been. He asks for the opportunity to prove himself and to continue working towards his goal to become a surgical oncologist.

22. Applicant testified in a sincere and forthcoming manner, consistent with credibility. He gave every indication, by his demeanor and manner while testifying, that he was answering the questions honestly. It was clear that it has taken Applicant time to come to grips with the fact that he became intoxicated and drove a car; and with all of the ramifications of that conduct on his life and career. But it was also clear that he has now done so and he was convincing in his assertions that he has learned "tremendous lessons" from this whole experience.

23. Applicant submitted 14 letters of reference, 11 of which were from physicians in a wide variety of specialties. The authors all attest to Applicant's general good character and commitment to medicine. The letter from Brian A. Mailey, M.D., is illustrative. Dr. Mailey is a plastic surgery fellow at the University of California, San Diego. He first worked with Applicant on the trauma surgery rotation in July 2009. On October 9, 2011, Dr. Mailey wrote, in pertinent part:

[Applicant] exhibited competence, dedication and enthusiasm; he was always a pleasure to have around . . . . [He] was one of our

most reliable and consistent residents . . . with an admirable work ethic.

On the night of medical school graduation, [Applicant] made an error in judgment while driving intoxicated. It is clear to me he carries tremendous shame, and guilt for these actions. He stated it was a terrible mistake and realizes the seriousness, destructive nature, and unprofessional aspect of his decision. I consider this lapse in judgment to be out of character for [Applicant] and not an accurate representation of himself. In addition I have never heard or suspected substance abuse issues . . . .

## LEGAL CONCLUSIONS

### *Causes for denial*

1. Pursuant to Business and Professions Code section 480, the Board may deny an application for a certificate if an applicant has been convicted of a substantially related crime (subd. (a)(1)), "done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or herself . . ." (subd. (a)(2)), or "done any act that if done by [a licensed physician] would be grounds for suspension or revocation of the license if the act is "substantially related to the qualifications, functions, or duties" of the practice of medicine (subd. (a)(3)).

2. Unprofessional conduct is grounds for discipline of a physician's certificate pursuant to Business and Professions Code section 2234. Unprofessional conduct includes, but is not limited to, violations, attempted violations, and aiding and abetting violations, of the Medical Practice Act (Bus. & Prof. Code, § 2234, subd. (a)), the commission of any substantially related dishonest or corrupt act (Bus. & Prof. Code, § 2234, subd. (e)), any act which would have warranted denial of a certificate (Bus. & Prof. Code, § 2234, subd. (f)), conviction of a substantially related crime (Bus. & Prof. Code, § 2236, subd. (a)), and consumption of alcoholic beverages in a manner or to the extent that it is dangerous to himself or others (Bus. & Prof. Code, § 2239, subd. (a)).

### *Criminal conviction*

3. Pursuant to Business and Professions Code section 480, subdivision (a)(1), the Board may deny an application for a certificate if an applicant has been convicted of a crime that is "substantially related to the qualifications, functions, or duties" of the practice of medicine. Pursuant to Business and Professions Code section 2236, subdivision (a), conviction of a substantially related crime constitutes unprofessional conduct within the meaning of Business and Professions Code section 2234. Cause to deny licensure based upon these provisions exists by reason of the matters set forth in Finding 4.

*Unsafe consumption of alcohol*

4. Pursuant to Business and Professions Code section 2239, consumption of alcoholic beverages in a manner or to the extent that it is dangerous to himself or others constitutes unprofessional conduct within the meaning of Business and Professions Code section 2234. Cause to deny licensure based upon that provision exists by reason of the matters set forth in Finding 4.

*Dishonesty or corruption*

5. Complainant alleges grounds for denial in that Applicant engaged in dishonest conduct related to his application, arguing that he employed "a pattern of dishonest acts calculated to obtain a medical license." The conduct described includes his description of marijuana and alcohol use in statements to the Board, and his inaccurate report of alcohol use to the CDE evaluators. Applicant admitted lying to the CDE when he did not reveal having a beer the weekend before he was evaluated, and the other statements were adequately explained. The Board's application asks for a great deal of detail, and Applicant provided it. Although it was not provided in a very efficient manner, and some of his statements regarding his illegal conduct were not as forthcoming as would be desirable, in light of all that Applicant was dealing with at the time, his conduct is understandable and does not rise to the level of dishonesty such as would support denial of licensure. Accordingly, cause to deny licensure pursuant to Business and Professions Code sections 480, subdivision (a)(2), and 2234, subdivisions (e), was not established.

*Discussion*

6. Complainant has demonstrated cause to deny licensure by reason of Applicant's criminal conviction and dangerous use of alcohol. The burden therefore shifts to Applicant to show that, despite these facts, it would be in the public interest to license him to practice medicine in California. The somewhat incomplete manner with which Applicant handled his initial reports of his background to the Board and his failure to timely address various traffic violations in the past is of concern. There is also evidence of an arrogant attitude, which is particularly inappropriate in the context of an arrest for drunk driving. Nonetheless, it is determined that Applicant has met his burden. First, he has shown a significant change in attitude from that previously exhibited. Most importantly, an extensive evaluation, which he underwent voluntarily, determined that he does not have a substance abuse problem. The evaluators concluded that he is fit to practice medicine. There is no doubt that Applicant is very remorseful for his conduct. Applicant has indeed paid a tremendous price, financially and emotionally, for his transgressions, and there is every reason to believe that the difficult lessons he has learned will inform his future conduct.

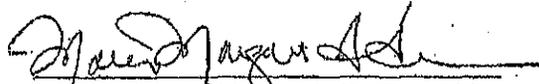
Complainant contends that if a license is granted, it should be probationary and require abstinence from alcohol, random testing, and psychotherapy. The evidence, however, does not support these suggestions. The record contains the results of a thorough evaluation of Applicant's fitness to practice medicine, the conclusions of which are undisputed. Applicant

indeed drank too much alcohol and drove a vehicle in 2009, but it appears that this was an isolated incident; he does not have an on-going problem with excessive alcohol use. Requiring Applicant to abstain from alcohol completely and to submit to random testing is not warranted on this record. Similarly, the fact that the assessment team recommended counseling is an insufficient basis from which to condition licensure as a physician upon obtaining such counseling. All things considered, there appears no well-founded basis for placing any restrictions on Applicant's certificate. Accordingly, his application shall be granted.

ORDER

The application of Applicant Andrew I. Abrams for a physician's and surgeon's certificate is granted.

DATED: March 28, 2012



MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings