

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 LAWRENCE MERCER
Deputy Attorney General
4 State Bar No. 111898
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5539
6 Facsimile: (415) 703-5480
Attorneys for Petitioner

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Petition to Revoke
11 Probation Against:

Case No. 800-2017-034809

12 **LIEN JAY KYRI, M.D.**
6451 Silent Harbor Drive
13 Huntington Beach, CA 92648

**DEFAULT DECISION
AND ORDER**

14 Physician's and Surgeon's Certificate No. A122548

[Gov. Code, §11520]

15 Respondent.

16
17 FINDINGS OF FACT

18 1. Petitioner Kimberly Kirchmeyer, in her official capacity as the Executive Director of
19 the Medical Board of California, filed Petition to Revoke Probation No. 800-2017-034809 against
20 Lien Jay Kyri, M.D. (Respondent) before the Board.

21 2. On or about August 17, 2012, the Medical Board of California (Board) issued
22 Physician's and Surgeon's Certificate No. A122548 to Respondent. Said Certificate expired on
23 February 28, 2014, and has not been renewed.

24 3. Prior action has been taken by the Medical Board against this certificate as follows:
25 On July 7, 2010 a Statement of Issues was filed. On March 23, 2012 a Decision After Non-
26 Adoption became effective under which Respondent's application for an unrestricted Physician's
27 and Surgeon's Certificate was denied; however, a five-year probationary license was issued upon
28 completion of precedent conditions. On April 20, 2012, Respondent's probationary certificate

1 was suspended pending completion of a psychological evaluation; and, on August 8, 2012, the
2 suspension was lifted. On November 13, 2014, an Accusation and Petition to Revoke Probation
3 was filed. On May 19, 2017, a Decision After Reconsideration (Decision) became effective which
4 read: Revoked, Stayed, Five Years Probation with Terms and Conditions. A copy of the Decision
5 is filed herewith as Exhibit A.¹

6 4. Under the terms of the Decision, Respondent's probationary license and the probation
7 provided in disciplinary order in Case No. 20-2010-205464 were revoked. However, the
8 revocation of license was stayed, and Respondent was placed on probation for five years. Terms
9 and Conditions of Probation pertinent to this Petition to Revoke Probation include:

- 10 • Psychotherapy: Respondent was required to undergo psychotherapy during probation
11 (Condition 1);
- 12 • Coursework: Respondent was required to enroll in and complete courses/programs in
13 Interpersonal Skills, Conflict Resolution and Anger Management (Conditions 2, 3, 4);
- 14 • Practice Monitor: Respondent was ordered to nominate a practice monitor and practice
15 under an approved monitor (Condition 5);
- 16 • Standard Terms and Conditions of Probation, which specifically include submission of
17 quarterly declarations; compliance with the Board's probation unit, keeping the Board
18 informed of business and residence addresses, email address, and telephone number.
19 Respondent must maintain a current and renewed California license, be available for
20 interviews with the Board's probation unit (Conditions 11, 12, 13).
- 21 • Failure to comply with any term of probation is a violation of probation, which entitles the
22 Board to revoke probation and carry out the disciplinary order of revocation that was
23 stayed. (Standard terms, Paragraph 16)

24 5. After the effective date of the Decision, and despite multiple requests from the
25 Board's Probation Unit, Respondent failed and refused to comply with the terms and conditions
26

27 ¹ The evidence in support of this Default Decision and Order is submitted herewith as
28 "Exhibit Packet."

1 of his probation and his license is now subject to revocation pursuant to the Decision.

2 (Declaration of Virginia Gerard, filed herewith as Exhibit B to Exhibit Packet.)

3 6. On August 17, 2017, Petition to Revoke Probation No. 800-2017-034809 was filed
4 before the Board. On or about August 17, 2017, Richard M. Acosta, an employee of the Board,
5 served by Certified Mail a copy of the Petition to Revoke Probation No. 800-2017-034809,
6 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
7 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
8 was and is: 6451 Silent Harbor Drive, Huntington Beach, CA 92648. A copy of the Petition to
9 Revoke Probation, the related documents, and Declaration of Service are attached to the Exhibit
10 Packet, filed herewith as exhibit C, and are incorporated herein by reference.

11 7. Service of the Petition to Revoke Probation was effective as a matter of law under the
12 provisions of Government Code section 11505, subdivision (c).

13 8. According to the tracking system of the United States Postal Service, the
14 aforementioned documents were unclaimed despite notice to Respondent. A copy of the tracking
15 report is filed herewith as exhibit D, and is incorporated herein by reference.

16 9. On September 6, 2017, a Courtesy Notice of Default, together with a copy of the
17 Petition and related documents was served upon Respondent at his address of record.

18 10. According to the tracking system of the United States Postal Service, the Notice of
19 Default and related documents were unclaimed despite notice to Respondent. A copy of the
20 Notice of Default is filed herewith as Exhibit E and a copy of the tracking report is filed herewith
21 as exhibit F, and are incorporated herein by reference.

22 STATUTORY AUTHORITY

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

24 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
25 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
26 order of a court of law, or its surrender without the written consent of the board, shall not, during
27 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
28 authority to institute or continue a disciplinary proceeding against the licensee upon any ground

1 provided by law or to enter an order suspending or revoking the license or otherwise taking
2 disciplinary action against the license on any such ground."

3 12. Government Code section 11506 states, in pertinent part:

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

8 13. Respondent failed to file a Notice of Defense within 15 days after service upon him
9 of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of
10 Petition to Revoke Probation No. 800-2017-034809.

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

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

15 15. Pursuant to its authority under Government Code section 11520, the Board finds
16 Respondent is in default. The Board will take action without further hearing and, based on
17 Respondent's express admissions by way of default and the evidence before it, contained in
18 exhibits A, B and C, finds that the allegations in Petition to Revoke Probation No. 800-2017-
19 034809 are true.

20 DETERMINATION OF ISSUES

21 1. Based on the foregoing findings of fact, Respondent Lien Jay Kyri, M.D. has
22 subjected his Physician and Surgeon's Certificate No. A122548 to discipline.

23 2. A copy of the Petition to Revoke Probation and the related documents and
24 Declaration of Service are filed herewith.

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

26 //

27 //

28

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 State Bar No. 116564
LAWRENCE MERCER
4 Deputy Attorney General
State Bar No. 111898
5 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
6 Telephone: (415) 703-5539 (Mercer)
(415) 703-5544 (Simon)
7 Facsimile: (415) 703-5480
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO AUGUST 17 2017
BY *[Signature]* ANALYST

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

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

Case No. 800-2017-034809

13 **LIEN JAY KYRI, M.D.**
14 6451 Silent Harbor Drive
Huntington Beach, CA 92648-2677

PETITION TO REVOKE PROBATION

15 Physician's and Surgeon's Certificate No. A122548

16 Respondent.

17 **PARTIES**

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

20 2. On August 17, 2012, the Medical Board of California (Board) issued Physician's and
21 Surgeon's Certificate Number A122548 to Lien Jay Kyri, M.D. (Respondent.) Said certificate is
22 in delinquent status, having expired on February 28, 2014.

23 3. Prior action has been taken by the Medical Board against this certificate as follows:
24 On July 7, 2010 a Statement of Issues was filed. On March 23, 2012 a Decision After Non-
25 Adoption became effective under which Respondent's application for an unrestricted Physician's
26 and Surgeon's Certificate was denied; however, a five year probationary license was issued upon
27 completion of precedent conditions. On April 20, 2012, Respondent's probationary certificate
28 was suspended pending passage of a psychological evaluation; and, on August 8, 2012, the

1 suspension was lifted. On November 13, 2014, an Accusation and Petition to Revoke Probation
2 was filed. On May 19, 2017, a Decision After Reconsideration (2017 Decision) became effective
3 which read: Revoked, Stayed, Five Years Probation with Terms and Conditions.

4 JURISDICTION

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

8 5. Section 2004 of the Code states:

9 "The board shall have the responsibility for the following:

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

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

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

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

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

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

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

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

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

24 6. Section 2227 of the Code states:

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

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

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

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

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

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

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

16 7. Section 2228 of the Code states:

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

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

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

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28

1 “(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including
2 requiring notice to applicable patients that the licensee is unable to perform the indicated
3 treatment, where appropriate.

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

6 **THE MAY 19, 2017 DECISION AFTER RECONSIDERATION**

7 8. Respondent was issued a probationary medical license, following a hearing, in a
8 Decision After Non-Adoption (MBC Case No. 20-2010-205464) effective March 23, 2012. The
9 certificate was issued subject to a five year term of probation, with terms and conditions, based on
10 the Board’s concerns for Respondent’s mental state and behavioral issues. Terms and conditions
11 of probation included a psychiatric evaluation as a condition precedent to practice,
12 psychotherapy, practice monitor, a solo practice prohibition and standard terms and conditions.

13 9. Respondent failed to comply with the terms of the March 23, 2012 Decision After
14 Non-Adoption, and in 2014, an Accusation and Petition to Revoke Probation was filed in Case
15 No. 800-2014-007598. Ultimately, a hearing was held and the Board’s Decision After
16 Reconsideration became effective on May 19, 2017.

17 10. The 2017 Decision contained findings that Respondent failed to comply with the
18 terms of his then-existing probation: Respondent failed to maintain a current and renewed
19 certificate; failed to practice medicine during probation; and, failed to cooperate with the Board’s
20 probation staff. The Board noted in its 2017 Decision that the 2012 Decision After Non-
21 Adoption was designed to allow Respondent “to demonstrate to the Board, through his practice as
22 a physician and through compliance with other conditions, that an unrestricted certificate would
23 eventually be warranted” and that Respondent had failed to demonstrate to the Board that he
24 could practice safely. The Board further noted its “serious concerns with Respondent’s ability to
25 adhere to the rules and conditions placed upon him, and in turn, is concerned with the public’s
26 safety if Respondent is allowed to practice medicine.” In spite of these issues, the Board placed
27 “great weight on Respondent’s desire to move forward and demonstrate to the board his ability to
28 safely practice medicine.” In deciding to give Respondent another opportunity to work with the

1 Board and successfully complete probation, the Board noted its concern for Respondent's history
2 of aggressive and intimidating verbal interactions with Board staff and the public, and concluded
3 that Respondent would benefit from coursework in anger management, interpersonal skills and
4 conflict resolution. Because Respondent had not practiced in California since his probationary
5 license was issued in 2012, and had not demonstrated his ability to adhere to the provisions of his
6 probationary license, the Board determined the "only way the public can be protected is to place
7 him on a period of probation under the watchful eyes of the board's probation staff." The Board
8 specifically noted that "Respondent testified that he is 'willing to follow every regulation
9 necessary.' And the Board sincerely hopes he keeps true to his word."

10 11. Under the terms of the 2017 Decision, Respondent's probationary license and the
11 stayed disciplinary order in Case No. 20-2010-205464 were revoked. However, the revocation of
12 license was stayed, and Respondent was placed on probation for five years. Terms and
13 Conditions of Probation pertinent to this Petition to Revoke Probation include:

- 14 • Psychotherapy: Respondent was required to undergo psychotherapy during probation
15 (Condition 1);
- 16 • Coursework: Respondent was required to enroll in and complete courses/programs in
17 Interpersonal Skills, Conflict Resolution and Anger Management (Conditions 2, 3, 4);
- 18 • Practice Monitor: Respondent was ordered to nominate a practice monitor and practice
19 under an approved monitor (Condition 5);
- 20 • Standard Terms and Conditions of Probation, which specifically include submission of
21 quarterly declarations, compliance with the Board's probation unit, keeping the Board
22 informed of business and residence addresses, email address, and telephone number.
23 Respondent must maintain a current and renewed California license, be available for
24 interviews with the Board's probation unit (Conditions 11, 12, 13).

25 12. The 2017 Decision provides:

26 "Failure to fully comply with any term of condition of probation is a violation of
27 probation. If respondent violates probation in any respect, the Board, after giving respondent
28

1 notice and the opportunity to be heard, may revoke probation and carry out the disciplinary
2 order that was stayed...”

3 CAUSES TO REVOKE PROBATION

4 13. The 2017 Decision was served on Respondent and his then attorneys on May 17,
5 2017. On May 22, 2017, Respondent’s assigned Medical Board Probation Monitor began what
6 would prove to be extensive efforts to schedule Respondent for his intake interview and seek
7 compliance with the 2017 Decision. She telephoned Respondent, who did not answer his phone,
8 which was not accepting messages. Between May 22 and July 24, 2017, the Board’s Probation
9 Monitor made numerous attempts to reach Respondent by mail, email and telephone. She also
10 contacted Respondent’s then attorneys, who notified the Probation Monitor that they could not
11 distribute Respondent’s cell phone number. Respondent did not contact the Probation Unit
12 regarding his probation, and made no response to the repeated contacts.

13 14. On June 28, 2017, the Board issued and served a Citation Order and Order of
14 Abatement. The Citation imposed a fine for non-compliance with the terms and conditions of
15 probation, and the Order of Abatement directed Respondent to maintain compliance with the
16 terms and conditions of the 2017 Decision, to schedule an intake interview and to renew his
17 Physician’s and Surgeon’s Certificate within 30 days. Respondent did not comply with any aspect
18 of the Citation Order and Order of Abatement.

19 15. On July 20, 2017, Respondent’s attorneys sent a letter to the Board’s Probation Unit,
20 acknowledging receipt of correspondence regarding Respondent, and stating they were no longer
21 representing Respondent. On July 21, 2017, the Probation Unit sent Respondent a letter,
22 informing him that he was in violation of his probation, and enumerating the specific areas of
23 non-compliance. Respondent was advised that the matter was referred to the Attorney General’s
24 Office for disciplinary action for failure to comply with the conditions of probation.

25 16. The 2017 Decision, Condition 1, required Respondent to within 60 days of its
26 effective date, submit to the Board for prior approval the name and qualifications of a
27 psychotherapist, and to undergo treatment with the approved clinician. Respondent’s probation is
28 subject to revocation because he failed to comply with Probation Condition 1.

1 17. The 2017 Decision, Condition 2, required Respondent to within 60 days of its
2 effective date, enroll in a Board approved Interpersonal Skills course/program, to begin
3 attendance in the course/program within 90 days, and to complete the entire course/program
4 within six months of his initial enrollment. Respondent's probation is subject to revocation
5 because he failed to comply with Probation Condition 2.

6 18. The 2017 Decision, Condition 3, required Respondent to within 60 days of its
7 effective date, enroll in a Board approved Conflict Resolution course/program, to begin
8 attendance in the course/program within 90 days, and to complete the entire course/program
9 within six months of his initial enrollment. Respondent's probation is subject to revocation
10 because he failed to comply with Probation Condition 3.

11 19. The 2017 Decision, Condition 4, required Respondent to within 60 days of its
12 effective date, enroll in a Board approved Anger Management course/program, to begin
13 attendance in the course/program within 90 days, and to complete the entire course/program
14 within six months of his initial enrollment. Respondent's probation is subject to revocation
15 because he failed to comply with Probation Condition 4.

16 20. The 2017 Decision, Condition 5, required Respondent to within 30 days of its
17 effective date, submit to the Board for its approval a practice monitor, and thereafter to have his
18 practice monitored. Respondent's probation is subject to revocation because he failed to comply
19 with Probation Condition 5.

20 21. The 2017 Decision, Condition 11, required Respondent to submit quarterly
21 declarations under penalty of perjury on forms provided by the Board, stating whether there has
22 been compliance with all the conditions of probation. The quarterly declarations are required to
23 be submitted not later than 10 calendar days after the end of each quarter. Respondent's
24 probation is subject to revocation because he failed to submit any quarterly declarations.

25 22. The 2017 Decision, Condition 12, includes requirements that Respondent comply
26 with the Board's Probation Unit and maintain a current and renewed California certificate.
27 Respondent's probation is subject to revocation because he failed to respond to repeated contacts
28

1 from the Board's Probation Unit, wholly failed to cooperate with the Board's Probation Unit, and
2 failed to renew his delinquent certificate.

3 23. The 2017 Decision, Condition 13, requires Respondent to be available in person upon
4 request for interviews throughout the term of probation. Respondent's probation is subject to
5 revocation because he failed to respond to multiple requests for an interview with the Board's
6 Probation Unit.

7 PRAYER

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

- 10 1. Revoking the probation that was granted by the Medical Board of California in Case
11 No. 800-2014-007598 and imposing the disciplinary order that was stayed thereby revoking
12 Physician's and Surgeon's Certificate No. A122548 issued to Lien Jay Kyri, M.D.;
- 13 2. Revoking, suspending or denying approval of Lien Jay Kyri, M.D.'s authority to
14 supervise physician's assistants and advanced practice nurses;
- 15 3. Ordering Respondent, if placed on probation, to pay the costs of probation
16 monitoring;
- 17 4. Taking such other and further action as deemed necessary and proper.

18 DATED: August 17, 2017


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

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

In the Matter of the Second Amended)
Accusation and Petition to Revoke Probation)
Against:)
)
LIEN JAY KYRI, M.D.)
Physician's and Surgeon's)
Certificate No. A 122548)
)
Respondent)
)
)
_____)

Case No. 800-2014-007598

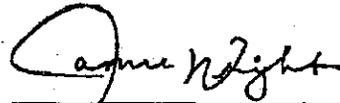
OAH No. 2014120806

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by Robert McKim Bell, Supervising Deputy Attorney General, for the reconsideration of the decision after reconsideration, in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on May 19, 2017.

IT IS SO ORDERED: May 17, 2017



Jamie Wright, JD, Chair
Panel A

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

In the Matter of the Second Amended
Accusation and Petition to Revoke
Probation Against:

LIEN JAY KYRI

Physician's and Surgeon's
Certificate No. A 122548

Respondent.

Case No. 800-2014-007598

OAH No. 2014120806

DECISION AFTER RECONSIDERATION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 22, 23, and 24, 2016, in Los Angeles.

Tan N. Tran, Deputy Attorney General, represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs, State of California.

Arcine Mananian and Michael Anderson, Attorneys at Law, represented respondent Lien Jay Kyri, M.D.

Oral and documentary evidence was received. The record was closed and the matter was submitted on August 24, 2016.

Amendment to Accusation

During the hearing, on complainant's motion and over respondent's objection, the Third Cause for Discipline in the Second Amended Accusation was amended as follows: to the end of Paragraph 12, on page 5, line 2, was added, "Respondent is also subject to disciplinary action under section 2234 of the Business and Professions Code, as follows: during the course of respondent's probation, respondent has shown hostility and a lack of cooperation to obey or comply with his probationary requirements and directives from Board staff and law enforcement. Board staff felt threatened by respondent's actions and transferred respondent's probation matter."

On October 11, 2016, the Board adopted the Administrative Law Judge's Proposed Decision, which was to be effective November 10, 2016. On November 3, 2016, the Board issued an Order Granting Stay of Execution of the Decision for the purpose of allowing the Board time to review and consider Respondent's Petition for Reconsideration, which was filed November 1, 2016. On November 15, 2016, the Board issued an Order Granting Reconsideration, with an Order Granting Stay effective until the Board issues its Decision After Reconsideration. The parties were given opportunity to submit written argument, and on January 26, 2017, oral arguments pursuant to Title 16 of the California Code of Regulations were heard in front of the Board and Administrative Law Judge Erin Koch-Goodman.

FACTUAL FINDINGS

Jurisdiction

1. Complainant filed the Second Amended Accusation and Petition to Revoke Probation in her official capacity. Respondent timely filed a notice of defense.
2. The Board issued Physician's and Surgeon's Certificate No. A 122548 to respondent on August 17, 2012. That certificate expired on February 28, 2014, and has not been renewed. The Board retains jurisdiction to discipline the certificate. (Bus. & Prof. Code, § 118.)

Respondent's Background

3. Respondent is 46 years old. He attended Golden West College and the University of California, San Diego, for his undergraduate degree in biochemistry and cell biology. He received a Doctor of Medicine degree from the University of California, Irvine, in June 2004, and passed the United States Medical Licensing Examination the same year.
4. Respondent completed an internship in internal medicine at the Fresno program of the University of California, San Francisco, School of Medicine, in 2005. He completed a residency program in Physical Medicine and Rehabilitation at the University of Texas Southwestern in 2008, where he was on probation for 22 of the 36 months he was in the program. He took and passed the written examination to become board-certified by the American Board of Physical Medicine and Rehabilitation but was not eligible to take the oral examination because the Board denied his application for a physician's and surgeon's certificate. Respondent was accepted into a fellowship training program in Spinal Cord Injury at Stanford University/Palo Alto Veterans Administration Health Systems for the 2009/2010 year, but was unable to accept the fellowship, which requires a California medical license.

Procedural Background

5. In an administrative action entitled, "In the Matter of the Statement of Issues Against Lien Jay Kyri, M.D.," Case No. 20-2010-205464, the Board issued a Decision After Nonadoption, effective March 23, 2012, in which respondent was issued a five-year probationary Physician's and Surgeon's Certificate on various terms and conditions. The Decision After Nonadoption explains the Board's rationale for issuing a probationary certificate and imposing probationary conditions:

Five years' probation is the minimum necessary for the Board to monitor respondent with respect to the issues in this case. The issuance of a probationary license will produce a positive effect for respondent and the public, in that the imposition of probation with terms and conditions will encourage on-going assessment, monitoring, therapy and self-reflection for respondent, and ensures the public that the Board has put protections in place to help ensure safe practice. (Ex. 1, pp. 31-32.)

Complainant's Allegations

6. In her Second Amended Accusation, complainant states causes for discipline against respondent for engaging in dishonest or corrupt acts and making or signing false documents, based on allegations that respondent sent electronic mail to Board staff under the name of a California Highway Patrol (CHP) officer. Complainant also states a cause for discipline for unprofessional conduct, based on allegations that respondent failed to comply with an order requiring him to comply with probationary terms.
7. In her Petition to Revoke Probation, complainant states four causes for revocation against respondent for failure to comply with probationary conditions and one cause for revocation for failure to obey all laws. The causes for revocation are based on allegations that respondent (a) failed to pay the cost of a psychiatric evaluation in the amount of \$3,068.75, (b) failed to pay probation monitoring costs, and (c) failed to maintain a current and renewed Physician's and Surgeon's Certificate. The causes for revocation are also based on respondent's failure to successfully complete a Physician Assessment and Clinical Education (PACE) program after having not practiced continuously as a physician for over 18 consecutive months, and on his having failed to practice medicine continuously for a period exceeding two years. Complainant further alleges that respondent has failed to cooperate with the Board's staff members as they performed their duties with respect to respondent's probation.

The Relevant Conditions of Probation

8. In its Decision in Case No. 20-2010-205464, as a condition precedent to issuing respondent a probationary certificate, the Board ordered respondent to undergo and complete a psychiatric evaluation within 30 calendar days after March 23, 2012, the effective date of the Decision, and to "pay the cost of all psychiatric evaluations and psychological testing. [¶] . . . [¶] Upon completion of the condition precedent . . . [r]espondent shall be issued a probationary license . . ." (Ex. 1, p. 32.)
9. The Decision placed 14 other conditions on respondent's probationary certificate.
10. Condition 2 requires respondent to designate a practice monitor, subject to Board approval. "Respondent shall pay all monitoring costs." (Ex. 1, p. 33.)
11. Condition 6 requires respondent to obey all laws and all rules governing the practice of medicine in California, and remain in compliance with all court and other orders.

12. Condition 8, entitled "General Probation Requirements," provides, among other things, that respondent shall keep the Board informed of address changes, shall not practice medicine in his place of residence, shall notify the Board of any travel outside California that lasts more than 30 days, and "shall maintain a current and renewed California physician's and surgeon's license." (Ex. 1, p. 36.) Condition 8 also provides, "Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision." (*Ibid.*)
13. Condition 10 defines non-practice as "any period of time respondent is not practicing medicine as defined in Sections 2051 and 2052 of the Business and Professions Code for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board." (Ex. 1, pp. 36-37.) Condition 10 further provides:

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

Respondent'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 Requirements. (Ex. 1, p. 37.)

14. Condition 11 provides that for any violation of any term or condition of probation the Board may, after giving respondent notice and an opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed.
15. Condition 13 provides that respondent "shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board . . . Such costs shall be payable to the [Board] . . . no later than January 31 of each calendar year." (Ex. 1, P. 38.)
16. Condition 14 requires respondent to "comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation." (Ex. 1, p. 38.)

Respondent's Acts Related to Allegations in the Second Amended Accusation

17. Based on testimonial and documentary evidence on this record, it appears more likely than not that respondent sent electronic mail to Board staff members in Cerritos under the name of a California Highway Patrol (CHP) officer, Officer Jeremy Tolen, in order to obtain information about this case. Officer Tolen testified that the emails were not from him and explained why he believes only respondent had the motive and knowledge to send the emails. After a period of

time, responsibility for monitoring respondent's probation was transferred from the Board's district office in Cerritos to the Board's Sacramento office. Paulette Romero, Enforcement Program Manager in the Sacramento office, testified that such a transfer was rare. She believes, after her own investigation, that respondent sent the Officer Tolen emails. No staff members from the Cerritos office testified, however. Respondent's testimony on the subject of the emails was somewhat confusing and, in part, unconvincing. But although complainant's evidence carried a degree of persuasive weight, in total the evidence did not establish clearly and convincingly that respondent committed the alleged acts.

18. By violating certain terms of probation, respondent failed to comply fully with an order imposing probationary conditions on his certificate. (See Factual Findings 22, 24, and 25.)

Respondent's Acts Related to Allegations in the Petition to Revoke Probation

19. Respondent timely underwent a psychiatric evaluation, required as a condition precedent to his probationary license issuing. The Board received a psychiatric report from Dr. David J. Sheffner, M.D., on July 5, 2012, and a supplemental report on August 13, 2012. As noted in the Board's Probation Quarterly Report for the third quarter of 2012, "Dr. Sheffner found that Dr. Kyri's ability to practice medicine safely is not impaired by either mental illness or physical illness." (Ex. 6, p. 7.) The cost of the evaluation was \$3,068.75. Respondent made payments toward that cost but did not pay it in full. Under Condition 11 of his probation, respondent is relieved of the responsibility to pay the balance pending his non-practice of medicine. (Factual Findings 13 and 21.)
20. Respondent has failed to pay all probation monitoring costs in January of each year while on probation, as required under probationary condition number 13. (Factual Finding 15.) As of the date of hearing, respondent had incurred probation monitoring costs in the amount of \$17,420, of which he had paid \$1,025.32. Under Condition 11 of his probation, respondent is relieved of the responsibility to pay the balance pending his non-practice of medicine. (Factual Findings 13 and 21.)
21. Probationary Condition 10, which provides relief from compliance with probationary conditions during periods of non-practice, makes three exceptions. The first is that respondent is obligated to comply with requirements delineated in Condition 10. The second is that respondent's obligation to comply with the law is not excused. The third is that compliance with General Probation Requirements, which are found in Condition 8, is not excused. (Factual Finding 13.) The General Probation Requirements include such items as keeping the Board informed of the licensee's current address and of periods of time spent outside of California. It also contains the general proposition that "Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision." (Factual Finding 12.) Complainant offered in evidence correspondence from Board probationary staff arguing that this general provision of Condition 8 is excepted from the relief afforded under Condition 11, which excuses compliance with probationary conditions during periods of non-practice of medicine. Complainant's position is not persuasive; it would render the grant of relief in Condition 11 illusory and the probationary order arbitrary. To avoid that result, the provision in Condition 11 that Condition 8 still applies during

periods of non-practice shall be construed to apply only to the specific requirements delineated in Condition 8 (see Factual Finding 12), and not to the general statement that probationers must comply with all terms and conditions of probation.

22. Respondent failed to maintain a current and renewed Physician's and Surgeon's Certificate, allowing his certificate to expire on February 28, 2014. This violates one of the specific requirements of Condition 8, a requirement that is not waived pending periods of non-practice. Respondent testified that he received a disability renewal application by mail and submitted the application and a \$25 fee to the Board. He denies, however, that he is disabled, and testified that he intends to comply with this requirement and pay the full renewal amount. Respondent did not present evidence sufficient to excuse noncompliance with Condition 8.
23. Respondent failed to successfully complete a Physician Assessment and Clinical Education (PACE) program after having not practiced continuously as a physician for over 18 consecutive months. This is not a violation of probation, however. Condition 10 requires that respondent complete a PACE course "prior to resuming the practice of medicine." (Factual Finding 13.) Respondent has not resumed the practice of medicine.
24. Respondent has failed to practice medicine continuously for a period exceeding two years. This violates one of the requirements of Condition 10; Condition 10 is not waived pending periods of non-practice. Respondent argued that the requirement should be waived because the Board delayed issuing him a wallet license and wall certificate after the Decision After Non-Adoption placing him on probation. Respondent testified that potential employers refused to hire him until he presented them with a physical certificate, and that he had applied for hundreds of positions. By letter dated June 17, 2013, Kevin Morris, then Inspector II at the Board's Cerritos office, wrote to respondent, after meeting with respondent and his counsel, that he had inquired of the Board's Licensing Department. The Licensing Department informed Morris that the wallet license and wall certificate had been mailed to respondent and had not been returned to sender. Morris advised respondent to contact the Licensing Department to request a duplicate. (Ex. 6, p. 32.) It appears from the evidence that respondent did receive a certificate by at least late 2013. Respondent did not adequately explain why he has not been able to obtain employment in the medical field since that time. There is insufficient evidence on this record to warrant waiver of the probationary requirement that respondent not exceed two years of non-practice of medicine.
25. Respondent failed at times to cooperate with Board probationary staff. He acknowledged as much when, in testimony, he agreed with the statements in a document entitled Addendum to June 3, 2013 Quarterly Declaration of Lien J. Kyri. That document includes a statement that he completed quarterly probation reports in a manner constituting a "form of peaceful civil protest," and a statement that "I recognize my obligation to cooperate with the MBC to ensure a smooth probation, so that I may ultimately obtain a clear license to practice medicine. I regret any confusion from my prior quarterly declarations and will full[y] comply with all reasonable MBC requests." (Ex. 17.) Evidence of respondent's leaving frequent voicemail messages and sending

¹ The addendum appears to relate to a quarterly report respondent submitted. (Sec Ex. 6.) In substance it comports with other testimony offered by respondent at this hearing. Respondent offered conflicting and rather unpersuasive testimony about knowing who authored the addendum, or whether he or his attorney authored it. But respondent testified that the statements in the addendum are accurate, other than statements regarding aliases.

complaints to Board staff about the probationary process does not support the allegation that respondent failed to cooperate; respondent is entitled, while complying with probationary conditions, to voice objections to the process. Nor did respondent fail to cooperate by disagreeing with staff's interpretation of the timing requirements for the payment of certain costs, e.g., for respondent's psychiatric examination. Respondent's interpretation that Condition 10 stayed certain payment requirements during periods of non-practice was reasonable and, with respect to certain payment obligations, correct.

Other Mitigation and Rehabilitation

26. Respondent testified that since being placed on probation he has been unable to procure employment to practice medicine, which he attributes to the Board's failure to provide him with a wallet license and wall certificate and to his unwillingness to continue applying because he believes employers will not hire someone with a revoked license. He has worked as a security guard at Disneyland, and is concerned about ever being able to obtain a job.

LEGAL CONCLUSIONS

Burden of Proof

1. With respect to the Second Amended Accusation, complainant has the burden of proving that discipline is warranted by clear and convincing evidence to a reasonable certainty. (Evid. Code, § 115; see *Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911.)
2. With respect to the Petition to Revoke Probation, while complainant still bears the burden, the standard of proof is lower. In a proceeding to revoke a criminal probation, the standard of proof is preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437.) The standard of proof for a petition to revoke probation of a professional license should be no higher than that required to establish a probation violation in a criminal matter. Thus, the preponderance of the evidence standard applies to the petition.

Applicable Authority

3. The Board's highest priority is to protect the public. (Bus. & Prof. Code, § 2229.)² The Board is responsible for enforcing the disciplinary and criminal provisions of the Medical Practice Act and "suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions." (§ 2004.) After a disciplinary hearing, the Board may revoke a practitioner's license, place the practitioner on probation and require payment of costs of probation monitoring, and take "any other action . . . in relation to discipline as part of an order of probation, as the [B]oard or an administrative law judge may deem proper." (§ 2227.)

² Further statutory references are to the Business and professions code except where otherwise states

4. The Board may take action against a licensee for unprofessional conduct, which includes “[t]he commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.” (§ § 2234, subd. (e), 490.) Unprofessional conduct also includes “[k]nowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine . . . which falsely represents the existence or nonexistence of a state of facts” (§ 2261.)

Cause for Discipline in the Second Amended Accusation

5. Cause does not exist to suspend or revoke respondent’s license for engaging in dishonest or corrupt acts under section 2234, subdivision (e), in that complainant did not establish by clear and convincing evidence that respondent sent electronic mail to Board staff under the name of a California Highway Patrol (CHP) officer, as set forth in Factual Findings 6 and 17.
6. Cause does not exist to suspend or revoke respondent’s license for making or signing false documents under section 2261, in that complainant did not establish by clear and convincing evidence that respondent sent electronic mail to Board staff under the name of a California Highway Patrol (CHP) officer, as set forth in Factual Findings 6 and 17.
7. Cause exists to suspend or revoke respondent’s license under section 2234, based on respondent’s failure to comply with a probationary order and his failure to cooperate with Board probationary staff, as set forth in Factual Findings 5 through 16, 18, 22, and 24, and Legal Conclusions 10, 12, and 13.

Cause for Revocation in the Petition to Revoke Probation

8. Cause does not exist to revoke probation, impose the stayed disciplinary order, and revoke the certificate, under the Decision After Nonadoption effective March 23, 2012, based on respondent’s failure to pay the cost of a psychiatric evaluation, as payment is not yet due under Condition 10 of the Board’s probationary order, as set forth in Factual Findings 5, 7 through 16, 19, and 21.
9. Cause does not exist to revoke probation, impose the stayed disciplinary order, and revoke the certificate, under the Decision After Nonadoption effective March 23, 2012, based on respondent’s failure to pay probation monitoring costs, as payment is not yet due under Condition 10 of the Board’s probationary order, as set forth in Factual Findings 5, 7 through 16, 20, and 21.
10. Cause exists to revoke probation, impose the stayed disciplinary order, and revoke the certificate, under the Decision After Nonadoption effective March 23, 2012, based on respondent’s failure to maintain a current and renewed Physician’s and Surgeon’s Certificate, as set forth in Factual Findings 5, 7 through 16, 21, and 22.
11. Cause does not exist to revoke probation, impose the stayed disciplinary order, and revoke the certificate, under the Decision After Nonadoption effective March 23, 2012, based on respondent’s failure to successfully complete a Physician Assessment and Clinical Education (PACE) program after having not practiced continuously as a physician for over 18 consecutive

months, because respondent has not been practicing medicine and is only required to complete the course before he resumes the practice of medicine, as set forth in Factual Findings 5, 7 through 16, 21, and 23.

12. Cause exists to revoke probation, impose the stayed disciplinary order, and revoke the certificate, under the Decision after Nonadoption effective March 23, 2012, based on respondent's failure to practice medicine continuously for a period exceeding two years, as set forth in Factual Findings 5, 7 through 16, 21, and 24.
13. Cause exists to revoke probation, impose the stayed disciplinary order, and revoke the certificate, under the Decision After Nonadoption effective March 23, 2012, based on respondent's failure to cooperate with the Board's staff members regarding their monitoring of his compliance with probationary conditions, as set forth in Factual Findings 5, 7 through 16, 21, and 25.
14. Based on Factual Findings 5 through 26 and Legal Conclusions 7, 10, 12, and 13, revoking probation, imposing the stayed disciplinary order, and revoking the certificate would appear warranted. Respondent's certificate was issued on a probationary basis. The Board explained its rationale in its Decision After Nonadoption, effective March 23, 2012. (Factual Finding 5.) The conditions were designed to allow respondent to demonstrate to the Board, through his practice as a physician and through compliance with other conditions, that an unrestricted certificate would eventually be warranted. Respondent has not practiced as a physician since the Decision After Nonadoption issued and since probation began in the summer of 2012. Respondent has, by not working as a physician, failed to demonstrate to the Board that he can practice medicine safely. Respondent's reasons for allowing his certificate to expire and for not practicing medicine were not persuasive, particularly with reference to the past three years, after, according to undisputed evidence, he received a wall certificate and wallet license. (Factual Findings 22 and 24.
15. At the January 26, 2017 hearing for oral arguments regarding Respondent's Petition for Reconsideration, Respondent expressed his frustrations with dealing with Board staff and others in regards to his probationary terms and with being unjustly labeled as having a mental illness/disability. Respondent testified that he was "never given the opportunity ... to realize [his] dream as a doctor," when all he ever wanted to do was provide care for others. (Transcript of Hearing, p. 14). While the Board recognizes Respondent's passion and commitment to the practice of medicine, it cannot simply ignore the fact that Respondent failed to comply with the terms of his probation and the Board's probation staff: (1) Respondent failed to cooperate with Board staff; (2) Respondent failed to maintain a current and renewed Physician's and Surgeon's Certification; (3) Respondent exceeded the two year limit for periods of non-practice while on probation. The Board has serious concerns with Respondent's ability to adhere to the rules and conditions placed upon him, and in turn, is concerned with the public's safety if Respondent is allowed to practice medicine.
16. The Board does not seek to punish Respondent for his prior violations of probation since the priority and focus is on protecting the public. (Section 2229). The Board must consider what level of penalty, if any, is appropriate here. Although outright revocation would appear warranted, the Board places great weight on Respondent's desire to move forward and demonstrate to the Board his ability to safely practice medicine. While Respondent's violations

of probation do not involve direct patient harm, the Board is troubled by Respondent's history of aggressive and intimidating verbal interactions with Board staff and the public. (R. at pp. 28-30). Based on the evidence reviewed, Respondent would benefit from taking classes in anger management as well as interpersonal skills and conflict resolution. Taking such courses in addition to participating in psychotherapy will ensure Respondent has the proper coping skills to deal with his frustrations and will ensure the public is adequately protected. As previously stated, Respondent has not practiced as a physician in the state of California at all since his probationary license was issued in 2012. In fact, because Respondent has not demonstrated his ability to adhere to the provisions of his probationary license, the only way the public can be protected is to place him on a period of probation under the watchful eyes of the Board's probation staff. It is also more than appropriate that in addition to the aforementioned courses, Respondent's probation contain the same terms and conditions that were imposed upon him in 2012 when the Board issued him a probationary license. Respondent testified that he is "willing to follow every regulation necessary," and the Board sincerely hopes he keeps true to his word. (R. at p. 36).

ORDER

The probationary order that the Board issued in Case No 20-2010-205464 is revoked, the disciplinary order that was stayed by that order is imposed, and Physician's and Surgeon's Certificate No. A 122548, issued to respondent Lien Jay Kyri, M.D. is revoked. However, the revocation of Respondent's license is stayed, and Respondent is placed on probation for five (5) years upon the following terms and conditions:

1. **Psychotherapy.** Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo treatment twice a month with the Board approved clinician. Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, at any time prior to the completion of probation respondent is found to be mentally unfit to practice medicine by his treating psychotherapist, Respondent shall immediately cease the practice of

medicine within three (3) calendar days after being so notified, and may not resume practice until notified by the Board. During this period of non-practice, Respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of non-practice shall not apply to the reduction of this probationary time period.

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

- 2. Interpersonal Skills Course/Program.** Within 60 calendar days from the effective date of this Decision, respondent shall enroll in an Interpersonal Skills course/program approved in advance by the Board or its designee. Within 90 days from the effective date of this Decision, respondent must begin attendance in the Board-approved course. Failure to complete the entire course/program no later than six (6) months after respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. This course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

- 3. Conflict Resolution Course/Program.** Within 60 calendar days from the effective date of this Decision, respondent shall enroll in a Conflict Resolution course/program approved in advance by the Board or its designee. Within 90 days from the effective date of this Decision, respondent must begin attendance in the Board-approved course. Failure to complete the entire course/program no later than six (6) months after respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. This course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

- 4. Anger Management Course/Program.** Within 60 calendar days from the effective date of this Decision, respondent shall enroll in an Anger Management course/program approved in advance by the Board or its designee. Within 90 days from the effective date of this Decision, respondent must begin attendance in the Board-approved course. Failure to complete the entire course/program no later than six (6) months after respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. This course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

5. **Monitoring – Practice.** Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of all prior Decisions, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decisions and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decisions, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

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

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

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the

name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

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

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

If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The respondent shall not resume practice until an appropriate practice setting is established.

If during the course of the probation, the respondent's practice setting changes and the respondent is no longer practicing in a setting in compliance with this Decision and Order, the respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The respondent shall not resume practice until an appropriate practice setting is established.

7. **Clinical Competence Assessment Program.** Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee once he has secured employment and before he begins work. Respondent shall successfully complete the program not later than six (6) months after respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview,

and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require respondent's on-site participation for a minimum of 3 and no more than 5 days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the respondent has demonstrated the ability to practice safely and independently. Based on respondent's performance on the clinical competence assessment, the program will advise the Boards or its designee of its recommendation(s) for the scope and length of any additional education or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the respondent did not successfully complete the clinical competence assessment program, the respondent shall not resume the practice of medicine until a final decision has been rendered on the Accusation and/or a Petition to Revoke Probation. The cessation of practice shall not apply to the reduction of the probationary time period.

8. **Notification.** Within seven (7) days of the effective date of this Decision, the respondent shall provide a true copy of this Decision and Statement of Issues to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier, which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall apply to any change(s) in hospitals, other facilities, or insurance carrier.
9. **Supervision of Physician Assistants and Advanced Practice Nurses.** During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.
10. **Obey All Laws.** Respondent shall obey all federal, state, and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments, and other orders.

11. **Quarterly Declarations.** Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

12. **General Probation Requirements.**

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

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

License Renewal

Respondent shall maintain a current and renewed California physician's surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

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

14. **Non-practice While on Probation.** Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct

patient care, clinical activity or teaching, or other activity as approved by the Board. If respondent resides in California and is considered to be in non-practice, respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

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

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

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

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

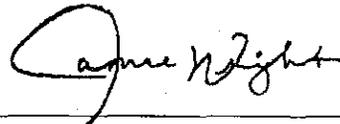
15. **Completion of Probation.** Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.
16. **Violation of Probation.** Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
17. **License Surrender.** Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his or her license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent

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

18. **Probation Monitoring Costs.** Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

This Decision shall become effective at 5:00 p.m. on May 19, 2017.

IT IS SO ORDERED April 20, 2017.



Jamie Wright, J.D., Chair
Panel A

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

In the Matter of the Second Amended)
Accusation and Petition to Revoke Probation))
Against:))
LIEN JAY KYRI, M.D.))
Physician's and Surgeon's))
Certificate No. A 122548))
Respondent)

MBC File No. 800-2014-007598

OAH No: 2014120806

ORDER GRANTING RECONSIDERATION

The proposed decision of the administrative law judge in the above captioned matter was adopted by the Board on October 11, 2016, and was to become effective on November 10, 2016. A Petition for Reconsideration under Government Code Section 11521 was filed in a timely manner by respondent. An Order Granting Stay was issued until November 18, 2016.

The petition for reconsideration having been read and considered, the Board hereby orders reconsideration. The Board itself will reconsider the case based upon the entire record of the proceeding, including the transcript. Both complainant and respondent will be afforded the opportunity to present written argument to the Board. You will be notified of the time for submitting written argument. **In addition to written argument, oral argument may be scheduled if any party files with the Board, a written request for oral argument within 20 days from the date of this notice.** If a timely request is filed, the Board will serve all parties with written notice of the time, date and place of oral arguments. 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.

Your right to argue any matter is not limited, however, no new evidence will be heard. The Board is particularly interested in the reconsideration of the penalty order.

The decision with an effective date of November 18, 2016 is stayed. This stay shall remain in effect until the Board issues its decision after reconsideration. For its own use, the Board has ordered a copy of the hearing transcript and exhibits. At your own expense, you may order a copy of the transcript by contacting the transcript clerk at:

Kennedy Court Reporters Inc, (714) 835-0366
920 W. 17th St.
Santa Ana, CA 92706

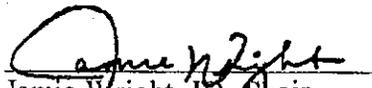
To order a copy of the exhibits, please submit a written request to this Board.

The address for serving written argument on the Board is:

Richard M. Acosta, Discipline Coordination Unit
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831

Please submit an original and 1 copy.

IT IS SO ORDERED: November 15, 2016


Jamie Wright, JD, Chair
Panel A
Medical Board of California

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

In the Matter of the Second Amended Accusation)
and Petition to Revoke Probation Against:)

LIEN JAY KYRI, M.D.)

Physician's and Surgeon's)
Certificate No. A 122548)

Respondent)

MBC No. 800-2014-007598

OAH No. 2014120806

ORDER GRANTING STAY

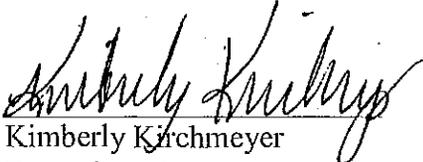
(Government Code Section 11521)

Arcine Mananian, Esq., on behalf of respondent, Lien Jay Kyri, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of November 10, 2016.

Execution is stayed until **November 18, 2016**.

This stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: **November 3, 2016**



Kimberly Kirchmeyer
Executive Director
Medical Board of California

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

In the Matter of the Second Amended)	
Accusation and Petition to Revoke)	
Probation Against:)	
)	
LIEN JAY KYRI, M.D.)	Case No. 800-2014-007598
)	
Physician's and Surgeon's)	OAH No. 2014120806
Certificate No. A 122548)	
)	
Respondent)	
_____)	

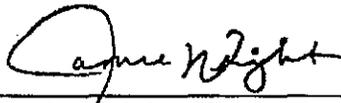
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 10, 2016.

IT IS SO ORDERED October 11, 2016.

MEDICAL BOARD OF CALIFORNIA

By: 
Jamie Wright, JD, Chair
Panel A

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

In the Matter of the Second Amended
Accusation and Petition to Revoke Probation
Against:

LIEN JAY KYRI, M.D.,

Physician's and Surgeon's
Certificate No. A 122548,

Respondent.

Case No. 800-2014-007598

OAH No. 2014120806

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 22, 23, and 24, 2016, in Los Angeles.

Tan N. Tran, Deputy Attorney General, represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs, State of California.

Arcine Mananian and Michael Anderson, Attorneys at Law, represented respondent Lien Jay Kyri, M.D.

Oral and documentary evidence was received. The record was closed and the matter was submitted on August 24, 2016.

Amendment to Accusation

During the hearing, on complainant's motion and over respondent's objection, the Third Cause for Discipline in the Second Amended Accusation was amended as follows: to the end of Paragraph 12, on page 5, line 2, was added, "Respondent is also subject to disciplinary action under section 2234 of the Business and Professions Code, as follows: during the course of respondent's probation, respondent has shown hostility and a lack of cooperation to obey or comply with his probationary requirements and directives from Board staff and law enforcement. Board staff felt threatened by respondent's actions and transferred respondent's probation matter."

FACTUAL FINDINGS

Jurisdiction

1. Complainant filed the Second Amended Accusation and Petition to Revoke Probation in her official capacity. Respondent timely filed a notice of defense.

2. The Board issued Physician's and Surgeon's Certificate No. A 122548 to respondent on August 17, 2012. That certificate expired on February 28, 2014, and has not been renewed. The Board retains jurisdiction to discipline the certificate. (Bus. & Prof. Code, § 118.)

Respondent's Background

3. Respondent is 46 years old. He attended Golden West College and the University of California, San Diego, for his undergraduate degree in biochemistry and cell biology. He received a Doctor of Medicine degree from the University of California, Irvine, in June 2004, and passed the United States Medical Licensing Examination the same year.

4. Respondent completed an internship in internal medicine at the Fresno program of the University of California, San Francisco, School of Medicine, in 2005. He completed a residency program in Physical Medicine and Rehabilitation at the University of Texas Southwestern in 2008, where he was on probation for 22 of the 36 months he was in the program. He took and passed the written examination to become board-certified by the American Board of Physical Medicine and Rehabilitation but was not eligible to take the oral examination because the Board denied his application for a physician's and surgeon's certificate. Respondent was accepted into a fellowship training program in Spinal Cord Injury at Stanford University/Palo Alto Veterans Administration Health Systems for the 2009/2010 year, but was unable to accept the fellowship, which requires a California medical license.

Procedural Background

5. In an administrative action entitled, "In the Matter of the Statement of Issues Against Lien Jay Kyri, M.D.," Case No. 20-2010-205464, the Board issued a Decision After Nonadoption, effective March 23, 2012, in which respondent was issued a five-year probationary Physician's and Surgeon's Certificate on various terms and conditions. The Decision After Nonadoption explains the Board's rationale for issuing a probationary certificate and imposing probationary conditions:

Five years' probation is the minimum necessary for the Board to monitor respondent with respect to the issues in this case. The issuance of a probationary license will produce a positive effect for respondent and the public, in that the imposition of probation with terms and conditions will encourage on-going assessment, monitoring, therapy and self-reflection for respondent, and ensures the public that the Board has put protections in place to help ensure safe practice. (Ex. 1, pp. 31-32.)

Complainant's Allegations

6. In her Second Amended Accusation, complainant states causes for discipline against respondent for engaging in dishonest or corrupt acts and making or signing false documents, based on allegations that respondent sent electronic mail to Board staff under the name of a California Highway Patrol (CHP) officer. Complainant also states a cause for discipline for unprofessional conduct, based on allegations that respondent failed to comply with an order requiring him to comply with probationary terms.

7. In her Petition to Revoke Probation, complainant states four causes for revocation against respondent for failure to comply with probationary conditions and one cause for revocation for failure to obey all laws. The causes for revocation are based on allegations that respondent (a) failed to pay the cost of a psychiatric evaluation in the amount of \$3,068.75, (b) failed to pay probation monitoring costs, and (c) failed to maintain a current and renewed Physician's and Surgeon's Certificate. The causes for revocation are also based on respondent's failure to successfully complete a Physician Assessment and Clinical Education (PACE) program after having not practiced continuously as a physician for over 18 consecutive months, and on his having failed to practice medicine continuously for a period exceeding two years. Complainant further alleges that respondent has failed to cooperate with the Board's staff members as they performed their duties with respect to respondent's probation.

The Relevant Conditions of Probation

8. In its Decision in Case No. 20-2010-205464, as a condition precedent to issuing respondent a probationary certificate, the Board ordered respondent to undergo and complete a psychiatric evaluation within 30 calendar days after March 23, 2012, the effective date of the Decision, and to "pay the cost of all psychiatric evaluations and psychological testing. [¶] . . . [¶] Upon completion of the condition precedent . . . [r]espondent shall be issued a probationary license" (Ex. 1, p. 32.)

9. The Decision placed 14 other conditions on respondent's probationary certificate.

10. Condition 2 requires respondent to designate a practice monitor, subject to Board approval. "Respondent shall pay all monitoring costs." (Ex. 1, p. 33.)

11. Condition 6 requires respondent to obey all laws and all rules governing the practice of medicine in California, and remain in compliance with all court and other orders.

12. Condition 8, entitled "General Probation Requirements," provides, among other things, that respondent shall keep the Board informed of address changes, shall not practice medicine in his place of residence, shall notify the Board of any travel outside California that lasts more than 30 days, and "shall maintain a current and renewed California physician's and surgeon's license." (Ex. 1, p. 36.) Condition 8 also provides, "Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision." (*Ibid.*)

13. Condition 10 defines non-practice as “any period of time respondent is not practicing medicine as defined in Sections 2051 and 2052 of the Business and Professions Code for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board.” (Ex. 1, pp. 36-37.) Condition 10 further provides:

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

Respondent’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 Requirements. (Ex. 1, p. 37.)

14. Condition 11 provides that for any violation of any term or condition of probation the Board may, after giving respondent notice and an opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed.

15. Condition 13 provides that respondent “shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board . . . Such costs shall be payable to the [Board] . . . no later than January 31 of each calendar year.” (Ex. 1, p. 38.)

16. Condition 14 requires respondent to “comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation.” (Ex. 1, p. 38.)

Respondent’s Acts Related to Allegations in the Second Amended Accusation

17. Based on testimonial and documentary evidence on this record, it appears more likely than not that respondent sent electronic mail to Board staff members in Cerritos under the name of a California Highway Patrol (CHP) officer, Officer Jeremy Tolen, in order to obtain information about this case. Officer Tolen testified that the emails were not from him and explained why he believes only respondent had the motive and knowledge to send the emails. After a period of time, responsibility for monitoring respondent’s probation was transferred from the Board’s district office in Cerritos to the Board’s Sacramento office. Paulette Romero, Enforcement Program Manager in the Sacramento office, testified that such a transfer was rare. She believes, after her own investigation, that respondent sent the Officer Tolen emails. No staff

members from the Cerritos office testified, however. Respondent's testimony on the subject of the emails was somewhat confusing and, in part, unconvincing. But although complainant's evidence carried a degree of persuasive weight, in total the evidence did not establish clearly and convincingly that respondent committed the alleged acts.

18. By violating certain terms of probation, respondent failed to comply fully with an order imposing probationary conditions on his certificate. (See Factual Findings 22, 24, and 25.)

Respondent's Acts Related to Allegations in the Petition to Revoke Probation

19. Respondent timely underwent a psychiatric evaluation, required as a condition precedent to his probationary license issuing. The Board received a psychiatric report from Dr. David J. Sheffner, M.D., on July 5, 2012, and a supplemental report on August 13, 2012. As noted in the Board's Probation Quarterly Report for the third quarter of 2012, "Dr. Sheffner found that Dr. Kyri's ability to practice medicine safely is not impaired by either mental illness or physical illness." (Ex. 6, p. 7.) The cost of the evaluation was \$3,068.75. Respondent made payments toward that cost but did not pay it in full. Under Condition 11 of his probation, respondent is relieved of the responsibility to pay the balance pending his non-practice of medicine. (Factual Findings 13 and 21.)

20. Respondent has failed to pay all probation monitoring costs in January of each year while on probation, as required under probationary condition number 13. (Factual Finding 15.) As of the date of hearing, respondent had incurred probation monitoring costs in the amount of \$17,420, of which he had paid \$1,025.32. Under Condition 11 of his probation, respondent is relieved of the responsibility to pay the balance pending his non-practice of medicine. (Factual Findings 13 and 21.)

21. Probationary Condition 10, which provides relief from compliance with probationary conditions during periods of non-practice, makes three exceptions. The first is that respondent is obligated to comply with requirements delineated in Condition 10. The second is that respondent's obligation to comply with the law is not excused. The third is that compliance with General Probation Requirements, which are found in Condition 8, is not excused. (Factual Finding 13.) The General Probation Requirements include such items as keeping the Board informed of the licensee's current address and of periods of time spent outside of California. It also contains the general proposition that "Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision." (Factual Finding 12.) Complainant offered in evidence correspondence from Board probationary staff arguing that this general provision of Condition 8 is excepted from the relief afforded under Condition 11, which excuses compliance with probationary conditions during periods of non-practice of medicine. Complainant's position is not persuasive; it would render the grant of relief in Condition 11 illusory and the probationary order arbitrary. To avoid that result, the provision in Condition 11 that Condition 8 still applies during periods of non-practice shall be construed to apply only to the specific requirements delineated in Condition 8 (see Factual Finding 12), and not to the general statement that probationers must comply with all terms and conditions of probation.

22. Respondent failed to maintain a current and renewed Physician's and Surgeon's Certificate, allowing his certificate to expire on February 28, 2014. This violates one of the specific requirements of Condition 8, a requirement that is not waived pending periods of non-practice. Respondent testified that he received a disability renewal application by mail and submitted the application and a \$25 fee to the Board. He denies, however, that he is disabled, and testified that he intends to comply with this requirement and pay the full renewal amount. Respondent did not present evidence sufficient to excuse noncompliance with Condition 8.

23. Respondent failed to successfully complete a Physician Assessment and Clinical Education (PACE) program after having not practiced continuously as a physician for over 18 consecutive months. This is not a violation of probation, however. Condition 10 requires that respondent complete a PACE course "prior to resuming the practice of medicine." (Factual Finding 13.) Respondent has not resumed the practice of medicine.

24. Respondent has failed to practice medicine continuously for a period exceeding two years. This violates one of the requirements of Condition 10; Condition 10 is not waived pending periods of non-practice. Respondent argued that the requirement should be waived because the Board delayed issuing him a wallet license and wall certificate after the Decision After Non-Adoption placing him on probation. Respondent testified that potential employers refused to hire him until he presented them with a physical certificate, and that he had applied for hundreds of positions. By letter dated June 17, 2013, Kevin Morris, then Inspector II at the Board's Cerritos office, wrote to respondent, after meeting with respondent and his counsel, that he had inquired of the Board's Licensing Department. The Licensing Department informed Morris that the wallet license and wall certificate had been mailed to respondent and had not been returned to sender. Morris advised respondent to contact the Licensing Department to request a duplicate. (Ex. 6, p. 32.) It appears from the evidence that respondent did receive a certificate by at least late 2013. Respondent did not adequately explain why he has not been able to obtain employment in the medical field since that time. There is insufficient evidence on this record to warrant waiver of the probationary requirement that respondent not exceed two years of non-practice of medicine.

25. Respondent failed at times to cooperate with Board probationary staff. He acknowledged as much when, in testimony, he agreed with the statements in a document entitled Addendum to June 3, 2013 Quarterly Declaration of Lien J. Kyri. That document includes a statement that he completed quarterly probation reports in a manner constituting a "form of peaceful civil protest," and a statement that "I recognize my obligation to cooperate with the MBC to ensure a smooth probation, so that I may ultimately obtain a clear license to practice medicine. I regret any confusion from my prior quarterly declarations and will full[y] comply with all reasonable MBC requests."¹ (Ex. 17.) Evidence of respondent's leaving

¹ The addendum appears to relate to a quarterly report respondent submitted. (See Ex. 6.) In substance it comports with other testimony offered by respondent at this hearing. Respondent offered conflicting and rather unpersuasive testimony about knowing who

frequent voicemail messages and sending complaints to Board staff about the probationary process does not support the allegation that respondent failed to cooperate; respondent is entitled, while complying with probationary conditions, to voice objections to the process. Nor did respondent fail to cooperate by disagreeing with staff's interpretation of the timing requirements for the payment of certain costs, e.g., for respondent's psychiatric examination. Respondent's interpretation that Condition 10 stayed certain payment requirements during periods of non-practice was reasonable and, with respect to certain payment obligations, correct.

Other Mitigation and Rehabilitation

26. Respondent testified that since being placed on probation he has been unable to procure employment to practice medicine, which he attributes to the Board's failure to provide him with a wallet license and wall certificate and to his unwillingness to continue applying because he believes employers will not hire someone with a revoked license. He has worked as a security guard at Disneyland, and is concerned about ever being able to obtain a job.

LEGAL CONCLUSIONS

Burden of Proof

1. With respect to the Second Amended Accusation, complainant has the burden of proving that discipline is warranted by clear and convincing evidence to a reasonable certainty. (Evid. Code, § 115; see *Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911.)

2. With respect to the Petition to Revoke Probation, while complainant still bears the burden, the standard of proof is lower. In a proceeding to revoke a criminal probation, the standard of proof is preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437.) The standard of proof for a petition to revoke probation of a professional license should be no higher than that required to establish a probation violation in a criminal matter. Thus, the preponderance of the evidence standard applies to the petition.

Applicable Authority

3. The Board's highest priority is to protect the public. (Bus. & Prof. Code, § 2229.)² The Board is responsible for enforcing the disciplinary and criminal provisions of the Medical Practice Act and "suspending, revoking, or otherwise limiting certificates after the

authored the addendum, or whether he or his attorney authored it. But respondent testified that the statements in the addendum are accurate, other than statements regarding aliases.

² Further statutory references are to the Business and Professions Code except where otherwise stated.

conclusion of disciplinary actions.” (§ 2004.) After a disciplinary hearing, the Board may revoke a practitioner’s license, place the practitioner on probation and require payment of costs of probation monitoring, and take “any other action . . . in relation to discipline as part of an order of probation, as the [B]oard or an administrative law judge may deem proper.” (§ 2227.)

4. The Board may take action against a licensee for unprofessional conduct, which includes “[t]he commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.” (§§ 2234, subd. (e), 490.) Unprofessional conduct also includes “[k]nowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine . . . which falsely represents the existence or nonexistence of a state of facts” (§ 2261.)

Cause for Discipline in the Second Amended Accusation

5. Cause does not exist to suspend or revoke respondent’s license for engaging in dishonest or corrupt acts under section 2234, subdivision (e), in that complainant did not establish by clear and convincing evidence that respondent sent electronic mail to Board staff under the name of a California Highway Patrol (CHP) officer, as set forth in Factual Findings 6 and 17.

6. Cause does not exist to suspend or revoke respondent’s license for making or signing false documents under section 2261, in that complainant did not establish by clear and convincing evidence that respondent sent electronic mail to Board staff under the name of a California Highway Patrol (CHP) officer, as set forth in Factual Findings 6 and 17.

7. Cause exists to suspend or revoke respondent’s license under section 2234, based on respondent’s failure to comply with a probationary order and his failure to cooperate with Board probationary staff, as set forth in Factual Findings 5 through 16, 18, 22, and 24, and Legal Conclusions 10, 12, and 13.

Cause for Revocation in the Petition to Revoke Probation

8. Cause does not exist to revoke probation, impose the stayed disciplinary order, and revoke the certificate, under the Decision After Nonadoption effective March 23, 2012, based on respondent’s failure to pay the cost of a psychiatric evaluation, as payment is not yet due under Condition 10 of the Board’s probationary order, as set forth in Factual Findings 5, 7 through 16, 19, and 21.

9. Cause does not exist to revoke probation, impose the stayed disciplinary order, and revoke the certificate, under the Decision After Nonadoption effective March 23, 2012, based on respondent’s failure to pay probation monitoring costs, as payment is not yet due under Condition 10 of the Board’s probationary order, as set forth in Factual Findings 5, 7 through 16, 20, and 21.

10. Cause exists to revoke probation, impose the stayed disciplinary order, and revoke the certificate, under the Decision After Nonadoption effective March 23, 2012, based

on respondent's failure to maintain a current and renewed Physician's and Surgeon's Certificate, as set forth in Factual Findings 5, 7 through 16, 21, and 22.

11. Cause does not exist to revoke probation, impose the stayed disciplinary order, and revoke the certificate, under the Decision After Nonadoption effective March 23, 2012, based on respondent's failure to successfully complete a Physician Assessment and Clinical Education (PACE) program after having not practiced continuously as a physician for over 18 consecutive months, because respondent has not been practicing medicine and is only required to complete the course before he resumes the practice of medicine, as set forth in Factual Findings 5, 7 through 16, 21, and 23.

12. Cause exists to revoke probation, impose the stayed disciplinary order, and revoke the certificate, under the Decision After Nonadoption effective March 23, 2012, based on respondent's failure to practice medicine continuously for a period exceeding two years, as set forth in Factual Findings 5, 7 through 16, 21, and 24.

13. Cause exists to revoke probation, impose the stayed disciplinary order, and revoke the certificate, under the Decision After Nonadoption effective March 23, 2012, based on respondent's failure to cooperate with the Board's staff members regarding their monitoring of his compliance with probationary conditions, as set forth in Factual Findings 5, 7 through 16, 21, and 25.

14. Based on Factual Findings 5 through 26 and Legal Conclusions 7, 10, 12, and 13, revoking probation, imposing the stayed disciplinary order, and revoking the certificate is warranted. Respondent's certificate was issued on a probationary basis. The Board explained its rationale in its Decision After Nonadoption, effective March 23, 2012. (Factual Finding 5.) The conditions were designed to allow respondent to demonstrate to the Board, through his practice as a physician and through compliance with other conditions, that an unrestricted certificate would eventually be warranted. Respondent has not practiced as a physician since the Decision After Nonadoption issued and since probation began in the summer of 2012. Respondent has, by not working as a physician, failed to demonstrate to the Board that he can practice medicine safely. Respondent's reasons for allowing his certificate to expire and for not practicing medicine were not persuasive, particularly with reference to the past three years, after, according to undisputed evidence, he received a wall certificate and wallet license. (Factual Findings 22 and 24.) While extending the period of probation might have been an option for technical probation violations, respondent's failure to practice for such an extended period of time, his failure to renew his certificate, and his failure to make preparations to resume practice, including enrolling in a PACE program, render any consideration of an extension at this time futile, given the purpose of the conditions the Board initially imposed on respondent's certificate.

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ORDER

The probationary order that the Board issued in Case No. 20-2010-205464 is revoked, the disciplinary order that was stayed by that order is imposed, and Physician's and Surgeon's Certificate No. A 122548, issued to respondent Lien Jay Kyri, M.D., is revoked.

DATED: September 23, 2016

DocuSigned by:
Howard W. Cohen
D44C96A3C8054C5..

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearing

1 KAMALA D. HARRIS
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 TAN N. TRAN
Deputy Attorney General
4 State Bar No. 197775
CALIFORNIA DEPARTMENT OF JUSTICE
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 897-6793
Facsimile: (213) 897-9395
7 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO MAY 3 2016
BY: R. E. N. [Signature] ANALYST

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

11 In the Matter of the Second Amended
12 Accusation and Petition to Revoke Probation
13 Against:

Case No. 800-2014-007598

OAH No. 2014120806

14 **LIEN JAY KYRI, M.D.**
15 **6451 Silent Harbor Drive**
16 **Huntington Beach, CA 92648**
17 **Physician's and Surgeon's Certificate No. A**
18 **122548,**

SECOND AMENDED ACCUSATION AND
PETITION TO REVOKE PROBATION

Respondent.

18 Complainant alleges:

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) brings this Second Amended Accusation and
21 Petition to Revoke Probation solely in her official capacity as the Executive Director of the
22 Medical Board of California, Department of Consumer Affairs.

23 2. On or about August 17, 2012, the Medical Board of California issued Physician's
24 and Surgeon's Certificate Number A 122548 to LIEN JAY KYRI, M.D. (Respondent). The
25 Physician's and Surgeon's Certificate expired on February 28, 2014, and has not been renewed.

26 The Board nonetheless retains jurisdiction over this matter pursuant to Business and
27 Professions Code section 118.

28 ///

1 one year, placed on probation and required to pay the costs of probation monitoring, or such other
2 action taken in relation to discipline as the Board deems proper.

3 7. Section 2234 of the Code, states:

4 "The board shall take action against any licensee who is charged with unprofessional
5 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
6 limited to, the following:

7 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
8 violation of, or conspiring to violate any provision of this chapter.

9 "(b) Gross negligence.

10 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
11 omissions. An initial negligent act or omission followed by a separate and distinct departure from
12 the applicable standard of care shall constitute repeated negligent acts.

13 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate
14 for that negligent diagnosis of the patient shall constitute a single negligent act.

15 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
16 constitutes the negligent act described in paragraph (1), including, but not limited to, a
17 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
18 applicable standard of care, each departure constitutes a separate and distinct breach of the
19 standard of care.

20 "(d) Incompetence.

21 "(e) The commission of any act involving dishonesty or corruption that is substantially
22 related to the qualifications, functions, or duties of a physician and surgeon.

23 "(f) Any action or conduct which would have warranted the denial of a certificate.

24 "(g) The practice of medicine from this state into another state or country without meeting
25 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
26 apply to this subdivision. This subdivision shall become operative upon the implementation of
27 the proposed registration program described in Section 2052.5.

28 ///

1 that he has demonstrated a lack of willingness to obey a lawful Order and to comply with the law
2 and his probationary requirements.²

3 **FIRST CAUSE TO REVOKE PROBATION**

4 (Failure to Comply: Costs of Psychiatric Evaluation)

5 13. As a condition precedent before being issued a probationary license, the March 2012
6 Decision ordered Respondent to undergo a psychiatric evaluation and stated in pertinent part:

7 "Respondent shall pay the cost of all psychiatric evaluations and psychological testing."

8 10. Respondent's probation is subject to revocation because he failed to comply with said
9 condition of the March 2012 Decision, referenced above. The facts and circumstances regarding
10 this violation are as follows:

11 A. A review by the Board's Probation Unit discovered that Respondent completed the
12 psychiatric evaluation after April 2012 and was advised by the Board that the costs associated
13 with said evaluation was \$3,068.75.

14 B. To date, Respondent has not paid said costs, thereby violating his probation.³

15 **SECOND CAUSE TO REVOKE PROBATION**

16 (Failure to Comply: Probation Monitoring Costs)

17 14. At all times after the effective date of Respondent's probation, Condition 13 of the
18 March 2012 Decision states in pertinent part:

19 ///

20
21 ² Despite a lawful Order ordering Respondent to comply with his probationary
22 requirements, and despite being offered a payment plan by the Board, Respondent continues to
23 violate his probationary requirements because Respondent's position is that probation should
24 have been "removed," and that he [Respondent] should have been issued a "normal" [i.e.
25 unrestricted] license.

26 ³ Respondent claims that this (i.e. payment for costs of psychiatric evaluation) is *not* a
27 condition that violated the terms and conditions of the probation while Respondent was in a "non-
28 practice situation." Respondent is in a "non-practice situation" due to *Respondent's own actions*,
not by the Board's actions. By Respondent's own admission, he had a "valid" license to practice
medicine for *at least* a total period of "18 months and 11 days", from August 17, 2012 (when the
Board issued Respondent a probationary license) until February 28, 2014 (when the "no practice
allowed" status was placed on Respondent's license, pursuant to Condition 10 of the March 2012
Decision, after Respondent's period of non-practice while on probation had exceeded 18 calendar
months). Therefore, Respondent placed himself in a "non-practice situation" by *not* practicing
medicine, despite having the opportunity to do so.

1 FOURTH CAUSE TO REVOKE PROBATION

2 (Failure to Comply: Non-Practice While on Probation)

3 18. At all times after the effective date of Respondent's probation, Condition 10 of the
4 March 2012 Decision states in pertinent part:

5 "In the event that respondent's period of non-practice while on probation exceeds 18
6 calendar months, respondent *shall* (*emphasis added*) successfully complete a clinical training
7 program that meets the criteria of Condition 18 of the current version of the Board's "Manual of
8 Model Disciplinary Orders and Disciplinary Guidelines" *prior* (*emphasis added*) to resuming the
9 practice of medicine....Respondent's period of non-practice while on probation shall not exceed
10 two (2) years."

11 19. Respondent's probation is subject to revocation because he failed to comply with
12 Condition 10 of the March 2012 Decision, referenced above. The facts and circumstances
13 regarding this violation are as follows:

14 A. Respondent's medical license was issued on August 17, 2012, which enabled him to
15 begin practicing medicine on said date.

16 B. Since the issuance of his California medical license, Respondent has not been
17 practicing medicine. Respondent's period of non-practice while on probation has exceeded 18
18 calendar months, and to date he has not successfully completed a clinical training program that
19 meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
20 Disciplinary Orders and Disciplinary Guidelines" thereby violating his probation.⁶

21 ///

22 (...continued)

23 18 calendar months, *not* because of Respondent's "failure of payment of renewal fees," as
Respondent claims.

24 ⁶ Respondent's medical license became effective on August 17, 2012. Respondent asserts
25 that the license was placed on a "no practice allowed" status by the Board on February 28, 2014,
26 which Respondent claims excuses many of his probationary requirements. The "no practice
27 allowed" status was placed on Respondent's license, pursuant to Condition 10 of the March 2012
28 Decision, above, a *lawful Order*. By Respondent's own admission, he had a "valid" license to
practice medicine for *at least* a total period of "18 months and 11 days", but did *not* practice
medicine during said period. To date, Respondent is still *not* practicing medicine (which makes
Respondent's period of non-practice while on probation to exceed two (2) years), and he has not
successfully completed the required training program.

1 **FIFTH CAUSE TO REVOKE PROBATION**

2 (Failure to Obey All Laws)

3 20. At all times after the effective date of Respondent's probation, Condition 6 of the
4 March 2012 Decision states:

5 "Respondent shall obey all federal, state and local laws, all rules governing the practice of
6 medicine in California and remain in full compliance with any court ordered criminal probation,
7 payments, and other orders."

8 21. The facts and circumstances in the First, Second and Third Causes for Discipline, as
9 well as the First, Second, Third, and Fourth Causes to Revoke Probation, are incorporated by
10 reference as if set forth in full herein.

11 **PRAYER**

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

14 1. Revoking the probation that was granted by the Medical Board of California in Case
15 No. 20-2010-205464 and imposing the disciplinary order that was stayed thereby revoking
16 Physician's and Surgeon's Certificate No. A 122548 issued to LIEN JAY KYRI, M.D.;

17 2. Revoking or suspending Physician's and Surgeon's Certificate No. A 122548, issued
18 to LIEN JAY KYRI, M.D.;

19 3. Revoking, suspending or denying approval of Lien Jay Kyri, M.D.'s authority to
20 supervise physicians assistants, pursuant to section 3527 of the Code;

21 4. Ordering LIEN JAY KYRI, M.D. to pay the Medical Board of California the costs of
22 probation monitoring, if Respondent is placed on probation;

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

24 DATED: May 3, 2016

25 
26 KIMBERLY KIRCHMEYER
27 Executive Director
28 Medical Board of California
Department of Consumer Affairs
State of California
Complainant

Exhibit A

Decision After Non-Adoption

Medical Board of California Case No. 20-2010-205464

MEDICAL BOARD OF CALIFORNIA

I do hereby certify that this document is a true and correct copy of the original on file in this office.

Signature: Cynthia Wagon
Title: Assistant Secretary
Date: 8/20/2014

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

In the Matter of the Statement of Issues
Against:

LIEN JAY KYRI

Respondent.

Case No. 20-2010-205464

OAH No. 2010110370

DECISION AFTER NONADOPTION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on June 13 through 17, 2011, in Los Angeles, and on June 22, 2011, in Sacramento, California.

Complainant Linda K. Whitney was represented by Supervising Deputy Attorney General Gloria L. Castro, and Deputy Attorney General Beneth A. Browne.

Respondent Lien Jay Kyri was present and represented by Daniel H. Willick, Attorney at Law.

The case was submitted for decision on June 22, 2011.

The proposed decision of the administrative law judge was submitted to Panel "A" of the Medical Board of California (hereafter "Board") on August 1, 2011. After due consideration thereof, the Board declined to adopt the proposed decision and thereafter on October 26, 2011 issued an "Order of Nonadoption of Proposed Decision." On November 3, 2011, the Board issued an "Amended Order of Nonadoption of Proposed Decision" and subsequently issued an Order Fixing Date for Submission of Written Argument. On January 3, 2012, the Board issued a "Notice of Hearing for Oral Argument." On January 23, 2012, the Board issued an "Order Clarifying Prior Orders of Nonadoption," which provided that the Order dated November 3, 2011 superseded and replaced the prior Order dated October 26, 2011. On February 2, 2012, oral argument was heard, rulings regarding arguments and the taking of additional evidence were made by Administrative Law Judge Catherine Frink

on behalf of the Board, and the Board voted on this matter that same day.

The time for filing written argument in this matter having expired, written argument having been filed by both parties and such written argument, together with the entire record, including the transcript of said hearing, having been read and considered, pursuant to Government Code Section 11517, the Board hereby makes the following decision and order:

FACTUAL FINDINGS

1. Linda K. Whitney (complainant) is the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs. She brought the Statement of Issues and First Amended Statement of Issues solely in her official capacity. The Statement of Issues and First Amended Statement of Issues were filed on July 7, 2010 and June 16, 2011, respectively. Those charging documents both alleged that respondent's application was subject to denial pursuant to Sections 820 and/or 480 of the Business and Professions Code "in that Respondent's ability to practice medicine is impaired due to his mental conditions."

2. On January 16, 2009, the Board received an application for a Physician's and Surgeon's License from Lien Jay Kyri (respondent). On January 13, 2009, respondent certified under penalty of perjury to the truthfulness of all statements, answers and representations in the application. The Board denied the application on December 8, 2009, indicating that its denial was based upon a determination that respondent "is impaired and unable to practice his/her profession safely," and that he has done an "act which if done by a licensee of the business and profession in question, would be grounds for discipline or revocation of license." (See Bus. & Prof. Code, §§ 480, subd. (a)(3), 820 and 822.)

3. By letter to the Board dated February 3, 2010, respondent contested the denial of his application and requested a hearing. Respondent timely filed a notice of defense in response to the Board's filing and service of the Statement of Issues and First Amended Statement of Issues in this matter.

Education Background

4. Respondent is age 41. He did his undergraduate studies at Golden West College, and at the University of California at San Diego, majoring in biochemistry and cell biology. He then applied to and was accepted at the University of California at Irvine (UCI) School of Medicine. Respondent took and passed all three steps of the United States Medical Licensing Examination, and received his Doctor of Medicine from UCI on June 19, 2004.

Between July 2004 and June 2005, respondent completed an internship in internal medicine through the University of California, San Francisco, School of

Medicine, at its Fresno program. He then applied for a residency position in Physical Medicine and Rehabilitation (PM&R) and was accepted into the PM&R residency program at the University of Texas Southwestern (UTS). He participated in the three-year UTS residency program between 2005 and 2008.

5. Respondent completed the UTS residency program in the specialty of PM&R on June 30, 2008. He took and passed the written examination to be board certified by the American Board of Physical Medicine and Rehabilitation (ABPMR). However, he was not eligible to take the oral examination for the ABPMR board certification because his application for a Physician's and Surgeon's License was denied by the Board.

Respondent applied to and was accepted into a fellowship training program in Spinal Cord Injury (SCI) Medicine at the Stanford University/Palo Alto Veterans Administration Health Systems for the 2009/2010 year. He was unable to accept the SCI fellowship because a California medical license is required for him to continue as a postgraduate fellow in this program.

Respondent's Application for Licensure

6. In respondent's January 13, 2009 application for licensure, he was asked whether he had ever been placed on probation. He answered in the affirmative. He had been placed on probation during his postgraduate training at UTS. Respondent participated in the UTS residency in PM&R between July 1, 2005, and June 30, 2008. He was on probation for 22 of the 36 months that he was in this program.

7. Probation During Residency. Respondent was initially placed on probation from December 30, 2005, to June 30, 2007. Samuel Bierner, M.D., was the UTS Residency Program Director with responsibility over the PM&R residency program. By letter dated December 30, 2005, Dr. Bierner advised respondent that he was being placed on probation through June 30, 2006, for the following reasons: "excessive tardiness and/or absenteeism, unsatisfactory job performance and unethical conduct."

Dr. Bierner and respondent met for a six-month evaluation and counseling session on June 30, 2006. Dr. Bierner made a determination to extend respondent's probation for an additional six months through December 31, 2006. By letter dated June 30, 2006, Dr. Bierner detailed seven specific performance areas where he believed improvement by respondent was needed.

Dr. Bierner and respondent met on other occasions to discuss his resident job performance. By letter dated December 29, 2006, Dr. Bierner advised respondent that he would remain on probation through June 30, 2007. The letter detailed areas where Dr. Bierner expected improvements in respondent's behavior and job performance as a condition to respondent's continuation in the UTS residency program.

By letter dated September 24, 2007, Dr. Bierner confirmed that respondent remained on probation through October 31, 2007. He warned respondent in that letter that "failure to comply with all the terms of my previous instructions to you may result in your termination from the residency prior to graduation, which would make you ineligible to sit for the American Board of PM&R examination."

Dr. Bierner wrote a letter on December 26, 2007, to Anthony M. Tarvestad, Executive Director of the ABPMR. Dr. Bierner indicated to Mr. Tarvestad that he had removed respondent from probationary status, that respondent's "performance, attitude, and communication skills have improved," and that he would recommend respondent for admission to take the written ABPMR board examination.

By letter to the Board dated August 31, 2009, Dr. Bierner confirmed that respondent was on probation from December 30, 2005, through October 31, 2007. He noted: "After Dr. Kyri completed his period of probation, he then successfully completed a residency program on June 30, 2008. Subsequent to that, this individual successfully passed his written board examination."

8. Respondent's Written Explanation to the Board. Respondent was requested, as a part of the application process, to provide a written explanation for his "Yes" response to being on probation. He did so and submitted a seven-page separate attachment to his application explaining why he believed he was placed on probation at UTS. The content, nature and character of this written explanation, in tandem with other information received by the Board relating to respondent's probation, led the Board to reject respondent's application over concerns it has related to respondent's ability to practice medicine safely and independently.

Respondent indicated that he was placed on probation "due to my very great dissatisfaction, less than enthusiastic attitude, and alleged derisive remarks that were overheard toward the residency program." He suggested that he was forced to work at the UTS residency program against his wishes, that he did not select UTS as his preference to continue his post graduate studies, "nor did I agree to work there of my own volition." Respondent was highly critical of the National Residency Matching Program (Match) and its resulting assignment of all graduating medical students. The process "infuriated" him and he was "not inclined to trust nor have any support for a residency system whose moral and ethical judgments I had serious questions and concerns about."

9. Respondent portrayed himself as a victim of the Match program and of the UTS residency program director, Dr. Bierner. The following excerpts from his written explanation to the Board are indicative of the tenor and tone of his comments:

In a nation that proclaims the strengths of its freedoms and democracy, I did not knowingly enter into a career in Medicine to

have my basic rights of freedom and civil liberties stripped away, to be abducted half-way across the country to a place I had no desire to live in, and be forced to work in a place I had absolutely no confidence in without having in the very least the last word. Throughout this entire residency process, I felt as if I were treated like a slave or a common criminal, despite the fact that I did not deserve to be treated as such.

The Informant was eavesdropping on a private conversation where I was expressing my frustrations about how strongly I disagreed with how the residency program had exploited and fraudulently forced graduating medical students into compulsory, involuntary labor contracts through Match assignments. ... In my estimation, the program director has never been very sympathetic to my plight, nor has he, in my estimation, taken any effort to understand anything about my point of view about why I did not want to work at UT Southwestern nor live in a place not of my own choosing.

- Based on hearsay evidence, Dr. Bierner unilaterally acted in placing me on probation, which at the time, effectively stopped ongoing efforts I was making to rectify an already difficult living and work situation -- namely attempting to transfer out of his program and move out of the State of Texas. I strongly believe the program director imposed this probation to specifically prevent me from freely defying and walking away from his program to pursue my interests elsewhere.

- The program director acted alone as prosecution, judge and jury in implementing this action.

- I strongly feel probation was place [sic] on me as punishment for airing my dissatisfaction and as retribution to prevent me from freely and willingly defying and challenging the authority of the established residency programs.

Board Investigation and Referral

10. Cindi Oseto is a manager and former associate analyst with the Board. She was responsible for reviewing respondent's application and obtaining additional materials from respondent and the UTS residency program in response to his "Yes" answer to having been placed on probation. She prepared a Summary Memorandum dated September 28, 2009, and provided this along with respondent's application materials to the Board's medical consultant, Jim Nuovo, M.D., for secondary review. Dr. Nuovo is a professor and Associate Dean of Student Affairs and Graduate Medical Education at the University of California, Davis School of Medicine. It is the Board's practice to have a medical consultant review such materials and provide

guidance to the Board on whether and/or how to proceed with an investigation.

11. Dr. Nuovo prepared an October 1, 2009 memorandum in response to Ms. Oseto's request. He identified the "key question" in this matter as whether respondent has the ability to practice safely and independently. He did not believe respondent should proceed to licensure, citing deficiencies he described as "serious and in multiple areas." Dr. Nuovo made the following recommendations for further Board action:

Dr. Kyri has not convinced me that he is able to demonstrate the ability to remediate serious performance deficiencies; particularly the global issues of his professionalism which has a clear link to his medical decision making, patient care, interpersonal skills and patient safety. His professionalism is problematic in multiple domains and the root cause of this would need further assessment in order to determine if there is a remediable condition.

(S) ... (S)

This would require a medical and psychiatric assessment in order to determine the root cause. If a medical/psychiatric assessment is completed and does not have remarkable findings, due to the nature of the concerns with integrity, honesty and professionalism I would strongly advocate for a probationary license with a practice monitor.

12. Based upon Dr. Nuovo's recommendations, Ms. Oseto arranged for respondent to be seen by Stuart Shipko, M.D., for a psychiatric evaluation. Ms. Oseto provided Dr. Shipko with application materials that she described as "essential" to his evaluation. In her October 27, 2009 letter to Dr. Shipko, Ms. Oseto noted that senior staff had reviewed respondent's application and "agreed that he should undergo a psychiatric evaluation to help determine his eligibility for medical licensure." She provided three pages of background narrative in that same letter.

Respondent was seen for independent medical (psychiatric) examination by Dr. Shipko on November 9, 2009.

Psychiatric Evaluation by Dr. Shipko

13. Dr. Shipko attended the University of Michigan Medical School, and completed his residency in psychiatry at the University of California, Irvine. He is board certified in psychiatry and he has practiced in this area since 1981. Dr. Shipko is a Fellow in Consultation and Liaison Psychiatry, which he completed through UCI in 1984. He has conducted a number of disability evaluations since 1985, including fitness for duty examinations and work as an independent medical examiner. Dr. Shipko has performed disability evaluations for the Los Angeles County Employees Retirement System, Los Angeles County Department of Social Services, the

California Public Employees Retirement System and the Medical Board of California. He has performed approximately 10 evaluations for the Board relating to the fitness of applicants for licensure.

14. Ms. Oseto provided Dr. Shipko with all application materials collected by the Board, excluding non-essential correspondence between the Board and respondent.¹ Dr. Shipko reviewed these materials and met personally with respondent for approximately two and a half hours. Dr. Shipko obtained a history of the "Illness/Incident" as reported by respondent, as well as respondent's past history. Dr. Shipko conducted a mental status examination, and obtained the results of a Minnesota Multiphasic Personality Inventory-2 (MMPI-2) administered that same date. Following the November 9 examination, Dr. Shipko conducted separate telephone interviews with physicians at UTS including Dr. Bierner, Jian Hu, M.D., Vincent Gabriel, M.D., and Peter Roland, M.D. He then prepared a written report dated November 13, 2009, entitled "Independent Medical Examination: Psychiatry" reporting on his findings and recommendations to the Board.

15. Dr. Shipko's diagnostic impressions are that respondent suffers from Delusional Disorder, Persecutory Type along Axis I; and Passive Aggressive Personality Traits along Axis II. These are with reference to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV). The DSM-IV characterizes diagnostic features of a Delusional Disorder as follows:

The essential feature of Delusional Disorder is the presence of one or more nonbizarre delusions that persist for at least 1 month (Criterion A). A diagnosis of Delusional Disorder is not given if the individual has ever had a symptom presentation that met Criteria A for Schizophrenia (Criterion B). ... Apart from the direct impact of the delusions, psychosocial functioning is not markedly impaired, and behavior is neither obviously odd nor bizarre (Criterion C). If mood episodes occur concurrently with the delusions, the total duration of these mood episodes is relatively brief compared to the total duration of the delusional periods (Criterion D). The delusions are not due to the direct physiological effects of a substance (e.g., cocaine) or a general medical condition (e.g., Alzheimer's disease, systemic lupus erythematosus) (Criterion E).

(DSM-IV, Section 297.1, pp. 323-324.)

¹ Application materials included the Application for Physician's and Surgeon's License and supporting documents, respondent's narrative explaining why he was placed on probation at UTS, respondent's resume, Certificate of Completion of ACGME/RCPSC Postgraduate Training, nine letters from Dr. Bierner, UTS due process policies and procedures and a UTS Performance Analysis Report.

16. Delusions are subdivided according to their content and the predominant delusional theme. Dr. Shipko opined that the subtype of respondent's Delusional Disorder was "persecutory." The DSM-IV defines this as a "delusion in which the central theme is that one (or someone to whom one is close) is being attacked, harassed, cheated, persecuted, or conspired against." (DSM-IV, Glossary of Technical Terms, Appendix C, pp. 765-766.) The DSM-IV narrative description of this particular subtype is particularly helpful in this case:

Persecutory Type. This subtype applies when the central theme of the delusion involves the person's belief that he or she is being conspired against, cheated, spied on, followed, poisoned or drugged, maliciously maligned, harassed, or obstructed in the pursuit of long-term goals. Small slights may be exaggerated and become the focus of a delusional system. The focus of the delusion is often on some injustice that must be remedied by legal action ("querulous paranoia"), and the affected person may engage in repeated attempts to obtain satisfaction by appeal to the courts and other government agencies. Individuals with persecutory delusions are often resentful and angry and may resort to violence against those they believe are hurting them.

(DSM-IV, Section 297.1, p. 325.)

17. Dr. Shipko found marked inconsistencies between what was reported to him by respondent and what he learned through his interviews with collateral sources, some of whom respondent asked Dr. Shipko to contact for confirmation. He determined that the "gap between the information provided to me by Dr. Kyri and the information from collateral sources is too large to be explained by merely a different perception of the same set of events. Dr. Kyri's beliefs of malevolent treatment is implausible and is best explained as a delusional disorder, persecutory type. It most likely emerged during his medical education when he first learned about the match system and has been persistent since that time."

Dr. Shipko opined that respondent has a delusional disorder that causes his judgment, at times, to be so impaired that he is not in contact with reality. He believes that respondent is not capable of practicing medicine safely because his delusions of persecution "have resulted in poor decision making and actual neglect in performance of basic patient care responsibilities such as performing examinations." Dr. Shipko further noted that respondent's persecutory delusions render him unable to interact properly with colleagues and patients alike. He also believes that respondent is unable to follow instructions, refuses to care for patients at times and can exhibit behavioral extremes towards patients that were so inappropriate in one case that respondent was sent home from a clinic.

18. Dr. Shipko's diagnosis and opinions were influenced largely by the significant gap and marked inconsistencies between what he was told by respondent, and what he learned from others.

Dr. Shipko's preliminary examination of respondent on November 9, 2009, was unremarkable. Respondent's interview and mental status examination were appropriate, his mood and affect normal. His thought processes were logical and goal-directed. He was cooperative and Dr. Shipko observed no clinical anxiety or any features suggesting a personality disorder. Dr. Shipko noted: "These sorts of interviews are very difficult, and I felt that he responded in a very appropriate way." When respondent spoke about the Match program and issues related to his being placed on probation at UTS, Dr. Shipko noted that he seemed credible and sounded reasonable. Dr. Shipko was not overly concerned about earlier comments made in respondent's narrative explanation to the Board about why he was placed on probation. (See Finding 9.) Respondent was obviously opposed to the Match program and Dr. Shipko considered descriptive references such as being "abducted" as mere hyperbole.

Dr. Shipko completely changed his mind about respondent after collateral source verification conversations with Doctors Bierner, Hu, Gabriel and Roland. He noted that information provided to him by respondent was all organized around his beliefs of persecution -- by the Match system as well as the residency program. Dr. Shipko opined: "In this case, the delusion relates to Dr. Kyri's belief that he is being persecuted by the Match system and persecuted by his training program. Also he is having delusions that his residency is engaging in deliberately fraudulent practices."

Specifics upon which Dr. Shipko relied and formulated his opinion are set forth below.

19. Match Program. Respondent reported to Dr. Shipko being very upset at the loss of choice in what he described as a lottery system, and his being matched with a program "he definitely did not want to go to." He did not show up at either "Match day" or medical school graduation because he felt like a "beaten dog." Respondent reported going "unwillingly" to UTS, and verbalizing his dissent about the Match and also about aspects of the UTS residency program that he disliked. Dr. Shipko discussed difficulties that respondent had with the Match program with Dr. Bierner. Dr. Bierner advised that respondent had interviewed with the school and, in order to be accepted, had to have ranked UTS as a residency program to which he wanted to go. Dr. Bierner told Dr. Shipko that respondent had a surprising degree of dislike for the program and the state of Texas, and that his degree of dissatisfaction was "amazing."

20. Reasons for Being Placed on Probation. Respondent reported to Dr. Shipko that he was placed on probation by Dr. Bierner because of his lack of enthusiasm and/or because he was overheard speaking to another resident in the program and encouraging this resident to violate a UTS residency program policy. The specific policy related to requests for physician consultations which respondent

believed were not legitimate. Respondent noted that other doctors had already issued orders for physical therapy or occupational therapy. He believed that these same orders were intercepted and transformed into a request for consultation from the residents as a "fishing expedition to try and get new patients for the rehabilitation unit." Respondent was concerned on different levels. Respondent understood that a consultation involved a physician requesting the opinion of another physician for a specific purpose and that this was simply not occurring at the UTS residency program. He was also concerned that there were an average of about 20 consultations per day, with a low of 15, and a high of 30. This volume could not be done easily and "was an impossible burden of work." And he was concerned that this practice was instituted because it was a lucrative aspect of the residency program. Respondent reported to another resident that Dr. Hu had advised him that if he waited a day or two to do these consultations, most of these patients would be discharged from the hospital, thereby lessening the workload. Respondent believes that another resident, who overheard parts of this conversation, reported him to the residency director, Dr. Bierner.

Respondent told Dr. Shipko that he thought it possible that Dr. Bierner was upset because he was threatening a very lucrative part of the residency program and because the large number of consultations was billable. He believes this is why he was placed on probation. Respondent also described being placed on probation as personal retaliation by Dr. Bierner because he had expressed a dislike of the program.

21. Dr. Shipko spoke with Dr. Bierner on November 10, 2009, and asked him why respondent was placed on probation in the first place. Dr. Bierner indicated that respondent was placed on probation for unsatisfactory performance, noting that there were complaints from other residents and neurologists, and that there were difficulties with professional issues of arriving on time, attendance, follow-through and attention to detail. Dr. Bierner acknowledged that there was an issue about respondent telling other residents to wait a few days before doing consultations, but he had no idea where respondent had gotten that idea. Dr. Bierner indicated that consultations are to be performed within 24 hours. He disputed the number of consultations complained of by respondent, noting that an average day would have between three to five consultations. Dr. Bierner dismissed the higher numbers referenced by respondent as "fantasy."

Dr. Bierner also indicated that specific requests for consultation were made by one doctor to another each time, and that the protocol was to use special forms that included physical therapy and occupational therapy, and also a request for PM&R evaluation. Dr. Bierner indicated that respondent never complained to him about an excessive workload or about the number of consultations he had to perform. Dr. Shipko noted that Dr. Bierner was aware that respondent had complained that Dr. Bierner was "committing Medicare fraud and stealing consultations." However, Dr. Bierner reported to Dr. Shipko that the Texas Medical Board had looked into this and determined that the accusations were groundless.

22. Dr. Shipko spoke with Jian Hu, M.D. on November 10, 2009. Respondent had asked Dr. Shipko to call Dr. Hu to verify his account about why he waited to perform the consultations. Dr. Hu said he would never have told respondent not to do the consultations, or to wait in anticipation of a patient being discharged. Dr. Hu reiterated to Dr. Shipko that he never told respondent that it would be a good idea not to do the consultations or that the consultations were unnecessary.

23. Persecution During Residency. Respondent reported to Dr. Shipko that he had been treated harshly and discriminated against, and that Dr. Bierner was the sort of man who enjoyed wielding his power over others and that this was a way of showing respondent how much power Dr. Bierner actually had. Dr. Shipko reviewed with respondent a number of specific performance issues raised in the various letters Dr. Bierner had written to him. Respondent advised Dr. Shipko that Peter Roland, M.D. would confirm that the residency was harassing and persecutory. Dr. Bierner had referred respondent to a committee on practitioner peer review and assistance. The chair was Dr. Roland. Respondent reported to Dr. Shipko that the committee seemed to understand his situation and were supportive of him. Dr. Shipko spoke with Dr. Roland on November 11, 2009. Dr. Roland advised Dr. Shipko that the committee evaluated impaired physicians and "it was felt that Dr. Kyri was an impaired physician." Dr. Roland reported that there was no remediation to this impairment during the period that Dr. Roland's committee was investigating the impairment. Respondent was seen by a psychiatrist who opined that his impairment was depression.

Dr. Shipko also spoke to Vincent Gabriel, M.D. He asked Dr. Gabriel to comment upon specific instances relating to respondent falling asleep in an inappropriate setting, not being truthful about assessing an ICU patient for a rehabilitation transfer, and interacting with a burn clinic patient in a manner that was "so inappropriate that he relieved Dr. Kyri from clinic care after this incident." Dr. Gabriel had very little good to say about respondent and described the time that he supervised respondent as "very difficult."

24. The above collateral information was reported to and relied upon by Dr. Shipko in rendering his opinion in this case. Dr. Shipko noted that in his discussions with Doctors Bierner, Roland and Gabriel, he was impressed with their attempts to assist respondent "in a nurturing manner rather than an attitude of disrespect or contempt as Dr. Kyri described." As noted earlier, Dr. Shipko felt that the large gap between the information provided to him by respondent and the collateral sources could not simply be explained by differing perceptions of the same set of events.

25. Dr. Shipko's Conclusions. Dr. Shipko found substantial consistency in what he was told by collateral sources. He also found the MMPI-2 results to be consistent, albeit minimally helpful. Dr. Shipko believes respondent's condition to be rather serious, noting:

My impression is that the delusions had its origin sometime prior to Match day, but that they are increasing. His

repeated litigious behaviors concerning unfounded accusations of Medicare fraud represents a worrisome escalation of his illness. Individuals with persecutory delusions are often resentful and angry and may resort to violence against those that they believe are hurting them as well as litigation. Behavior can be completely unpredictable.

Dr. Shipko concluded in an "IME Addendum Report" dated December 4, 2009, that respondent may not practice medicine safely in California "even under a probationary license with specified terms and conditions." This was intended to clarify earlier language in his November 13, 2009 report indicating that respondent was "unable to practice medicine safely with a full and unrestricted license under any conditions in California."

26. Dr. Shipko believes that respondent is prone to distort information related to patient care and is making inappropriate clinical decisions on the basis of the delusional distortions. He believes it is possible that respondent "could become violent with coworkers or completely fail to respond to the needs of a seriously ill patient based on these delusions. He does not believe respondent's condition is remediable, noting in his Addendum:

Delusional disorder is not thought to respond to medication. Psychotherapy can be helpful, but in my experience neither treatment is particularly effective in getting the patient to comprehend that they are delusional. Sometimes the condition spontaneously remits, but given the chronicity he has shown already, it is most likely that this will follow a chronic course.

At hearing, Dr. Shipko further opined that respondent's persecutory-type delusion has now extended to include the Board, triggered by its action denying respondent's application for licensure. Respondent had made numerous Public Record Act requests under his father's name to obtain information from the Board. Dr. Shipko characterized the language contained in some of these letters to be suggestive of grandiosity and paranoia. Dr. Shipko also noted that the number of such requests was indicative of a preoccupation consistent with delusional disorder.

Psychiatric Evaluation by Thomas Ciesla, M.D.

27. Respondent was seen for psychiatric examination by Thomas K. Ciesla, M.D. on April 27, 2011. The two met for approximately two and one half hours. Dr. Ciesla received his medical degree from State University of New York at Buffalo. He completed a residency in psychiatry at the UCLA Neuropsychiatric Institute in Los Angeles, and also a fellowship in Social and Community Psychiatry at UCLA. He is board certified in psychiatry, with added qualifications for addiction psychiatry. Dr.

Ciesla also holds a masters degree in social psychology, and a Ph.D. from the Southern California Psychoanalytic Institute.

Dr. Ciesla has served as president of both the California Psychiatric Association and the Southern California Psychiatric Society. He is an Assistant Clinical Professor of Psychiatry at UCLA. In addition to engaging in private practice in psychiatry, he has served as an examining psychiatrist for the City of Los Angeles, Board of Pensions, and for the Los Angeles Unified School District. He has served on the liaison committee for the Board's diversion program, and has testified as an expert witness in matters before the Board.

28. Dr. Ciesla was provided with the Board's Statement of Issues, Dr. Shipko's November 13 and December 4, 2009 reports, the November 9, 2009 MMP12 scoring and report from Alex Caldwell, Ph.D., a September 6, 2007 psychiatric evaluation by Robert Garrett, M.D., and articles from the Dallas Morning News about allegations relating to Medicare billing at the UTS Parkland Hospital, and separate allegations relating to the UTS residency program.

29. Dr. Ciesla opined that respondent has no mental condition that renders him unfit to practice medicine. He disagreed with Dr. Shipko's opinion that respondent has a delusional disorder. While Dr. Ciesla conceded that respondent meets most criteria for delusional disorder, he failed to find any delusion. On that basis alone Dr. Ciesla determined that respondent does not have a delusional disorder. Dr. Ciesla explained that there was nothing about respondent's presentation that suggested an encapsulated delusion system. Dr. Ciesla noted that a "mistaken belief" is not a delusion. He would expect a delusion to arise, or to be created "out of whole cloth." In this respect, Dr. Ciesla relied upon collateral source material and press accounts about UTS billing irregularities and allegations relating to Medicare Fraud to support his opinion that respondent was not operating under a false belief about why he was placed on probation or being persecuted over the period of his UTS residency. Dr. Ciesla noted, for example, that respondent's beliefs about billing fraud were shared by other serious people.

The DSM-IV generally defines a delusion as follows:

A false belief based on incorrect inference about external reality that is firmly sustained despite what almost everyone else believes and despite what constitutes incontrovertible and obvious proof or evidence to the contrary. The belief is not one ordinarily accepted by other members of the person's culture or subculture (e.g., it is not an article of religious faith.) When a false belief involves a value judgment, it is regarded as a delusion only when the judgment is so extreme as to defy credibility. Delusional conviction occurs on a continuum and can sometimes be inferred from an individual's behavior. It is often difficult to

distinguish between a delusion and an overvalued idea (in which case the individual has an unreasonable belief or idea but does not hold it as firmly as is the case with a delusion.).

(DSM-IV, Glossary of Technical Terms, Appendix C, p. 765.)

30. Dr. Ciesla also considered respondent's "very solid academic record" and "distinguished work" as an undergraduate at U.C. San Diego and as a medical student at U.C. Irvine Medical School, and his having completed the UTS residency program as evidence that he had no significant psychopathology. Dr. Ciesla opined that at the time of his examination he would diagnose respondent with minor depression. In this respect he agreed with the earlier diagnosis by Robert Garrett, M.D., whose report Dr. Ciesla considered in rendering his opinion.

31. Respondent had earlier been referred to Dr. Garrett by the UTS Committee on Practitioner Peer Review & Assistance (COPRA). He was seen by Dr. Garrett on September 7, 2007.

Dr. Garrett diagnosed respondent with "Major Depressive Disorder, single episode, severe, without psychotic features." Dr. Garrett noted in his initial impressions that respondent acknowledged signs and symptoms of depression and that "he attributes all this to his resentment about the forced nature of the Match system and his resentment about being matched to Dallas, Texas." Respondent reported to Dr. Garrett that when he moved to Texas he lost his girlfriend, his circle of friends and ready access to his family. Dr. Garrett noted that respondent was socially isolated and without primary support outside of work, and "doing poorly at work." Respondent reported to Dr. Garrett that he "shut down" when he arrived at UTS and was unable to transfer out "because he did poorly at work" and was put on probation in his first six months.

Dr. Garrett made the following treatment recommendations that were communicated to respondent:

1. Weekly psychotherapy should be considered a primary treatment option, especially given your stated reluctance to take psychiatric medication. Either individual or group therapy would be appropriate. I recommend an initial course of therapy lasting 6 months. I provided you with several options and referral sources for such therapy.
2. Treatment with anti-depressant medication may also be helpful to you. I provided you with a prescription for an anti-depressant and a hypnotic.

32. Dr. Ciesla opined that a diagnosis of delusional disorder was neither consistent with Dr. Garrett's findings, nor with the MMPI-2 results as reported by Alex

B. Caldwell, Ph.D Dr. Caldwell's MMPI-2 report described respondent's profile as showing "a moderate level of anxiety and depression with low moods and open complaints of worry, fears, and self-doubts." The profile indicated "strong underlying tendencies to rationalize hostility, to covertly blame others, and to externalize problems away from himself when less depressed." Dr. Caldwell concluded that the diagnoses most commonly associated with respondent's profile are of depressive and anxiety neuroses.

33. Dr. Ciesla agrees that respondent has engaged in inappropriate behaviors but he does not believe such actions arose from a delusion. Rather, Dr. Ciesla believes it is more reflective of the desperate nature of respondent and the kind of "tone deaf" quality to his personal interactions with others. Building upon the profile and treatment considerations contained in Dr. Caldwell's report, Dr. Ciesla believes that respondent's prognosis and expected response to short term treatment is good. Dr. Ciesla made the following treatment and therapy recommendations at hearing:

Well, in view of all of the trouble that Dr. Kyri has gotten himself into and the kind of tone-deaf quality to his interaction with other people, I would want to focus on his capacity to apprehend and respond appropriately to affective cues from people he deals with. I think it would be crucial for Dr. Kyri, going forward, to be able to work comfortably and collaboratively in an institutional setting and, perhaps, even in a smaller clinic setting

Respondent's Testimony

34. Respondent avers that he was placed on probation because of his belief that UTS was committing billing fraud and because he was inquiring about transferring out of the program. He explained that although he highlighted his dissatisfaction with the Match program on his application to the Board, that that was not the real reason why he believes he was placed on probation. Respondent complained to a number of agencies around August 2009 about his concerns relating to the UTS PM&R department's practice of engaging in "blind consultations." He described this as when a consulting medical specialty such as PM&R initiates its medical services on its own unbeknownst to a patient and without being consulted by or being notified by the patient's care team of the need for its services. Respondent characterized this as a "very surreptitious means of inserting any consulting medical service onto the care team of a given patient." He believes it is "essentially a trolling expedition by which a given consult service artificially generates additional billing and income for Parkland Hospital in what is often needless, unwanted, and unauthorized medical services."

Respondent believes that word got back to Dr. Bierner that he was questioning the propriety of non-physician orders for PM&R consultations. The two met on July 13, 2005, and Dr. Bierner specifically asked him why he was not performing consultations on what respondent believed to be therapy orders. Respondent avers that Dr. Bierner

got very angry and yelled at him. He avers that Dr. Bierner told him that every therapy order at Parkland Hospital would come with a consultation order. Respondent alleges that he was instructed to do a physician consultation on every therapy order, and to also bill for an attending (supervising) physician even when the attending was not present during the consult. Respondent hesitated to do this out of concern that this was dishonest.

35. Respondent was placed on probation at UTS from December 30, 2005, through October 31, 2007. (See Finding 7.) Dr. Bierner wrote letters to respondent over this period, each detailing specific concerns relating to respondent's behavior and job performance as a resident, and summarizing expectations for him that were necessary in order for him to successfully complete the residency program. Concerns expressed by Dr. Bierner on December 30, 2005, included excessive tardiness and/or absenteeism, unsatisfactory job performance, and unethical conduct. The unethical conduct related to concerns that respondent had advised other residents to wait several days before completing a PM&R consultation. The expectation was that such be completed within 24 hours.

Concerns expressed on June 30, 2006, included respondent's failure to assess an ICU patient for possible rehabilitation transfer, failure to ask for assistance of an attending in appropriate situations of medical complexity, receiving unsatisfactory ratings on his inpatient rehabilitation unit evaluation, issues relating to hearing loss and daytime drowsiness, and unsatisfactory evaluations from St. Paul University Hospital inpatient rotation.

Concerns expressed on September 8, 2006, included delinquent completion of medical records, unsatisfactory job performance during on call period, and drowsiness and falling asleep in lectures. Similar concerns were expressed to respondent on December 29, 2006.

On September 24, 2007, Dr. Bierner reminded respondent that he remained on probation through October 31, 2007, and that he was expected to meet all the terms of the previous probation letters, and be removed from probation prior to completion of the UTS residency program.

36. At hearing, respondent addressed the matters set forth in the several letters from Dr. Bierner. He defended himself against most of the criticisms, with only minimal acknowledgement that he had any performance or behavior issues. He maintained that he "always did everything appropriately" in relation to patient consultations during his residency program, and also defended his decisions to not provide consultations ordered by the program because, in his opinion, the consultations were "not justified." (RT Vol. IV 963:1-21; Vol. V 1230:1-2.) He admitted that he made no similar defense at the time these same matters were brought to his attention by Dr. Bierner, noting that he "just listened" and that he did not wish to risk his career. He did not pursue the due process rights specifically afforded him by UTS in relation to his probation. He suggested that to do so would require him to bring up his

July 2005 discussions with Dr. Bierner, something he did not wish to do, and which he believes to be the real reason he was placed on probation.

37. Respondent met with COPPRA, and was referred to Dr. Garrett on September 7, 2007. (Finding 31.) Respondent denied being told that he needed to seek mental health counseling, or that he required psychotherapy or medications. He averred that Dr. Garrett did not share with him his diagnosis of major depression. Respondent reversed himself in subsequent testimony, suggesting that he did book and make an appointment for psychotherapy and that he otherwise followed the instructions of COPPRA.

38. Respondent is currently employed as a security officer at Disneyland. He had applied for employment with numerous biotech employers, but was questioned about his medical degree and why he was not working in medicine. He performs volunteer work as a logistics coordinator for the American Red Cross. Respondent would like to work in the field of spinal cord injury medicine. He desires to work with acute patients as they learn to regain function. He plans to reapply to the Spinal Cord Injury program at the Stanford University/Palo Alto Veterans Administration Health Systems, or to programs with UCI or the Kaiser-Permanente Medical Group.

39. Respondent's knowledge base, ability and skill in PM&R are not in dispute. Keith E. Tansey, M.D., Ph.D., who recommended respondent for the Stanford fellowship in spinal cord medicine, testified on respondent's behalf. Dr. Tansey was an Assistant Professor and Director of Spinal Cord Injury Program at the UTS Medical Center during respondent's residency. Dr. Tansey supervised respondent and observed him practice as a resident. He noted that respondent was an excellent resident who held himself and those he worked with to a very high standard. He also noted that respondent was "hungry to learn about not only the very practical but also the theoretical basis when it came to rehabilitation medicine." Dr. Tansey supports respondent's application for licensure in California.

40. Respondent is currently seeking out low-cost psychotherapy in Orange County. He is willing to accept any probationary terms and conditions the Board chooses to impose on his license. He acknowledges that some of his communications with Board staff were "off-putting" and he is somewhat apologetic. He now believes past poor behaviors were due to his dissatisfaction with the Match program and his reaction to billing irregularities at UTS. He noted that his dissatisfaction impacted his ability to trust others at UTS and that he did not interact with the level of trust needed. He believes this led to him not interacting positively with staff.

Discussion

41. Respondent's application was denied under Business and Professions Code section 820, relating to practice impairment. Section 820 provides:

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.²

Accordingly, the sole issue in this case is whether respondent's ability to practice medicine is impaired due to mental illness, or physical illness affecting competency.

42. The parties offered conflicting evidence in this matter regarding respondent's mental status. Complainant relies upon Dr. Shipko's opinion that respondent suffers from a delusional disorder, persecutory type. Dr. Shipko believes this mental illness emerged during respondent's medical education when he first learned about the match system and has been persistent since that time, even encompassing the Board's decision to deny his application for licensure. Dr. Shipko opined that respondent has a delusional disorder that causes his judgment to be so impaired that he is not in contact with reality. He does not believe respondent is capable of practicing medicine safely because his delusions of persecution have resulted in actual patient neglect in performance of basic responsibilities such as performing examinations. Dr. Shipko believes respondent's persecutory delusions render him unable to interact properly with colleagues and patients alike, and that respondent is unable to follow instructions, refuses to care for patients at times and can exhibit behavioral extremes towards patients.

However, the Board finds that the evidence, including the testimony of Dr. Ciesla, is more persuasive that respondent does not suffer from delusional disorder. Dr. Ciesla noted that a "mistaken belief" is not a delusion and that when a delusion is present, one would expect it to be created "out of whole cloth." A delusion is a false belief based on incorrect inference about external reality that is firmly sustained despite what almost everyone else believes and despite what constitutes incontrovertible and obvious proof or evidence to the contrary. Respondent is very likely wrong about why he was placed on probation and about being persecuted over the period of his UTS residency. But these amount to no more than mistaken beliefs,

² Business and Professions Code sections 820 and 822 contemplate proceedings involving one who is currently licensed. However, both the Statement of Issues and the First Amended Statement of Issues make these allegations in tandem with section 480, which references acts which "if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license."

and not delusions. Dr. Clesla noted, for example, that respondent's beliefs about billing fraud were shared by other serious people.

43. Dr. Clesla opined that respondent's poor behaviors are better explained by his diagnosis of depression, and by his personality characteristics and the MMPI-2 profile reported by Dr. Caldwell. Such opinion finds substantial corroboration in the record, including earlier reports by other experts received in evidence at the hearing. For example, Dr. Caldwell opined that respondent is prone to react with undue anxiety and poorly regulated emotions to minor threats to his security. He reported that respondent has "strong underlying tendencies to rationalize hostility, to covertly blame others, and to externalize problems away from himself when less depressed." The Administrative Law Judge (ALJ) for the hearing in this matter made the following findings with respect to respondent's credibility at hearing, to which the Board gives great weight.³ He found that Dr. Caldwell's description was an apt description of much of respondent's behaviors complained of over the course of his UTS residency, and also of the quality of his testimony at hearing. He further found that respondent rarely acknowledged wrong or accepted responsibility for inappropriate behaviors or poor performance. The ALJ found that, at times, respondent was not forthright. For example, he was not honest about being told of Dr. Garrett's diagnosis of major depression and his recommendations for treatment. This and other elements of his testimony were troubling, regardless of causation. The Board is concerned that this evidence shows that respondent's basic inclination is to accept little or no responsibility, to blame others and to externalize problems. However, this is not the same thing as having a delusion.

Certain of respondent's behaviors are also better explained by a diagnosis of depression. Dr. Garrett diagnosed him with Major Depressive Disorder. Respondent reported to him that he was very angry about being matched to UTS and that he "shut down" when he arrived and was unable to transfer out because he did poorly at work and was put on probation. He reported having no friends and being isolated, if not ostracized, by the program and fellow residents. Importantly, respondent acknowledged signs and symptoms of depression and attributed it to his resentment about being matched to UTS. This is all consistent with depression, and not delusional disorder.

44. Delusional disorder, if an accurate diagnosis, would not be remediable. The non-remediable nature and chronicity of this disease informed Dr. Shipko's recommendation that respondent may not practice medicine safely in California "even under a probationary license with specified terms and conditions." However, the evidence did not show that respondent suffers from a delusional disorder or that respondent's condition was not remediable. On balance, the evidence in this case

³ Government Code section 11425.50(b) states, in pertinent part, "If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it."

indicates that respondent's condition may be treated. Dr. Garrett recommended weekly psychotherapy as a primary treatment option, with an initial course of therapy lasting six months. He also believed anti-depressant medication would be helpful. Dr. Calowell's report indicated that diagnoses most commonly associated with respondent's profile are depressive and anxiety neuroses, with the expected response to short-term treatment being "relatively good." Dr. Ciesla endorsed these recommendations, disagreeing only as to the degree of depression. Dr. Ciesla recommended psychotherapy more directly focused on improving respondent's capacity to apprehend and respond appropriately to affective cues from people he deals with so that he might work comfortably and collaboratively in an institutional setting or smaller clinic settings.

45. Complainant points out that respondent was repeatedly given opportunity to respond to the many performance issues raised by Dr. Biemer, and that never once did he raise the issues about consultations, lack of attending physicians or fraudulent billing practices. Complainant is also troubled that respondent, for the first time at hearing, suggested that his comments about the match program were just a "cover story" for the real reason he was placed on probation. And complainant is concerned by the fact that respondent did not become a whistle-blower until the week that he submitted his application to the Board in August 2009. Complainant contends that regardless of the root cause, respondent should not be granted a license because he has not met his burden of showing that he can practice medicine safely. Complainant's several concerns about respondent's behaviors are warranted. Indeed, respondent's behaviors may well be explained by matters beyond his personality profile or depression, such as basic character flaws. But the sole issue remains whether his ability to practice is impaired due to mental illness, or physical illness affecting competency. Because the medical evidence in this case does not support a finding of delusional disorder, respondent's ability to practice is not impaired due to that mental illness.

46. The evidence in this case demonstrates that respondent requires further evaluation and treatment for his condition, including psychotherapy. At hearing, respondent represented that he is willing to undergo such treatment and avowed that he was in the process of seeking a medical provider. He should not receive a license until he does so.

47. Because respondent's mental health condition (Depression) is remediable, it is recommended that he be placed on standard terms of probation with the Board. This is consistent with the recommendation of the Board's medical consultant, Jim Nuovo, M.D. (See Finding 11.) Board oversight of respondent's reentry into medical practice is wise given that he has not practiced medicine since 2008. Probation should also include a psychiatric evaluation, some form of psychotherapy, a practice monitor, and solo practice prohibition.

LEGAL CONCLUSIONS

The Burden of Proof

1. The Administrative Procedure Act (Gov. Code, §§ 11500 et seq.) provides that the burden of proof is upon the applicant seeking licensure. (*Coffin v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471, 476-477.) Specifically, Government Code section 11504 states:

"A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which *the respondent must show compliance by producing proof at the hearing* and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought."
(Emphasis added.)

2. "Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." (Evid. Code, § 115.)

Grounds for Denial/Issuance of a Certificate on Probation

3. Under Business and Professions Code section 480, the Board may deny a license of an applicant who has done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. (Bus. & Prof. Code, § 480, subd. (a)(3).) The act must be substantially related to the qualifications, functions or duties of the business or profession for which application is made.

4. Business and Professions Code section 820 provides:

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

5. Cause exists to deny respondent's application for licensure under Business and Professions Code sections 480, subdivision (a); and 820, by reason of the matters set forth in Findings 43 through 47.

6. Although grounds for denial exist, the Board may still issue a probationary certificate on terms and conditions of probation. (Bus. & Prof. Code, § 2221.) Government Code section 11519(b) provides that: "A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision."

Factors Considered in Justification of Issuance of a Probationary Certificate

7. Protection of the public is the Board's highest priority. (Bus. & Prof. Code, § 2001.1.) It is for this reason that licensure by the Board is not readily granted. Qualification for licensure must be met⁴ and minimum standards continuously satisfied.⁵ Further, it is expected that the Board's licensees practice with safety to the public, including practicing without mental impairments affecting competency. The Board has a compelling need to protect the public against risk of harm by physicians who may be so impaired that they cannot practice medicine safely.

8. The matters set forth in Findings 41 through 47, have been considered. The evidence in the record indicates that respondent has a mental condition that is remediable. However, it would not be in the public interest to grant an unrestricted license to respondent, given that the evidence in the record shows that respondent has a mental condition for which he has not received treatment (Factual Finding 46) and he has not fully accepted responsibility for his conduct (Factual Findings 36, 37, 43). Nevertheless, the balance of the medical experts in this matter expressed the opinion that respondent's condition could be remediated and that he could practice under certain conditions. (Factual Finding 44.) Further, respondent has expressed a willingness to accept treatment for his condition and shows some insights into his actions. (Factual Finding 40). Consequently, it would not be contrary to the public interest to issue respondent a probationary license at this time on standard terms of probation with the Board, with the additional conditions that he undergo a psychiatric evaluation, participate in some form of psychotherapy, have a practice monitor, and that he is prohibited from solo practice. The condition that respondent undergo a psychiatric evaluation should be a condition precedent to his licensure on probation for five years.

9. Five years' probation is the minimum necessary for the Board to monitor respondent with respect to the issues in this case. The issuance of a probationary license will produce a positive effect for respondent and the public, in that the

⁴ Business and Professions Code §2080, et seq.

⁵ Business and Professions Code §2190, et seq.

imposition of probation with terms and conditions will encourage on-going assessment, monitoring, therapy and self-reflection for respondent, and ensures the public that the Board has put protections in place to help ensure safe practice. To that end, the Board has determined that the following terms regarding probation under the Board's Disciplinary Guidelines [effective 2011, 11th Edition] shall apply in this case: psychiatric evaluation (as condition precedent), psychotherapy, practice monitor, solo practice prohibition, notification, supervision of physician assistants, obey all laws, quarterly declarations, general probation requirements, interview with the Board or its Designee, non-practice while on probation, completion of probation, violation of probation, license surrender, and probation monitoring costs. The Board has determined that these conditions are sufficient to meet the goal of allowing respondent to practice with safety to the public. This conclusion is based upon all of the Factual Findings and Legal Conclusions.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application of Lien Jay Kyri for an unrestricted physician's and surgeon's certificate is denied. However, Respondent shall be issued a physician's and surgeon's certificate on a probationary basis, as described below, upon completion of the following condition precedent:

Psychiatric Evaluation. Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee

Upon completion of the condition precedent above, Respondent shall be issued a probationary license as follows: Respondent Lien Jay Kyri shall be issued a physician's and surgeon's certificate, the certificate shall be immediately revoked, the revocation shall be stayed, and Respondent shall be placed on five (5) years' probation on the following terms and conditions:

1. Psychotherapy. Within sixty (60) calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary. The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents the psychotherapist may deem pertinent.

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

2. Monitoring Practice. Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision and First Amended Statement of Issues, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, First Amended Statement of Issues, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and First Amended Statement of Issues, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

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

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

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

In lieu of a monitor, respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

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

If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The respondent shall not resume the practice until an appropriate practice setting is established.

If, during the course of the probation, the respondent's practice setting changes and the respondent is no longer practicing in a setting in compliance with this Decision, the respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The respondent shall not resume practice until an appropriate practice setting is established.

4. Notification. Prior to establishing a practice with another physician or securing employment in an appropriate practice setting, respondent shall provide a true copy of the Decision and First Amended Statement of Issues to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent, and to every partner in the practice of medicine, or prospective employer. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall apply to any change in hospitals, other facilities or insurance carrier.

5. Supervision of Physician Assistants. During probation, respondent is prohibited from supervising physician assistants.

6. Obey All Laws. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

7. Quarterly Declarations. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

8. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

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

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

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

10. Non-practice While on Probation. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine as defined in Sections 2051 and 2052 of the Business and Professions Code for at least 40 hours in a calendar month in direct patient care, clinical activity or

teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

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

Respondent'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 Requirements.

11. Violation of Probation. Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

12. License Surrender. Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his license. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wallet certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

13. Probation Monitoring Costs. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

14. Completion of Probation. Respondent shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

This decision shall become effective at 5 p.m. on March 23, 2012.

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


Shelton Duruisseau, Ph.D., Chairperson
Panel A
Medical Board of California

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

In the Matter of the Statement of Issues
Against:

LIEN JAY KYRI

Respondent.

Case No. 20-2010-205464

OAH No. 2010110370

DECISION AFTER NONADOPTION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on June 13 through 17, 2011, in Los Angeles, and on June 22, 2011, in Sacramento, California.

Complainant Linda K. Whitney was represented by Supervising Deputy Attorney General Gloria L. Castro, and Deputy Attorney General Beneth A. Browne.

Respondent Lien Jay Kyri was present and represented by Daniel H. Willick, Attorney at Law.

The case was submitted for decision on June 22, 2011.

The proposed decision of the administrative law judge was submitted to Panel "A" of the Medical Board of California (hereafter "Board") on August 1, 2011. After due consideration thereof, the Board declined to adopt the proposed decision and thereafter on October 26, 2011 issued an "Order of Nonadoption of Proposed Decision." On November 3, 2011, the Board issued an "Amended Order of Nonadoption of Proposed Decision" and subsequently issued an Order Fixing Date for Submission of Written Argument. On January 3, 2012, the Board issued a "Notice of Hearing for Oral Argument." On January 23, 2012, the Board issued an "Order Clarifying Prior Orders of Nonadoption," which provided that the Order dated November 3, 2011 superseded and replaced the prior Order dated October 26, 2011. On February 2, 2012, oral argument was heard, rulings regarding arguments and the taking of additional evidence were made by Administrative Law Judge Catherine Frink

on behalf of the Board, and the Board voted on this matter that same day.

The time for filing written argument in this matter having expired, written argument having been filed by both parties and such written argument, together with the entire record, including the transcript of said hearing, having been read and considered, pursuant to Government Code Section 11517, the Board hereby makes the following decision and order:

FACTUAL FINDINGS

1. Linda K. Whitney (complainant) is the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs. She brought the Statement of Issues and First Amended Statement of Issues solely in her official capacity. The Statement of Issues and First Amended Statement of Issues were filed on July 7, 2010 and June 16, 2011, respectively. Those charging documents both alleged that respondent's application was subject to denial pursuant to Sections 820 and/or 480 of the Business and Professions Code "in that Respondent's ability to practice medicine is impaired due to his mental conditions."

2. On January 16, 2009, the Board received an application for a Physician's and Surgeon's License from Lien Jay Kyri (respondent). On January 13, 2009, respondent certified under penalty of perjury to the truthfulness of all statements, answers and representations in the application. The Board denied the application on December 8, 2009, indicating that its denial was based upon a determination that respondent "is impaired and unable to practice his/her profession safely," and that he has done an "act which if done by a licentiate of the business and profession in question, would be grounds for discipline or revocation of license." (See Bus. & Prof. Code, §§ 480, subd. (a)(3), 820 and 822.)

3. By letter to the Board dated February 3, 2010, respondent contested the denial of his application and requested a hearing. Respondent timely filed a notice of defense in response to the Board's filing and service of the Statement of Issues and First Amended Statement of Issues in this matter.

Education Background

4. Respondent is age 41. He did his undergraduate studies at Golden West College, and at the University of California at San Diego, majoring in biochemistry and cell biology. He then applied to and was accepted at the University of California at Irvine (UCI) School of Medicine. Respondent took and passed all three steps of the United States Medical Licensing Examination, and received his Doctor of Medicine from UCI on June 19, 2004.

Between July 2004 and June 2005, respondent completed an internship in internal medicine through the University of California, San Francisco, School of

Medicine, at its Fresno program. He then applied for a residency position in Physical Medicine and Rehabilitation (PM&R) and was accepted into the PM&R residency program at the University of Texas Southwestern (UTS). He participated in the three-year UTS residency program between 2005 and 2008.

5. Respondent completed the UTS residency program in the specialty of PM&R on June 30, 2008. He took and passed the written examination to be board certified by the American Board of Physical Medicine and Rehabilitation (ABPMR). However, he was not eligible to take the oral examination for the ABPMR board certification because his application for a Physician's and Surgeon's License was denied by the Board.

Respondent applied to and was accepted into a fellowship training program in Spinal Cord Injury (SCI) Medicine at the Stanford University/Palo Alto Veterans Administration Health Systems for the 2009/2010 year. He was unable to accept the SCI fellowship because a California medical license is required for him to continue as a postgraduate fellow in this program.

Respondent's Application for Licensure

6. In respondent's January 13, 2009 application for licensure, he was asked whether he had ever been placed on probation. He answered in the affirmative. He had been placed on probation during his postgraduate training at UTS. Respondent participated in the UTS residency in PM&R between July 1, 2005, and June 30, 2008. He was on probation for 22 of the 36 months that he was in this program.

7. Probation During Residency. Respondent was initially placed on probation from December 30, 2005, to June 30, 2007. Samuel Bierner, M.D., was the UTS Residency Program Director with responsibility over the PM&R residency program. By letter dated December 30, 2005, Dr. Bierner advised respondent that he was being placed on probation through June 30, 2006, for the following reasons: "excessive tardiness and/or absenteeism, unsatisfactory job performance and unethical conduct."

Dr. Bierner and respondent met for a six-month evaluation and counseling session on June 30, 2006. Dr. Bierner made a determination to extend respondent's probation for an additional six months through December 31, 2006. By letter dated June 30, 2006, Dr. Bierner detailed seven specific performance areas where he believed improvement by respondent was needed.

Dr. Bierner and respondent met on other occasions to discuss his resident job performance. By letter dated December 29, 2006, Dr. Bierner advised respondent that he would remain on probation through June 30, 2007. The letter detailed areas where Dr. Bierner expected improvements in respondent's behavior and job performance as a condition to respondent's continuation in the UTS residency program.

By letter dated September 24, 2007, Dr. Bierner confirmed that respondent remained on probation through October 31, 2007. He warned respondent in that letter that "failure to comply with all the terms of my previous instructions to you may result in your termination from the residency prior to graduation, which would make you ineligible to sit for the American Board of PM&R examination."

Dr. Bierner wrote a letter on December 26, 2007, to Anthony M. Tarvestad, Executive Director of the ABPMR. Dr. Bierner indicated to Mr. Tarvestad that he had removed respondent from probationary status, that respondent's "performance, attitude, and communication skills have improved," and that he would recommend respondent for admission to take the written ABPMR board examination.

By letter to the Board dated August 31, 2009, Dr. Bierner confirmed that respondent was on probation from December 30, 2005, through October 31, 2007. He noted: "After Dr. Kyri completed his period of probation, he then successfully completed a residency program on June 30, 2008. Subsequent to that, this individual successfully passed his written board examination."

8. Respondent's Written Explanation to the Board. Respondent was requested, as a part of the application process, to provide a written explanation for his "Yes" response to being on probation. He did so and submitted a seven-page separate attachment to his application explaining why he believed he was placed on probation at UTS. The content, nature and character of this written explanation, in tandem with other information received by the Board relating to respondent's probation, led the Board to reject respondent's application over concerns it has related to respondent's ability to practice medicine safely and independently.

Respondent indicated that he was placed on probation "due to my very great dissatisfaction, less than enthusiastic attitude, and alleged derisive remarks that were overheard toward the residency program." He suggested that he was forced to work at the UTS residency program against his wishes, that he did not select UTS as his preference to continue his post graduate studies, "nor did I agree to work there of my own volition." Respondent was highly critical of the National Residency Matching Program (Match) and its resulting assignment of all graduating medical students. The process "infuriated" him and he was "not inclined to trust nor have any support for a residency system whose moral and ethical judgments I had serious questions and concerns about."

9. Respondent portrayed himself as a victim of the Match program and of the UTS residency program director, Dr. Bierner. The following excerpts from his written explanation to the Board are indicative of the tenor and tone of his comments:

- In a nation that proclaims the strengths of its freedoms and democracy, I did not knowingly enter into a career in Medicine to

have my basic rights of freedom and civil liberties stripped away, to be abducted half-way across the country to a place I had no desire to live in, and be forced to work in a place I had absolutely no confidence in without having in the very least the last word. Throughout this entire residency process, I felt as if I were treated like a slave or a common criminal, despite the fact that I did not deserve to be treated as such.

- The informant was eavesdropping on a private conversation where I was expressing my frustrations about how strongly I disagreed with how the residency program had exploited and fraudulently forced graduating medical students into compulsory, involuntary labor contracts through Match assignments. ... In my estimation, the program director has never been very sympathetic to my plight, nor has he, in my estimation, taken any effort to understand anything about my point of view about why I did not want to work at UT Southwestern nor live in a place not of my own choosing.
- Based on hearsay evidence, Dr. Bierner unilaterally acted in placing me on probation, which at the time, effectively stopped ongoing efforts I was making to rectify an already difficult living and work situation – namely attempting to transfer out of his program and move out of the State of Texas. I strongly believe the program director imposed this probation to specifically prevent me from freely defying and walking away from his program to pursue my interests elsewhere.
- The program director acted alone as prosecution, judge and jury in implementing this action.
- I strongly feel probation was place [sic] on me as punishment for airing my dissatisfaction and as retribution to prevent me from freely and willingly defying and challenging the authority of the established residency programs.

Board Investigation and Referral

10. Cindi Oseto is a manager and former associate analyst with the Board. She was responsible for reviewing respondent's application and obtaining additional materials from respondent and the UTS residency program in response to his "Yes" answer to having been placed on probation. She prepared a Summary Memorandum dated September 28, 2009, and provided this along with respondent's application materials to the Board's medical consultant, Jim Nuovo, M.D., for secondary review. Dr. Nuovo is a professor and Associate Dean of Student Affairs and Graduate Medical Education at the University of California, Davis School of Medicine. It is the Board's practice to have a medical consultant review such materials and provide

guidance to the Board on whether and/or how to proceed with an investigation.

11. Dr. Nuovo prepared an October 1, 2009 memorandum in response to Ms. Oseto's request. He identified the "key question" in this matter as whether respondent has the ability to practice safely and independently. He did not believe respondent should proceed to licensure, citing deficiencies he described as "serious and in multiple areas." Dr. Nuovo made the following recommendations for further Board action:

Dr. Kyri has not convinced me that he is able to demonstrate the ability to remediate serious performance deficiencies; particularly the global issues of his professionalism which has a clear link to his medical decision making, patient care, interpersonal skills and patient safety. His professionalism is problematic in multiple domains and the root cause of this would need further assessment in order to determine if there is a remediable condition.

[REDACTED] ... [REDACTED]

This would require a medical and psychiatric assessment in order to determine the root cause. If a medical/psychiatric assessment is completed and does not have remarkable findings, due to the nature of the concerns with integrity, honesty and professionalism I would strongly advocate for a probationary license with a practice monitor.

12. Based upon Dr. Nuovo's recommendations, Ms. Oseto arranged for respondent to be seen by Stuart Shipko, M.D., for a psychiatric evaluation. Ms. Oseto provided Dr. Shipko with application materials that she described as "essential" to his evaluation. In her October 27, 2009 letter to Dr. Shipko, Ms. Oseto noted that senior staff had reviewed respondent's application and "agreed that he should undergo a psychiatric evaluation to help determine his eligibility for medical licensure." She provided three pages of background narrative in that same letter.

Respondent was seen for independent medical (psychiatric) examination by Dr. Shipko on November 9, 2009.

Psychiatric Evaluation by Dr. Shipko

13. Dr. Shipko attended the University of Michigan Medical School, and completed his residency in psychiatry at the University of California, Irvine. He is board certified in psychiatry and he has practiced in this area since 1981. Dr. Shipko is a Fellow in Consultation and Liaison Psychiatry, which he completed through UCI in 1984. He has conducted a number of disability evaluations since 1985, including fitness for duty examinations and work as an independent medical examiner. Dr. Shipko has performed disability evaluations for the Los Angeles County Employees Retirement System, Los Angeles County Department of Social Services, the

California Public Employees Retirement System and the Medical Board of California. He has performed approximately 10 evaluations for the Board relating to the fitness of applicants for licensure.

14. Ms. Oseto provided Dr. Shipko with all application materials collected by the Board, excluding non-essential correspondence between the Board and respondent.¹ Dr. Shipko reviewed these materials and met personally with respondent for approximately two and a half hours. Dr. Shipko obtained a history of the "Illness/Incident" as reported by respondent, as well as respondent's past history. Dr. Shipko conducted a mental status examination, and obtained the results of a Minnesota Multiphasic Personality Inventory-2 (MMPI-2) administered that same date. Following the November 9 examination, Dr. Shipko conducted separate telephone interviews with physicians at UTS including Dr. Bierner, Jian Hu, M.D., Vincent Gabriel, M.D., and Peter Roland, M.D. He then prepared a written report dated November 13, 2009, entitled "Independent Medical Examination: Psychiatry" reporting on his findings and recommendations to the Board.

15. Dr. Shipko's diagnostic impressions are that respondent suffers from Delusional Disorder, Persecutory Type along Axis I; and Passive Aggressive Personality Traits along Axis II. These are with reference to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV). The DSM-IV characterizes diagnostic features of a Delusional Disorder as follows:

The essential feature of Delusional Disorder is the presence of one or more nonbizarre delusions that persist for at least 1 month (Criterion A). A diagnosis of Delusional Disorder is not given if the individual has ever had a symptom presentation that met Criteria A for Schizophrenia (Criterion B). ... Apart from the direct impact of the delusions, psychosocial functioning is not markedly impaired, and behavior is neither obviously odd nor bizarre (Criterion C). If mood episodes occur concurrently with the delusions, the total duration of these mood episodes is relatively brief compared to the total duration of the delusional periods (Criterion D). The delusions are not due to the direct physiological effects of a substance (e.g., cocaine) or a general medical condition (e.g., Alzheimer's disease, systemic lupus erythematosus) (Criterion E).

(DSM-IV, Section 297.1, pp. 323-324.)

¹ Application materials included the Application for Physician's and Surgeon's License and supporting documents, respondent's narrative explaining why he was placed on probation at UTS, respondent's resume, Certificate of Completion of ACGME/RCPSG Postgraduate Training, nine letters from Dr. Bierner, UTS due process policies and procedures, and a UTS Performance Analysis Report.

16. Delusions are subdivided according to their content and the predominant delusional theme. Dr. Shipko opined that the subtype of respondent's Delusional Disorder was "persecutory." The DSM-IV defines this as a "delusion in which the central theme is that one (or someone to whom one is close) is being attacked, harassed, cheated, persecuted, or conspired against." (DSM-IV, Glossary of Technical Terms, Appendix C, pp. 765-766.) The DSM-IV narrative description of this particular subtype is particularly helpful in this case:

Persecutory Type. This subtype applies when the central theme of the delusion involves the person's belief that he or she is being conspired against, cheated, spied on, followed, poisoned or drugged, maliciously maligned, harassed, or obstructed in the pursuit of long-term goals. Small slights may be exaggerated and become the focus of a delusional system. The focus of the delusion is often on some injustice that must be remedied by legal action ("querulous paranoia"), and the affected person may engage in repeated attempts to obtain satisfaction by appeal to the courts and other government agencies. Individuals with persecutory delusions are often resentful and angry and may resort to violence against those they believe are hurting them.

(DSM-IV, Section 297.1, p. 325.)

17. Dr. Shipko found marked inconsistencies between what was reported to him by respondent and what he learned through his interviews with collateral sources, some of whom respondent asked Dr. Shipko to contact for confirmation. He determined that the "gap between the information provided to me by Dr. Kyri and the information from collateral sources is too large to be explained by merely a different perception of the same set of events. Dr. Kyri's beliefs of malevolent treatment is implausible and is best explained as a delusional disorder, persecutory type. It most likely emerged during his medical education when he first learned about the match system and has been persistent since that time."

Dr. Shipko opined that respondent has a delusional disorder that causes his judgment, at times, to be so impaired that he is not in contact with reality. He believes that respondent is not capable of practicing medicine safely because his delusions of persecution "have resulted in poor decision making and actual neglect in performance of basic patient care responsibilities such as performing examinations." Dr. Shipko further noted that respondent's persecutory delusions render him unable to interact properly with colleagues and patients alike. He also believes that respondent is unable to follow instructions, refuses to care for patients at times and can exhibit behavioral extremes towards patients that were so inappropriate in one case that respondent was sent home from a clinic.

18. Dr. Shipko's diagnosis and opinions were influenced largely by the significant gap and marked inconsistencies between what he was told by respondent, and what he learned from others.

Dr. Shipko's preliminary examination of respondent on November 9, 2009, was unremarkable. Respondent's interview and mental status examination were appropriate, his mood and affect normal. His thought processes were logical and goal-directed. He was cooperative and Dr. Shipko observed no clinical anxiety or any features suggesting a personality disorder. Dr. Shipko noted: "These sorts of interviews are very difficult, and I felt that he responded in a very appropriate way." When respondent spoke about the Match program and issues related to his being placed on probation at UTS, Dr. Shipko noted that he seemed credible and sounded reasonable. Dr. Shipko was not overly concerned about earlier comments made in respondent's narrative explanation to the Board about why he was placed on probation. (See Finding 9.) Respondent was obviously opposed to the Match program and Dr. Shipko considered descriptive references such as being "abducted" as mere hyperbole.

Dr. Shipko completely changed his mind about respondent after collateral source verification conversations with Doctors Bierner, Hu, Gabriel and Roland. He noted that information provided to him by respondent was all organized around his beliefs of persecution – by the Match system as well as the residency program. Dr. Shipko opined: "In this case, the delusion relates to Dr. Kyri's belief that he is being persecuted by the Match system and persecuted by his training program. Also he is having delusions that his residency is engaging in deliberately fraudulent practices."

Specifics upon which Dr. Shipko relied and formulated his opinion are set forth below.

19. Match Program. Respondent reported to Dr. Shipko being very upset at the loss of choice in what he described as a lottery system, and his being matched with a program "he definitely did not want to go to." He did not show up at either "Match day" or medical school graduation because he felt like a "beaten dog." Respondent reported going "unwillingly" to UTS, and verbalizing his dissent about the Match and also about aspects of the UTS residency program that he disliked. Dr. Shipko discussed difficulties that respondent had with the Match program with Dr. Bierner. Dr. Bierner advised that respondent had interviewed with the school and, in order to be accepted, had to have ranked UTS as a residency program to which he wanted to go. Dr. Bierner told Dr. Shipko that respondent had a surprising degree of dislike for the program and the state of Texas, and that his degree of dissatisfaction was "amazing."

20. Reasons for Being Placed on Probation. Respondent reported to Dr. Shipko that he was placed on probation by Dr. Bierner because of his lack of enthusiasm and/or because he was overheard speaking to another resident in the program and encouraging this resident to violate a UTS residency program policy. The specific policy related to requests for physician consultations which respondent

believed were not legitimate. Respondent noted that other doctors had already issued orders for physical therapy or occupational therapy. He believed that these same orders were intercepted and transformed into a request for consultation from the residents as a "fishing expedition to try and get new patients for the rehabilitation unit." Respondent was concerned on different levels. Respondent understood that a consultation involved a physician requesting the opinion of another physician for a specific purpose and that this was simply not occurring at the UTS residency program. He was also concerned that there were an average of about 20 consultations per day, with a low of 15, and a high of 30. This volume could not be done easily and "was an impossible burden of work." And he was concerned that this practice was instituted because it was a lucrative aspect of the residency program. Respondent reported to another resident that Dr. Hu had advised him that if he waited a day or two to do these consultations, most of these patients would be discharged from the hospital, thereby lessening the workload. Respondent believes that another resident, who overheard parts of this conversation, reported him to the residency director, Dr. Bierner.

Respondent told Dr. Shipko that he thought it possible that Dr. Bierner was upset because he was threatening a very lucrative part of the residency program and because the large number of consultations was billable. He believes this is why he was placed on probation. Respondent also described being placed on probation as personal retaliation by Dr. Bierner because he had expressed a dislike of the program.

21. Dr. Shipko spoke with Dr. Bierner on November 10, 2009, and asked him why respondent was placed on probation in the first place. Dr. Bierner indicated that respondent was placed on probation for unsatisfactory performance, noting that there were complaints from other residents and neurologists, and that there were difficulties with professional issues of arriving on time, attendance, follow-through and attention to detail. Dr. Bierner acknowledged that there was an issue about respondent telling other residents to wait a few days before doing consultations, but he had no idea where respondent had gotten that idea. Dr. Bierner indicated that consultations are to be performed within 24 hours. He disputed the number of consultations complained of by respondent, noting that an average day would have between three to five consultations. Dr. Bierner dismissed the higher numbers referenced by respondent as "fantasy."

Dr. Bierner also indicated that specific requests for consultation were made by one doctor to another each time, and that the protocol was to use special forms that included physical therapy and occupational therapy, and also a request for PM&R evaluation. Dr. Bierner indicated that respondent never complained to him about an excessive workload or about the number of consultations he had to perform. Dr. Shipko noted that Dr. Bierner was aware that respondent had complained that Dr. Bierner was "committing Medicare fraud and stealing consultations." However, Dr. Bierner reported to Dr. Shipko that the Texas Medical Board had looked into this and determined that the accusations were groundless.

22. Dr. Shipko spoke with Jian Hu, M.D. on November 10, 2009. Respondent had asked Dr. Shipko to call Dr. Hu to verify his account about why he waited to perform the consultations. Dr. Hu said he would never have told respondent not to do the consultations, or to wait in anticipation of a patient being discharged. Dr. Hu reiterated to Dr. Shipko that he never told respondent that it would be a good idea not to do the consultations or that the consultations were unnecessary.

23. Persecution During Residency. Respondent reported to Dr. Shipko that he had been treated harshly and discriminated against, and that Dr. Bierner was the sort of man who enjoyed wielding his power over others and that this was a way of showing respondent how much power Dr. Bierner actually had. Dr. Shipko reviewed with respondent a number of specific performance issues raised in the various letters Dr. Bierner had written to him. Respondent advised Dr. Shipko that Peter Roland, M.D. would confirm that the residency was harassing and persecutory. Dr. Bierner had referred respondent to a committee on practitioner peer review and assistance. The chair was Dr. Roland. Respondent reported to Dr. Shipko that the committee seemed to understand his situation and were supportive of him. Dr. Shipko spoke with Dr. Roland on November 11, 2009. Dr. Roland advised Dr. Shipko that the committee evaluated impaired physicians and "it was felt that Dr. Kyri was an impaired physician." Dr. Roland reported that there was no remediation to this impairment during the period that Dr. Roland's committee was investigating the impairment. Respondent was seen by a psychiatrist who opined that his impairment was depression.

Dr. Shipko also spoke to Vincent Gabriel, M.D. He asked Dr. Gabriel to comment upon specific instances relating to respondent falling asleep in an inappropriate setting, not being truthful about assessing an ICU patient for a rehabilitation transfer, and interacting with a burn clinic patient in a manner that was "so inappropriate that he relieved Dr. Kyri from clinic care after this incident." Dr. Gabriel had very little good to say about respondent and described the time that he supervised respondent as "very difficult."

24. The above collateral information was reported to and relied upon by Dr. Shipko in rendering his opinion in this case. Dr. Shipko noted that in his discussions with Doctors Bierner, Roland and Gabriel, he was impressed with their attempts to assist respondent "in a nurturing manner rather than an attitude of disrespect or contempt as Dr. Kyri described." As noted earlier, Dr. Shipko felt that the large gap between the information provided to him by respondent and the collateral sources could not simply be explained by differing perceptions of the same set of events.

25. Dr. Shipko's Conclusions. Dr. Shipko found substantial consistency in what he was told by collateral sources. He also found the MMPI-2 results to be consistent, albeit minimally helpful. Dr. Shipko believes respondent's condition to be rather serious, noting:

My impression is that the delusions had its origin sometime prior to Match day, but that they are increasing. His

repeated litigious behaviors concerning unfounded accusations of Medicare fraud represents a worrisome escalation of his illness. Individuals with persecutory delusions are often resentful and angry and may resort to violence against those that they believe are hurting them as well as litigation. Behavior can be completely unpredictable.

Dr. Shipko concluded in an "IME Addendum Report" dated December 4, 2009, that respondent may not practice medicine safely in California "even under a probationary license with specified terms and conditions." This was intended to clarify earlier language in his November 13, 2009 report indicating that respondent was "unable to practice medicine safely with a full and unrestricted license under any conditions in California."

26. Dr. Shipko believes that respondent is prone to distort information related to patient care and is making inappropriate clinical decisions on the basis of the delusional distortions. He believes it is possible that respondent "could become violent with coworkers or completely fail to respond to the needs of a seriously ill patient based on these delusions. He does not believe respondent's condition is remediable, noting in his Addendum:

Delusional disorder is not thought to respond to medication. Psychotherapy can be helpful, but in my experience neither treatment is particularly effective in getting the patient to comprehend that they are delusional. Sometimes the condition spontaneously remits, but given the chronicity he has shown already, it is most likely that this will follow a chronic course.

At hearing, Dr. Shipko further opined that respondent's persecutory-type delusion has now extended to include the Board, triggered by its action denying respondent's application for licensure. Respondent had made numerous Public Record Act requests under his father's name to obtain information from the Board. Dr. Shipko characterized the language contained in some of these letters to be suggestive of grandiosity and paranoia. Dr. Shipko also noted that the number of such requests was indicative of a preoccupation consistent with delusional disorder.

Psychiatric Evaluation by Thomas Ciesla, M.D.

27. Respondent was seen for psychiatric examination by Thomas K. Ciesla, M.D. on April 27, 2011. The two met for approximately two and one half hours. Dr. Ciesla received his medical degree from State University of New York at Buffalo. He completed a residency in psychiatry at the UCLA Neuropsychiatric Institute in Los Angeles, and also a fellowship in Social and Community Psychiatry at UCLA. He is board certified in psychiatry, with added qualifications for addiction psychiatry. Dr.

Ciesla also holds a masters degree in social psychology, and a Ph.D. from the Southern California Psychoanalytic Institute.

Dr. Ciesla has served as president of both the California Psychiatric Association and the Southern California Psychiatric Society. He is an Assistant Clinical Professor of Psychiatry at UCLA. In addition to engaging in private practice in psychiatry, he has served as an examining psychiatrist for the City of Los Angeles, Board of Pensions, and for the Los Angeles Unified School District. He has served on the liaison committee for the Board's diversion program, and has testified as an expert witness in matters before the Board.

28. Dr. Ciesla was provided with the Board's Statement of Issues, Dr. Shipko's November 13 and December 4, 2009 reports, the November 9, 2009 MMPI2 scoring and report from Alex Caldwell, Ph.D., a September 6, 2007 psychiatric evaluation by Robert Garrett, M.D., and articles from the Dallas Morning News about allegations relating to Medicare billing at the UTS Parkland Hospital, and separate allegations relating to the UTS residency program.

29. Dr. Ciesla opined that respondent has no mental condition that renders him unfit to practice medicine. He disagreed with Dr. Shipko's opinion that respondent has a delusional disorder. While Dr. Ciesla conceded that respondent meets most criteria for delusional disorder, he failed to find any delusion. On that basis alone Dr. Ciesla determined that respondent does not have a delusional disorder. Dr. Ciesla explained that there was nothing about respondent's presentation that suggested an encapsulated delusion system. Dr. Ciesla noted that a "mistaken belief" is not a delusion. He would expect a delusion to arise, or to be created "out of whole cloth." In this respect, Dr. Ciesla relied upon collateral source material and press accounts about UTS billing irregularities and allegations relating to Medicare Fraud to support his opinion that respondent was not operating under a false belief about why he was placed on probation or being persecuted over the period of his UTS residency. Dr. Ciesla noted, for example, that respondent's beliefs about billing fraud were shared by other serious people.

The DSM-IV generally defines a delusion as follows:

A false belief based on incorrect inference about external reality that is firmly sustained despite what almost everyone else believes and despite what constitutes incontrovertible and obvious proof or evidence to the contrary. The belief is not one ordinarily accepted by other members of the person's culture or subculture (e.g., it is not an article of religious faith.) When a false belief involves a value judgment, it is regarded as a delusion only when the judgment is so extreme as to defy credibility. Delusional conviction occurs on a continuum and can sometimes be inferred from an individual's behavior. It is often difficult to

distinguish between a delusion and an overvalued idea (in which case the individual has an unreasonable belief or idea but does not hold it as firmly as is the case with a delusion.).

(DSM-IV, Glossary of Technical Terms, Appendix C, p. 765.)

30. Dr. Ciesla also considered respondent's "very solid academic record" and "distinguished work" as an undergraduate at U.C. San Diego and as a medical student at U.C. Irvine Medical School, and his having completed the UTS residency program as evidence that he had no significant psychopathology. Dr. Ciesla opined that at the time of his examination he would diagnose respondent with minor depression. In this respect he agreed with the earlier diagnosis by Robert Garrett, M.D., whose report Dr. Ciesla considered in rendering his opinion.

31. Respondent had earlier been referred to Dr. Garrett by the UTS Committee on Practitioner Peer Review & Assistance (COPPRA). He was seen by Dr. Garrett on September 7, 2007.

Dr. Garrett diagnosed respondent with "Major Depressive Disorder, single episode, severe, without psychotic features." Dr. Garrett noted in his initial impressions that respondent acknowledged signs and symptoms of depression and that "he attributes all this to his resentment about the forced nature of the Match system and his resentment about being matched to Dallas, Texas." Respondent reported to Dr. Garrett that when he moved to Texas he lost his girlfriend, his circle of friends and ready access to his family. Dr. Garrett noted that respondent was socially isolated and without primary support outside of work, and "doing poorly at work." Respondent reported to Dr. Garrett that he "shut down" when he arrived at UTS and was unable to transfer out "because he did poorly at work" and was put on probation in his first six months.

Dr. Garrett made the following treatment recommendations that were communicated to respondent:

1. Weekly psychotherapy should be considered a primary treatment option, especially given your stated reluctance to take psychiatric medication. Either individual or group therapy would be appropriate. I recommend an initial course of therapy lasting 6 months. I provided you with several options and referral sources for such therapy.
2. Treatment with anti-depressant medication may also be helpful to you. I provided you with a prescription for an anti-depressant and a hypnotic.

32. Dr. Ciesla opined that a diagnosis of delusional disorder was neither consistent with Dr. Garrett's findings, nor with the MMPI-2 results as reported by Alex

B. Caldwell, Ph.D. Dr. Caldwell's MMPI-2 report described respondent's profile as showing "a moderate level of anxiety and depression with low moods and open complaints of worry, fears, and self-doubts." The profile indicated "strong underlying tendencies to rationalize hostility, to covertly blame others, and to externalize problems away from himself when less depressed." Dr. Caldwell concluded that the diagnoses most commonly associated with respondent's profile are of depressive and anxiety neuroses.

33. Dr. Ciesla agrees that respondent has engaged in inappropriate behaviors but he does not believe such actions arose from a delusion. Rather, Dr. Ciesla believes it is more reflective of the desperate nature of respondent and the kind of "tone deaf" quality to his personal interactions with others. Building upon the profile and treatment considerations contained in Dr. Caldwell's report, Dr. Ciesla believes that respondent's prognosis and expected response to short term treatment is good. Dr. Ciesla made the following treatment and therapy recommendations at hearing:

Well, in view of all of the trouble that Dr. Kyri has gotten himself into and the kind of tone-deaf quality to his interaction with other people, I would want to focus on his capacity to apprehend and respond appropriately to affective cues from people he deals with. I think it would be crucial for Dr. Kyri, going forward, to be able to work comfortably and collaboratively in an institutional setting and, perhaps, even in a smaller clinic setting.

Respondent's Testimony

34. Respondent avers that he was placed on probation because of his belief that UTS was committing billing fraud and because he was inquiring about transferring out of the program. He explained that although he highlighted his dissatisfaction with the Match program on his application to the Board, that that was not the real reason why he believes he was placed on probation. Respondent complained to a number of agencies around August 2009 about his concerns relating to the UTS PM&R department's practice of engaging in "blind consultations." He described this as when a consulting medical specialty such as PM&R initiates its medical services on its own unbeknownst to a patient and without being consulted by or being notified by the patient's care team of the need for its services. Respondent characterized this as a "very surreptitious means of inserting any consulting medical service onto the care team of a given patient." He believes it is "essentially a trolling expedition by which a given consult service artificially generates additional billing and income for Parkland Hospital in what is often needless, unwanted, and unauthorized medical services."

Respondent believes that word got back to Dr. Bierner that he was questioning the propriety of non-physician orders for PM&R consultations. The two met on July 13, 2005, and Dr. Bierner specifically asked him why he was not performing consultations on what respondent believed to be therapy orders. Respondent avers that Dr. Bierner

got very angry and yelled at him. He avers that Dr. Bierner told him that every therapy order at Parkland Hospital would come with a consultation order. Respondent alleges that he was instructed to do a physician consultation on every therapy order, and to also bill for an attending (supervising) physician even when the attending was not present during the consult. Respondent hesitated to do this out of concern that this was dishonest.

35. Respondent was placed on probation at UTS from December 30, 2005, through October 31, 2007. (See Finding 7.) Dr. Bierner wrote letters to respondent over this period, each detailing specific concerns relating to respondent's behavior and job performance as a resident, and summarizing expectations for him that were necessary in order for him to successfully complete the residency program. Concerns expressed by Dr. Bierner on December 30, 2005, included excessive tardiness and/or absenteeism, unsatisfactory job performance, and unethical conduct. The unethical conduct related to concerns that respondent had advised other residents to wait several days before completing a PM&R consultation. The expectation was that such be completed within 24 hours.

Concerns expressed on June 30, 2006, included respondent's failure to assess an ICU patient for possible rehabilitation transfer, failure to ask for assistance of an attending in appropriate situations of medical complexity, receiving unsatisfactory ratings on his inpatient rehabilitation unit evaluation, issues relating to hearing loss and daytime drowsiness, and unsatisfactory evaluations from St. Paul University Hospital inpatient rotation.

Concerns expressed on September 8, 2006, included delinquent completion of medical records, unsatisfactory job performance during on call period, and drowsiness and falling asleep in lectures. Similar concerns were expressed to respondent on December 29, 2006.

On September 24, 2007, Dr. Bierner reminded respondent that he remained on probation through October 31, 2007, and that he was expected to meet all the terms of the previous probation letters, and be removed from probation prior to completion of the UTS residency program.

36. At hearing, respondent addressed the matters set forth in the several letters from Dr. Bierner. He defended himself against most of the criticisms, with only minimal acknowledgement that he had any performance or behavior issues. He maintained that he "always did everything appropriately" in relation to patient consultations during his residency program, and also defended his decisions to not provide consultations ordered by the program because, in his opinion, the consultations were "not justified." (RT Vol. IV 963:1-21; Vol. V 1230:1-2.) He admitted that he made no similar defense at the time these same matters were brought to his attention by Dr. Bierner, noting that he "just listened" and that he did not wish to risk his career. He did not pursue the due process rights specifically afforded him by UTS in relation to his probation. He suggested that to do so would require him to bring up his

July 2005 discussions with Dr. Bierner, something he did not wish to do, and which he believes to be the real reason he was placed on probation.

37. Respondent met with COPPRA, and was referred to Dr. Garrett on September 7, 2007. (Finding 31.) Respondent denied being told that he needed to seek mental health counseling, or that he required psychotherapy or medications. He averred that Dr. Garrett did not share with him his diagnosis of major depression. Respondent reversed himself in subsequent testimony, suggesting that he did book and make an appointment for psychotherapy and that he otherwise followed the instructions of COPPRA.

38. Respondent is currently employed as a security officer at Disneyland. He had applied for employment with numerous biotech employers, but was questioned about his medical degree and why he was not working in medicine. He performs volunteer work as a logistics coordinator for the American Red Cross. Respondent would like to work in the field of spinal cord injury medicine. He desires to work with acute patients as they learn to regain function. He plans to reapply to the Spinal Cord Injury program at the Stanford University/Palo Alto Veterans Administration Health Systems, or to programs with UCI or the Kaiser-Permanente Medical-Group.

39. Respondent's knowledge base, ability and skill in PM&R are not in dispute. Keith E. Tansey, M.D., Ph.D., who recommended respondent for the Stanford fellowship in spinal cord medicine, testified on respondent's behalf. Dr. Tansey was an Assistant Professor and Director of Spinal Cord Injury Program at the UTS Medical Center during respondent's residency. Dr. Tansey supervised respondent and observed him practice as a resident. He noted that respondent was an excellent resident who held himself and those he worked with to a very high standard. He also noted that respondent was "hungry to learn about not only the very practical but also the theoretical basis when it came to rehabilitation medicine." Dr. Tansey supports respondent's application for licensure in California.

40. Respondent is currently seeking out low-cost psychotherapy in Orange County. He is willing to accept any probationary terms and conditions the Board chooses to impose on his license. He acknowledges that some of his communications with Board staff were "off-putting" and he is somewhat apologetic. He now believes past poor behaviors were due to his dissatisfaction with the Match program and his reaction to billing irregularities at UTS. He noted that his dissatisfaction impacted his ability to trust others at UTS and that he did not interact with the level of trust needed. He believes this led to him not interacting positively with staff.

Discussion

41. Respondent's application was denied under Business and Professions Code section 820, relating to practice impairment. Section 820 provides:

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.²

Accordingly, the sole issue in this case is whether respondent's ability to practice medicine is impaired due to mental illness, or physical illness affecting competency.

42. The parties offered conflicting evidence in this matter regarding respondent's mental status. Complainant relies upon Dr. Shipko's opinion that respondent suffers from a delusional disorder, persecutory type. Dr. Shipko believes this mental illness emerged during respondent's medical education when he first learned about the match system and has been persistent since that time, even encompassing the Board's decision to deny his application for licensure. Dr. Shipko opined that respondent has a delusional disorder that causes his judgment to be so impaired that he is not in contact with reality. He does not believe respondent is capable of practicing medicine safely because his delusions of persecution have resulted in actual patient neglect in performance of basic responsibilities such as performing examinations. Dr. Shipko believes respondent's persecutory delusions render him unable to interact properly with colleagues and patients alike, and that respondent is unable to follow instructions, refuses to care for patients at times and can exhibit behavioral extremes towards patients.

However, the Board finds that the evidence, including the testimony of Dr. Ciesla, is more persuasive that respondent does not suffer from delusional disorder. Dr. Ciesla noted that a "mistaken belief" is not a delusion and that when a delusion is present, one would expect it to be created "out of whole cloth." A delusion is a false belief based on incorrect inference about external reality that is firmly sustained despite what almost everyone else believes and despite what constitutes incontrovertible and obvious proof or evidence to the contrary. Respondent is very likely wrong about why he was placed on probation and about being persecuted over the period of his UTS residency. But these amount to no more than mistaken beliefs,

² Business and Professions Code sections 820 and 822 contemplate proceedings involving one who is currently licensed. However, both the Statement of Issues and the First Amended Statement of Issues make these allegations in tandem with section 480, which references acts which "if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license."

and not delusions. Dr. Ciesla noted, for example, that respondent's beliefs about billing fraud were shared by other serious people.

43. Dr. Ciesla opined that respondent's poor behaviors are better explained by his diagnosis of depression, and by his personality characteristics and the MMPI-2 profile reported by Dr. Caldwell. Such opinion finds substantial corroboration in the record, including earlier reports by other experts received in evidence at the hearing. For example, Dr. Caldwell opined that respondent is prone to react with undue anxiety and poorly regulated emotions to minor threats to his security. He reported that respondent has "strong underlying tendencies to rationalize hostility, to covertly blame others, and to externalize problems away from himself when less depressed." The Administrative Law Judge (ALJ) for the hearing in this matter made the following findings with respect to respondent's credibility at hearing, to which the Board gives great weight.³ He found that Dr. Caldwell's description was an apt description of much of respondent's behaviors complained of over the course of his UTS residency, and also of the quality of his testimony at hearing. He further found that respondent rarely acknowledged wrong or accepted responsibility for inappropriate behaviors or poor performance. The ALJ found that, at times, respondent was not forthright. For example, he was not honest about being told of Dr. Garrett's diagnosis of major depression and his recommendations for treatment. This and other elements of his testimony were troubling, regardless of causation. The Board is concerned that this evidence shows that respondent's basic inclination is to accept little or no responsibility, to blame others and to externalize problems. However, this is not the same thing as having a delusion.

Certain of respondent's behaviors are also better explained by a diagnosis of depression. Dr. Garrett diagnosed him with Major Depressive Disorder. Respondent reported to him that he was very angry about being matched to UTS and that he "shut down" when he arrived and was unable to transfer out because he did poorly at work and was put on probation. He reported having no friends and being isolated, if not ostracized, by the program and fellow residents. Importantly, respondent acknowledged signs and symptoms of depression and attributed it to his resentment about being matched to UTS. This is all consistent with depression, and not delusional disorder.

44. Delusional disorder, if an accurate diagnosis, would not be remediable. The non-remediable nature and chronicity of this disease informed Dr. Shipko's recommendation that respondent may not practice medicine safely in California "even under a probationary license with specified terms and conditions." However, the evidence did not show that respondent suffers from a delusional disorder or that respondent's condition was not remediable. On balance, the evidence in this case

³ Government Code section 11425.50(b) states, in pertinent part, "If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it."

indicates that respondent's condition may be treated. Dr. Garrett recommended weekly psychotherapy as a primary treatment option, with an initial course of therapy lasting six months. He also believed anti-depressant medication would be helpful. Dr. Caldwell's report indicated that diagnoses most commonly associated with respondent's profile are depressive and anxiety neuroses, with the expected response to short-term treatment being "relatively good." Dr. Ciesla endorsed these recommendations, disagreeing only as to the degree of depression. Dr. Ciesla recommended psychotherapy more directly focused on improving respondent's capacity to apprehend and respond appropriately to affective cues from people he deals with so that he might work comfortably and collaboratively in an institutional setting or smaller clinic settings.

45. Complainant points out that respondent was repeatedly given opportunity to respond to the many performance issues raised by Dr. Bierner, and that never once did he raise the issues about consultations, lack of attending physicians or fraudulent billing practices. Complainant is also troubled that respondent, for the first time at hearing, suggested that his comments about the match program were just a "cover story" for the real reason he was placed on probation. And complainant is concerned by the fact that respondent did not become a whistle-blower until the week that he submitted his application to the Board in August 2009. Complainant contends that regardless of the root cause, respondent should not be granted a license because he has not met his burden of showing that he can practice medicine safely. Complainant's several concerns about respondent's behaviors are warranted. Indeed, respondent's behaviors may well be explained by matters beyond his personality profile or depression, such as basic character flaws. But the sole issue remains whether his ability to practice is impaired due to mental illness, or physical illness affecting competency. Because the medical evidence in this case does not support a finding of delusional disorder, respondent's ability to practice is not impaired due to that mental illness.

46. The evidence in this case demonstrates that respondent requires further evaluation and treatment for his condition, including psychotherapy. At hearing, respondent represented that he is willing to undergo such treatment and averred that he was in the process of seeking a medical provider. He should not receive a license until he does so.

47. Because respondent's mental health condition (Depression) is remediable, it is recommended that he be placed on standard terms of probation with the Board. This is consistent with the recommendation of the Board's medical consultant, Jim Nuovo, M.D. (See Finding 11.) Board oversight of respondent's reentry into medical practice is wise given that he has not practiced medicine since 2008. Probation should also include a psychiatric evaluation, some form of psychotherapy, a practice monitor, and solo practice prohibition.

LEGAL CONCLUSIONS

The Burden of Proof

1. The Administrative Procedure Act (Gov. Code, §§ 11500 et seq.) provides that the burden of proof is upon the applicant seeking licensure. (*Coffin v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471, 476-477.) Specifically, Government Code section 11504 states:

"A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which *the respondent must show compliance by producing proof at the hearing* and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought." (Emphasis added.)

2. "Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." (Evid. Code, § 115.)

Grounds for Denial/Issuance of a Certificate on Probation

3. Under Business and Professions Code section 480, the Board may deny a license of an applicant who has done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. (Bus. & Prof. Code, § 480, subd. (a)(3).) The act must be substantially related to the qualifications, functions or duties of the business or profession for which application is made.

4. Business and Professions Code section 820 provides:

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

5. Cause exists to deny respondent's application for licensure under Business and Professions Code sections 480, subdivision (a); and 820, by reason of the matters set forth in Findings 43 through 47.

6. Although grounds for denial exist, the Board may still issue a probationary certificate on terms and conditions of probation. (Bus. & Prof. Code, § 2221.) Government Code section 11519(b) provides that: "A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision."

Factors Considered in Justification of Issuance of a Probationary Certificate

7. Protection of the public is the Board's highest priority. (Bus. & Prof. Code, § 2001.1.) It is for this reason that licensure by the Board is not readily granted. Qualification for licensure must be met⁴ and minimum standards continuously satisfied.⁵ Further, it is expected that the Board's licensees practice with safety to the public, including practicing without mental impairments affecting competency. The Board has a compelling need to protect the public against risk of harm by physicians who may be so impaired that they cannot practice medicine safely.

8. The matters set forth in Findings 41 through 47, have been considered. The evidence in the record indicates that respondent has a mental condition that is remediable. However, it would not be in the public interest to grant an unrestricted license to respondent, given that the evidence in the record shows that respondent has a mental condition for which he has not received treatment (Factual Finding 46) and he has not fully accepted responsibility for his conduct (Factual Findings 36, 37, 43). Nevertheless, the balance of the medical experts in this matter expressed the opinion that respondent's condition could be remediated and that he could practice under certain conditions. (Factual Finding 44.) Further, respondent has expressed a willingness to accept treatment for his condition and shows some insights into his actions. (Factual Finding 40). Consequently, it would not be contrary to the public interest to issue respondent a probationary license at this time on standard terms of probation with the Board, with the additional conditions that he undergo a psychiatric evaluation, participate in some form of psychotherapy, have a practice monitor, and that he is prohibited from solo practice. The condition that respondent undergo a psychiatric evaluation should be a condition precedent to his licensure on probation for five years.

9. Five years' probation is the minimum necessary for the Board to monitor respondent with respect to the issues in this case. The issuance of a probationary license will produce a positive effect for respondent and the public, in that the

⁴ Business and Professions Code §2080, et seq.

⁵ Business and Professions Code §2190, et seq

imposition of probation with terms and conditions will encourage on-going assessment, monitoring, therapy and self-reflection for respondent, and ensures the public that the Board has put protections in place to help ensure safe practice. To that end, the Board has determined that the following terms regarding probation under the Board's Disciplinary Guidelines [effective 2011, 11th Edition] shall apply in this case: psychiatric evaluation (as condition precedent), psychotherapy, practice monitor, solo practice prohibition, notification, supervision of physician assistants, obey all laws, quarterly declarations, general probation requirements, interview with the Board or its Designee, non-practice while on probation, completion of probation, violation of probation, license surrender, and probation monitoring costs. The Board has determined that these conditions are sufficient to meet the goal of allowing respondent to practice with safety to the public. This conclusion is based upon all of the Factual Findings and Legal Conclusions.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application of Lien Jay Kyri for an unrestricted physician's and surgeon's certificate is denied. However, Respondent shall be issued a physician's and surgeon's certificate on a probationary basis, as described below, upon completion of the following condition precedent:

Psychiatric Evaluation. Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

Upon completion of the condition precedent above, Respondent shall be issued a probationary license as follows: Respondent Lien Jay Kyri shall be issued a physician's and surgeon's certificate, the certificate shall be immediately revoked, the revocation shall be stayed, and Respondent shall be placed on five (5) years' probation on the following terms and conditions:

1. **Psychotherapy.** Within sixty (60) calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary. The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents the psychotherapist may deem pertinent.

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

2. **Monitoring -Practice.** Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision and First Amended Statement of Issues, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, First Amended Statement of Issues, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and First Amended Statement of Issues, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

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

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

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

In lieu of a monitor, respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

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

If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The respondent shall not resume the practice until an appropriate practice setting is established.

If, during the course of the probation, the respondent's practice setting changes and the respondent is no longer practicing in a setting in compliance with this Decision, the respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The respondent shall not resume practice until an appropriate practice setting is established.

4. **Notification.** Prior to establishing a practice with another physician or securing employment in an appropriate practice setting, respondent shall provide a true copy of the Decision and First Amended Statement of Issues to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent, and to every partner in the practice of medicine, or prospective employer. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall apply to any change in hospitals, other facilities or insurance carrier.

5. **Supervision of Physician Assistants.** During probation, respondent is prohibited from supervising physician assistants.

6. **Obey All Laws.** Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

7. **Quarterly Declarations.** Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

8. **General Probation Requirements.**

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

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

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

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

10. **Non-practice While on Probation.** Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine as defined in Sections 2051 and 2052 of the Business and Professions Code for at least 40 hours in a calendar month in direct patient care, clinical activity or

teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

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

Respondent'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 Requirements.

11. **Violation of Probation.** Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

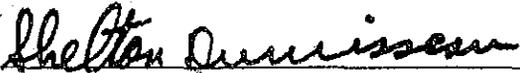
12. **License Surrender.** Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his license. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

13. **Probation Monitoring Costs.** Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

14. **Completion of Probation.** Respondent shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

This decision shall become effective at 5 p.m. on March 23, 2012.

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


Shelton Duruisseau, Ph.D., Chairperson
Panel A
Medical Board of California

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

In the Matter of the Statement of Issues) Case No.: 20-2010-205464
Against:))
))
LIEN JAY KYRI))
) OAH No.: 2010110370
))
))

) Respondent.)

**AMENDED 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, any argument directed to the question of whether the proposed Order should be modified. The Board also respectfully requests that, in addition to any argument that the parties may wish to submit, the parties specifically address the following issue in their arguments: whether the evidence, including respondent's testimony explaining his past conduct, shows that the respondent has met his burden of proof in demonstrating that he is fit for licensure. 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 Star Reporting Services, Inc., 703 Market Street, Suite 1005, San Francisco, CA 94103. Their telephone number is (415) 348-0050. 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: November 3, 2011.



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:)
)
LIEN JAY KYRI)
)
)
)
)
Respondent.)

Case No.: 20-2010-205464
OAH No.: 2010110370

**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 in particular, argument directed to what the respondent has done to improve his practice of medicine, as opposed to his charitable involvements. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

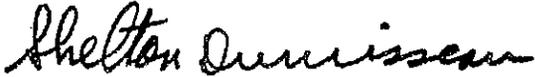
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Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
(916) 263-2349
Attention: John Yelchak

Dated: October 26, 2011


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:

LIEN JAY KYRI, M.D.

Respondent.

Case No. 20-2010-205464

OAH No. 2010110370

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on June 13 through 17, 2011, in Los Angeles, and on June 22, 2011, in Sacramento, California.

Complainant Linda K. Whitney was represented by Supervising Deputy Attorney General Gloria L. Castro, and Deputy Attorney General Beneth A. Browne.

Respondent Lien Jay Kyri, M.D. was present and represented by Daniel H. Willick, Attorney at Law.

The case was submitted for decision on June 22, 2011.

FACTUAL FINDINGS

1. Linda K. Whitney (complainant) is the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs. She brought the Statement of Issues and First Amended Statement of Issues solely in her official capacity.

2. On January 16, 2009, the Board received an application for a Physician's and Surgeon's License from Lien Jay Kyri, M.D. (respondent). On January 13, 2009, respondent certified under penalty of perjury to the truthfulness of all statements, answers and representations in the application. The Board denied the application on December 8, 2009, indicating that its denial was based upon a determination that respondent "is impaired and unable to practice his/her profession safely," and that he has done an "act which if done by a licentiate of the business and

profession in question, would be grounds for discipline or revocation of license.”
(See Bus. & Prof. Code, §§ 480, subd. (a)(3), 820 and 822.)

3. By letter to the Board dated February 3, 2010, respondent contested the denial of his application and requested a hearing.

Education Background

4. Respondent is age 41. He did his undergraduate studies at Golden West College, and at the University of California at San Diego, majoring in biochemistry and cell biology. He then applied to and was accepted at the University of California at Irvine (UCI) School of Medicine. Respondent took and passed all three steps of the United States Medical Licensing Examination, and received his Doctor of Medicine from UCI on June 19, 2004.

Between July 2004 and June 2005, respondent completed an internship in internal medicine through the University of California, San Francisco, School of Medicine, at its Fresno program. He then applied for a residency position in Physical Medicine and Rehabilitation (PM&R) and was accepted into the PM&R residency program at the University of Texas Southwestern (UTS). He participated in the three-year UTS residency program between 2005 and 2008.

5. Respondent completed the UTS residency program in the specialty of PM&R on June 30, 2008. He took and passed the written examination to be board certified by the American Board of Physical Medicine and Rehabilitation (ABPMR). However, he was not eligible to take the oral examination for the ABPMR board certification because his application for a Physician's and Surgeon's License was denied by the Board.

Respondent applied to and was accepted into a fellowship training program in Spinal Cord Injury (SCI) Medicine at the Stanford University/Palo Alto Veterans Administration Health Systems for the 2009/2010 year. He was unable to accept the SCI fellowship because a California medical license is required for him to continue as a postgraduate fellow in this program.

Respondent's Application for Licensure

6. In respondent's January 13, 2009 application for licensure, he was asked whether he had ever been placed on probation. He answered in the affirmative. He had been placed on probation during his postgraduate training at UTS. Respondent participated in the UTS residency in PM&R between July 1, 2005, and June 30, 2008. He was on probation for 22 of the 36 months that he was in this program.

7. Probation During Residency. Respondent was initially placed on probation from December 30, 2005, to June 30, 2007. Samuel Bierner, M.D., was the UTS Residency Program Director with responsibility over the PM&R residency program. By letter dated December 30, 2005, Dr. Bierner advised respondent that he was being placed on probation through June 30, 2006, for the following reasons: "excessive tardiness and/or absenteeism, unsatisfactory job performance and unethical conduct."

Dr. Bierner and respondent met for a six-month evaluation and counseling session on June 30, 2006. Dr. Bierner determined to extend respondent's probation for an additional six months through December 31, 2006. By letter dated June 30, 2006, Dr. Bierner detailed seven specific performance areas where he believed improvement by respondent was needed.

Dr. Bierner and respondent met on other occasions to discuss his resident job performance. By letter dated December 29, 2006, Dr. Bierner advised respondent that he would remain on probation through June 30, 2007. The letter detailed areas where Dr. Bierner expected improvements in respondent's behavior and job performance as a condition to respondent's continuation in the UTS residency program.

By letter dated September 24, 2007, Dr. Bierner confirmed that respondent remained on probation through October 31, 2007. He warned respondent in that letter that "failure to comply with all the terms of my previous instructions to you may result in your termination from the residency prior to graduation, which would make you ineligible to sit for the American Board of PM&R examination."

Dr. Bierner wrote a letter on December 26, 2007, to Anthony M. Tarvestad, Executive Director of the ABPMR. Dr. Bierner indicated to Mr. Tarvestad that he had removed respondent from probationary status, that respondent's "performance, attitude, and communication skills have improved," and that he would recommend respondent for admission to take the written ABPMR board examination.

By letter to the Board dated August 31, 2009, Dr. Bierner confirmed that respondent was on probation from December 30, 2005, through October 31, 2007. He noted: "After Dr. Kyri completed his period of probation, he then successfully completed a residency program on June 30, 2008. Subsequent to that, this individual successfully passed his written board examination."

8. Respondent's Written Explanation to the Board. Respondent was requested, as a part of the application process, to provide a written explanation for his "Yes" response to being on probation. He did so and submitted a seven-page separate attachment to his application explaining why he believed he was placed on probation at UTS. The content, nature and character of this written explanation, in tandem with other information received by the Board relating to respondent's probation, led the

Board to reject respondent's application over concerns it has related to respondent's ability to practice medicine safely and independently.

Respondent indicated that he was placed on probation "due to my very great dissatisfaction, less than enthusiastic attitude, and alleged derisive remarks that were overheard toward the residency program." He suggested that he was forced to work at the UTS residency program against his wishes, that he did not select UTS as his preference to continue his post graduate studies, "nor did I agree to work there of my own volition." Respondent was highly critical of the National Residency Matching Program (Match) and its resulting assignment of all graduating medical students. The process "infuriated" him and he was "not inclined to trust nor have any support for a residency system whose moral and ethical judgments I had serious questions and concerns about."

9. Respondent portrayed himself as a victim of the Match program and of the UTS residency program director, Dr. Bierner. The following excerpts from his written explanation to the Board are indicative of the tenor and tone of his comments:

In a nation that proclaims the strengths of its freedoms and democracy, I did not knowingly enter into a career in Medicine to have my basic rights of freedom and civil liberties stripped away, to be abducted half-way across the country to a place I had no desire to live in, and be forced to work in a place I had absolutely no confidence in without having in the very least the last word. Throughout this entire residency process, I felt as if I were treated like a slave or a common criminal, despite the fact that I did not deserve to be treated as such.

The informant was eavesdropping on a private conversation where I was expressing my frustrations about how strongly I disagreed with how the residency program had exploited and fraudulently forced graduating medical students into compulsory, involuntary labor contracts through Match assignments. ... In my estimation, the program director has never been very sympathetic to my plight, nor has he, in my estimation, taken any effort to understand anything about my point of view about why I did not want to work at UT Southwestern nor live in a place not of my own choosing.

Based on hearsay evidence, Dr. Bierner unilaterally acted in placing me on probation, which at the time, effectively stopped ongoing efforts I was making to rectify an already difficult living and work situation -- namely attempting to transfer out of his program and move out of the State of Texas. I strongly believe the program director imposed this probation to

specifically prevent me from freely defying and walking away from his program to pursue my interests elsewhere.

- The program director acted alone as prosecution, judge and jury in implementing this action.

- I strongly feel probation was place [sic] on me as punishment for airing my dissatisfaction and as retribution to prevent me from freely and willingly defying and challenging the authority of the established residency programs.

Board Investigation and Referral

10. Cindi Oseto is a manager and former associate analyst with the Board. She was responsible for reviewing respondent's application and obtaining additional materials from respondent and the UTS residency program in response to his "Yes" answer to having been placed on probation. She prepared a Summary Memorandum dated September 28, 2009, and provided this along with respondent's application materials to the Board's medical consultant, Jim Nuovo, M.D., for secondary review. Dr. Nuovo is a professor and Associate Dean of Student Affairs and Graduate Medical Education at the University of California, Davis School of Medicine. It is the Board's practice to have a medical consultant review such materials and provide guidance to the Board on whether and/or how to proceed with an investigation.

11. Dr. Nuovo prepared an October 1, 2009 memorandum in response to Ms. Oseto's request. He identified the "key question" in this matter as whether respondent has the ability to practice safely and independently. He did not believe respondent should proceed to licensure, citing deficiencies he described as "serious and in multiple areas." Dr. Nuovo made the following recommendations for further Board action:

Dr. Kyri has not convinced me that he is able to demonstrate the ability to remediate serious performance deficiencies; particularly the global issues of his professionalism which has a clear link to his medical decision making, patient care, interpersonal skills and patient safety. His professionalism is problematic in multiple domains and the root cause of this would need further assessment in order to determine if there is a remediable condition.

[¶] ... [¶]

This would require a medical and psychiatric assessment in order to determine the root cause. If a

medical/psychiatric assessment is completed and does not have remarkable findings, due to the nature of the concerns with integrity, honesty and professionalism I would strongly advocate for a probationary license with a practice monitor.

12. Based upon Dr. Nuovo's recommendations, Ms. Oseto arranged for respondent to be seen by Stuart Shipko, M.D., for a psychiatric evaluation. Ms. Oseto provided Dr. Shipko with application materials that she described as "essential" to his evaluation. In her October 27, 2009 letter to Dr. Shipko, Ms. Oseto noted that senior staff had reviewed respondent's application and "agreed that he should undergo a psychiatric evaluation to help determine his eligibility for medical licensure." She provided three pages of background narrative in that same letter.

Respondent was seen for independent medical (psychiatric) examination by Dr. Shipko on November 9, 2009.

Psychiatric Evaluation by Dr. Shipko

13. Dr. Shipko attended the University of Michigan Medical School, and completed his residency in psychiatry at the University of California, Irvine. He is board certified in psychiatry and he has practiced in this area since 1981. Dr. Shipko is a Fellow in Consultation and Liaison Psychiatry, which he completed through UCI in 1984. He has conducted a number of disability evaluations since 1985, including fitness for duty examinations and work as an independent medical examiner. Dr. Shipko has performed disability evaluations for the Los Angeles County Employees Retirement System, Los Angeles County Department of Social Services, the California Public Employees Retirement System and the Medical Board of California. He has performed approximately 10 evaluations for the Board relating to the fitness of applicants for licensure.

14. Ms. Oseto provided Dr. Shipko with all application materials collected by the Board, excluding non-essential correspondence between the Board and respondent.¹ Dr. Shipko reviewed these materials and met personally with respondent for approximately two and a half hours. Dr. Shipko obtained a history of the "Illness/Incident" as reported by respondent, as well as respondent's past history. Dr. Shipko conducted a mental status examination, and obtained the results of a Minnesota Multiphasic Personality Inventory-2 (MMPI-2) administered that same

¹ Application materials included the Application for Physician's and Surgeon's License and supporting documents, respondent's narrative explaining why he was placed on probation at UTS, respondent's resume, Certificate of Completion of ACGME/RCPSC Postgraduate Training, nine letters from Dr. Bierner, UTS due process policies and procedures, and a UTS Performance Analysis Report.

date. Following the November 9 examination, Dr. Shipko conducted separate telephone interviews with physicians at UTS including Dr. Bierner, Jian Hu, M.D., Vincent Gabriel, M.D., and Peter Roland, M.D. He then prepared a written report dated November 13, 2009, entitled "Independent Medical Examination: Psychiatry" reporting on his findings and recommendations to the Board.

15. Dr. Shipko's diagnostic impressions are that respondent suffers from Delusional Disorder, Persecutory Type along Axis I; and Passive Aggressive Personality Traits along Axis II. These are with reference to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV).

The DSM-IV characterizes diagnostic features of a Delusional Disorder as follows:

The essential feature of Delusional Disorder is the presence of one or more nonbizarre delusions that persist for at least 1 month (Criterion A). A diagnosis of Delusional Disorder is not given if the individual has ever had a symptom presentation that met Criteria A for Schizophrenia (Criterion B). ... Apart from the direct impact of the delusions, psychosocial functioning is not markedly impaired, and behavior is neither obviously odd nor bizarre (Criterion C). If mood episodes occur concurrently with the delusions, the total duration of these mood episodes is relatively brief compared to the total duration of the delusional periods (Criterion D). The delusions are not due to the direct physiological effects of a substance (e.g., cocaine) or a general medical condition (e.g., Alzheimer's disease, systemic lupus erythematosus) (Criterion E).

(DSM-IV, Section 297.1, pp. 323-324.)

16. Delusions are subdivided according to their content and the predominant delusional theme. Dr. Shipko opined that the subtype of respondent's Delusional Disorder was "persecutory." The DSM-IV defines this as a "delusion in which the central theme is that one (or someone to whom one is close) is being attacked, harassed, cheated, persecuted, or conspired against." (DSM-IV, Glossary of Technical Terms, Appendix C, pp. 765-766.) The DSM-IV narrative description of this particular subtype is particularly helpful in this case:

Persecutory Type. This subtype applies when the central theme of the delusion involves the person's belief that he or she is being conspired against, cheated, spied on, followed, poisoned or drugged, maliciously

maligned, harassed, or obstructed in the pursuit of long-term goals. Small slights may be exaggerated and become the focus of a delusional system. The focus of the delusion is often on some injustice that must be remedied by legal action ("querulous paranoia"), and the affected person may engage in repeated attempts to obtain satisfaction by appeal to the courts and other government agencies. Individuals with persecutory delusions are often resentful and angry and may resort to violence against those they believe are hurting them.

(DSM-IV, Section 297.1, p. 325.)

17. Dr. Shipko found marked inconsistencies between what was reported to him by respondent and what he learned through his interviews with collateral sources, some of whom respondent asked Dr. Shipko to contact for confirmation. He determined that the "gap between the information provided to me by Dr. Kyri and the information from collateral sources is too large to be explained by merely a different perception of the same set of events. Dr. Kyri's beliefs of malevolent treatment is implausible and is best explained as a delusional disorder, persecutory type. It most likely emerged during his medical education when he first learned about the match system and has been persistent since that time."

Dr. Shipko opined that respondent has a delusional disorder that causes his judgment, at times, to be so impaired that he is not in contact with reality. He believes that respondent is not capable of practicing medicine safely because his delusions of persecution "have resulted in poor decision making and actual neglect in performance of basic patient care responsibilities such as performing examinations." Dr. Shipko further noted that respondent's persecutory delusions render him unable to interact properly with colleagues and patients alike. He also believes that respondent is unable to follow instructions, refuses to care for patients at times and can exhibit behavioral extremes towards patients that were so inappropriate in one case that respondent was sent home from a clinic.

18. Dr. Shipko's diagnosis and opinions were influenced largely by the significant gap and marked inconsistencies between what he was told by respondent, and what he learned from others.

Dr. Shipko's preliminary examination of respondent on November 9, 2009, was unremarkable. Respondent's interview and mental status examination were appropriate, his mood and affect normal. His thought processes were logical and goal-directed. He was cooperative and Dr. Shipko observed no clinical anxiety or any features suggesting a personality disorder. Dr. Shipko noted: "These sorts of interviews are very difficult, and I felt that he responded in a very appropriate way." When respondent spoke about the Match program and issues related to his being

placed on probation at UTS, Dr. Shipko noted that he seemed credible and sounded reasonable. Dr. Shipko was not overly concerned about earlier comments made in respondent's narrative explanation to the Board about why he was placed on probation. (See Finding 9.) Respondent was obviously opposed to the Match program and Dr. Shipko considered descriptive references such as being "abducted" as mere hyperbole.

Dr. Shipko completely changed his mind about respondent after collateral source verification conversations with Doctors Bierner, Hu, Gabriel and Roland. He noted that information provided to him by respondent was all organized around his beliefs of persecution – by the Match system as well as the residency program. Dr. Shipko opined: "In this case, the delusion relates to Dr. Kyri's belief that he is being persecuted by the Match system and persecuted by his training program. Also he is having delusions that his residency is engaging in deliberately fraudulent practices."

Specifics upon which Dr. Shipko relied and formulated his opinion are set forth below.

19. Match Program. Respondent reported to Dr. Shipko being very upset at the loss of choice in what he described as a lottery system, and his being matched with a program "he definitely did not want to go to." He did not show up at either "Match day" or medical school graduation because he felt like a "beaten dog." Respondent reported going "unwillingly" to UTS, and verbalizing his dissent about the Match and also about aspects of the UTS residency program that he disliked.

Dr. Shipko discussed difficulties that respondent had with the Match program with Dr. Bierner. Dr. Bierner advised that respondent had interviewed with the school and, in order to be accepted, had to have ranked UTS as a residency program to which he wanted to go. Dr. Bierner told Dr. Shipko that respondent had a surprising degree of dislike for the program and the state of Texas, and that his degree of dissatisfaction was "amazing."

20. Reasons for Being Placed on Probation. Respondent reported to Dr. Shipko that he was placed on probation by Dr. Bierner because of his lack of enthusiasm and/or because he was overheard speaking to another resident in the program and encouraging this resident to violate a UTS residency program policy. The specific policy related to requests for physician consultations which respondent believed were not legitimate. Respondent noted that other doctors had already issued orders for physical therapy or occupational therapy. He believed that these same orders were intercepted and transformed into a request for consultation from the residents as a "fishing expedition to try and get new patients for the rehabilitation unit." Respondent was concerned on different levels. Respondent understood that a consultation involved a physician requesting the opinion of another physician for a specific purpose and that this was simply not occurring at the UTS residency program. He was also concerned that there were an average of about 20 consultations

per day, with a low of 15, and a high of 30. This volume could not be done easily and "was an impossible burden of work." And he was concerned that this practice was instituted because it was a lucrative aspect of the residency program. Respondent reported to another resident that Dr. Hu had advised him that if he waited a day or two to do these consultations, most of these patients would be discharged from the hospital, thereby lessening the workload. Respondent believes that another resident, who overheard parts of this conversation, reported him to the residency director, Dr. Bierner.

Respondent told Dr. Shipko that he thought it possible that Dr. Bierner was upset because he was threatening a very lucrative part of the residency program and because the large number of consultations was billable. He believes this is why he was placed on probation. Respondent also described being placed on probation as personal retaliation by Dr. Bierner because he had expressed a dislike of the program.

21. Dr. Shipko spoke with Dr. Bierner on November 10, 2009, and asked him why respondent was placed on probation in the first place. Dr. Bierner indicated that respondent was placed on probation for unsatisfactory performance, noting that there were complaints from other residents and neurologists, and that there were difficulties with professional issues of arriving on time, attendance, follow-through and attention to detail. Dr. Bierner acknowledged that there was an issue about respondent telling other residents to wait a few days before doing consultations, but he had no idea where respondent had gotten that idea. Dr. Bierner indicated that consultations are to be performed within 24 hours. He disputed the number of consultations complained of by respondent, noting that an average day would have between three to five consultations. Dr. Bierner dismissed the higher numbers referenced by respondent as "fantasy."

Dr. Bierner also indicated that specific requests for consultation were made by one doctor to another each time, and that the protocol was to use special forms that included physical therapy and occupational therapy, and also a request for PM&R evaluation. Dr. Bierner indicated that respondent never complained to him about an excessive workload or about the number of consultations he had to perform. Dr. Shipko noted that Dr. Bierner was aware that respondent had complained that Dr. Bierner was "committing Medicare fraud and stealing consultations." However, Dr. Bierner reported to Dr. Shipko that the Texas Medical Board had looked into this and determined that the accusations were groundless.

22. Dr. Shipko spoke with Jian Hu, M.D. on November 10, 2009. Respondent had asked Dr. Shipko to call Dr. Hu to verify his account about why he waited to perform the consultations. Dr. Hu said he would never have told respondent not to do the consultations, or to wait in anticipation of a patient being discharged. Dr. Hu reiterated to Dr. Shipko that he never told respondent that it would be a good idea not to do the consultations or that the consultations were unnecessary.

23. Persecution During Residency. Respondent reported to Dr. Shipko that he had been treated harshly and discriminated against, and that Dr. Bierner was the sort of man who enjoyed wielding his power over others and that this was a way of showing respondent how much power Dr. Bierner actually had. Dr. Shipko reviewed with respondent a number of specific performance issues raised in the various letters Dr. Bierner had written to him. Respondent advised Dr. Shipko that Peter Roland, M.D. would confirm that the residency was harassing and persecutory. Dr. Bierner had referred respondent to a committee on practitioner peer review and assistance. The chair was Dr. Roland. Respondent reported to Dr. Shipko that the committee seemed to understand his situation and were supportive of him. Dr. Shipko spoke with Dr. Roland on November 11, 2009. Dr. Roland advised Dr. Shipko that the committee evaluated impaired physicians and "it was felt that Dr. Kyri was an impaired physician." Dr. Roland reported that there was no remediation to this impairment during the period that Dr. Roland's committee was investigating the impairment. Respondent was seen by a psychiatrist who opined that his impairment was depression.

Dr. Shipko also spoke to Vincent Gabriel, M.D. He asked Dr. Gabriel to comment upon specific instances relating to respondent falling asleep in an inappropriate setting, not being truthful about assessing an ICU patient for a rehabilitation transfer, and interacting with a burn clinic patient in a manner that was "so inappropriate that he relieved Dr. Kyri from clinic care after this incident." Dr. Gabriel had very little good to say about respondent and described the time that he supervised respondent as "very difficult."

24. The above collateral information was reported to and relied upon by Dr. Shipko in rendering his opinion in this case. Dr. Shipko noted that in his discussions with Doctors Bierner, Roland and Gabriel, he was impressed with their attempts to assist respondent "in a nurturing manner rather than an attitude of disrespect or contempt as Dr. Kyri described." As noted earlier, Dr. Shipko felt that the large gap between the information provided to him by respondent and the collateral sources could not simply be explained by differing perceptions of the same set of events.

25. Dr. Shipko's Conclusions. Dr. Shipko found substantial consistency in what he was told by collateral sources. He also found the MMPI-2 results to be consistent, albeit minimally helpful. Dr. Shipko believes respondent's condition to be rather serious, noting:

My impression is that the delusions had its origin sometime prior to Match day, but that they are increasing. His repeated litigious behaviors concerning unfounded accusations of Medicare fraud represents a worrisome escalation of his illness. Individuals with persecutory delusions are often resentful and angry and may resort to

violence against those that they believe are hurting them as well as litigation. Behavior can be completely unpredictable.

Dr. Shipko concluded in an "IME Addendum Report" dated December 4, 2009, that respondent may not practice medicine safely in California "even under a probationary license with specified terms and conditions." This was intended to clarify earlier language in his November 13, 2009 report indicating that respondent was "unable to practice medicine safely with a full and unrestricted license under any conditions in California."

26. Dr. Shipko believes that respondent is prone to distort information related to patient care and is making inappropriate clinical decisions on the basis of the delusional distortions. He believes it is possible that respondent "could become violent with coworkers or completely fail to respond to the needs of a seriously ill patient based on these delusions. He does not believe respondent's condition is remediable, noting in his Addendum:

Delusional disorder is not thought to respond to medication. Psychotherapy can be helpful, but in my experience neither treatment is particularly effective in getting the patient to comprehend that they are delusional. Sometimes the condition spontaneously remits, but given the chronicity he has shown already, it is most likely that this will follow a chronic course.

At hearing, Dr. Shipko further opined that respondent's persecutory-type delusion has now extended to include the Board, triggered by its action denying respondent's application for licensure. Respondent had made numerous Public Record Act requests under his father's name to obtain information from the Board. Dr. Shipko characterized the language contained in some of these letters to be suggestive of grandiosity and paranoia. Dr. Shipko also noted that the number of such requests was indicative of a preoccupation consistent with delusion disorder.

Psychiatric Evaluation by Thomas Ciesla, M.D.

27. Respondent was seen for psychiatric examination by Thomas K. Ciesla, M.D. on April 27, 2011. The two met for approximately two and one half hours.

Dr. Ciesla received his medical degree from State University of New York at Buffalo. He completed a residency in psychiatry at the UCLA Neuropsychiatric Institute in Los Angeles, and also a fellowship in Social and Community Psychiatry at UCLA. He is board certified in psychiatry, with added qualifications for addiction psychiatry. Dr. Ciesla also holds a masters degree in social psychology, and a Ph.D. from the Southern California Psychoanalytic Institute.

Dr. Ciesla has served as president of both the California Psychiatric Association and the Southern California Psychiatric Society. He is an Assistant Clinical Professor of Psychiatry at UCLA. In addition to engaging in private practice in psychiatry, he has served as an examining psychiatrist for the City of Los Angeles, Board of Pensions, and for the Los Angeles Unified School District. He has served on the liaison committee for the Board's diversion program, and has testified as an expert witness in matters before the Board.

28. Dr. Ciesla was provided with the Board's Statement of Issues, Dr. Shipko's November 13 and December 4, 2009 reports, the November 9, 2009 MMPI-2 scoring and report from Alex Caldwell, Ph.D., a September 6, 2007 psychiatric evaluation by Robert Garrett, M.D., and articles from the *Dallas Morning News* about allegations relating to Medicare billing at the UTS Parkland Hospital, and separate allegations relating to the UTS residency program.

29. Dr. Ciesla opined that respondent has no mental condition that renders him unfit to practice medicine. He disagreed with Dr. Shipko's opinion that respondent has a delusional disorder. While Dr. Ciesla conceded that respondent meets most criteria for delusional disorder, he failed to find any delusion. On that basis alone Dr. Ciesla determined that respondent does not have a delusional disorder. Dr. Ciesla explained that there was nothing about respondent's presentation that suggested an encapsulated delusion system. Dr. Ciesla noted that a "mistaken belief" is not a delusion. He would expect a delusion to arise, or to be created "out of whole cloth." In this respect, Dr. Ciesla relied upon collateral source material and press accounts about UTS billing irregularities and allegations relating to Medicare Fraud to support his opinion that respondent was not operating under a false belief about why he was placed on probation or being persecuted over the period of his UTS residency. Dr. Ciesla noted, for example, that respondent's beliefs about billing fraud were shared by other serious people.

The DSM-IV generally defines a delusion as follows:

A false belief based on incorrect inference about external reality that is firmly sustained despite what almost everyone else believes and despite what constitutes incontrovertible and obvious proof or evidence to the contrary. The belief is not one ordinarily accepted by other members of the person's culture or subculture (e.g., it is not an article of religious faith.) When a false belief involves a value judgment, it is regarded as a delusion only when the judgment is so extreme as to defy credibility. Delusional conviction occurs on a continuum and can sometimes be inferred from an individual's behavior. It is often difficult to distinguish between a

delusion and an overvalued idea (in which case the individual has an unreasonable belief or idea but does not hold it as firmly as is the case with a delusion.).

(DSM-IV, Glossary of Technical Terms, Appendix C, p. 765.)

30. Dr. Ciesla also considered respondent's "very solid academic record" and "distinguished work" as an undergraduate at U.C. San Diego and as a medical student at U.C. Irvine Medical School, and his having completed the UTS residency program as evidence that he had no significant psychopathology. Dr. Ciesla opined that at the time of his examination he would diagnose respondent with minor depression. In this respect he agreed with the earlier diagnosis by Robert Garrett, M.D., whose report Dr. Ciesla considered in rendering his opinion.

31. Respondent had earlier been referred to Dr. Garrett by the UTS Committee on Practitioner Peer Review & Assistance (COPRA). He was seen by Dr. Garrett on September 7, 2007.

Dr. Garrett diagnosed respondent with "Major Depressive Disorder, single episode, severe, without psychotic features." Dr. Garrett noted in his initial impressions that respondent acknowledged signs and symptoms of depression and that "he attributes all this to his resentment about the forced nature of the Match system and his resentment about being matched to Dallas, Texas." Respondent reported to Dr. Garrett that when he moved to Texas he lost his girlfriend, his circle of friends and ready access to his family. Dr. Garrett noted that respondent was socially isolated and without primary support outside of work, and "doing poorly at work." Respondent reported to Dr. Garrett that he "shut down" when he arrived at UTS and was unable to transfer out "because he did poorly at work" and was put on probation in his first six months.

Dr. Garrett made the following treatment recommendations that were communicated to respondent:

1. Weekly psychotherapy should be considered a primary treatment option, especially given your stated reluctance to take psychiatric medication. Either individual or group therapy would be appropriate. I recommend an initial course of therapy lasting 6 months. I provided you with several options and referral sources for such therapy.
2. Treatment with anti-depressant medication may also be helpful to you. I provided you with a prescription for an anti-depressant and a hypnotic.

32. Dr. Ciesla opined that a diagnosis of delusional disorder was neither consistent with Dr. Garrett's findings, nor with the MMPI-2 results as reported by Alex B. Caldwell, Ph.D. Dr. Caldwell's MMPI-2 report described respondent's profile as showing "a moderate level of anxiety and depression with low moods and open complaints of worry, fears, and self-doubts." The profile indicated "strong underlying tendencies to rationalize hostility, to covertly blame others, and to externalize problems away from himself when less depressed." Dr. Caldwell concluded that the diagnoses most commonly associated with respondent's profile are of depressive and anxiety neuroses.

33. Dr. Ciesla agrees that respondent has engaged in inappropriate behaviors but he does not believe such actions arose from a delusion. Rather, Dr. Ciesla believes it is more reflective of the desperate nature of respondent and the kind of "tone deaf" quality to his personal interactions with others. Building upon the profile and treatment considerations contained in Dr. Caldwell's report, Dr. Ciesla believes that respondent's prognosis and expected response to short term treatment is good. Dr. Ciesla made the following treatment and therapy recommendations at hearing:

Well, in view of all of the trouble that Dr. Kyri has gotten himself into and the kind of tone-deaf quality to his interaction with other people, I would want to focus on his capacity to apprehend and respond appropriately to affective cues from people he deals with. I think it would be crucial for Dr. Kyri, going forward, to be able to work comfortably and collaboratively in an institutional setting and, perhaps, even in a smaller clinic setting.

Respondent's Testimony

34. Respondent avers that he was placed on probation because of his belief that UTS was committing billing fraud and because he was inquiring about transferring out of the program. He explained that although he highlighted his dissatisfaction with the Match program on his application to the Board, that that was not the real reason why he believes he was placed on probation. Respondent complained to a number of agencies around August 2009 about his concerns relating to the UTS PM&R department's practice of engaging in "blind consultations." He described this as when a consulting medical specialty such as PM&R initiates its medical services on its own unbeknownst to a patient and without being consulted by or being notified by the patient's care team of the need for its services. Respondent characterized this as a "very surreptitious means of inserting any consulting medical service onto the care team of a given patient." He believes it is "essentially a trolling expedition by which a given consult service artificially generates additional billing and income for Parkland Hospital in what is often needless, unwanted, and unauthorized medical services."

Respondent believes that word got back to Dr. Bierner that he was questioning the propriety of non-physician orders for PM&R consultations. The two met on July 13, 2005, and Dr. Bierner specifically asked him why he was not performing consultations on what respondent believed to be therapy orders. Respondent avers that Dr. Bierner got very angry and yelled at him. He avers that Dr. Bierner told him that every therapy order at Parkland Hospital would come with a consultation order. Respondent alleges that he was instructed to do a physician consultation on every therapy order, and to also bill for an attending (supervising) physician even when the attending was not present during the consult. Respondent hesitated to do this out of concern that this was dishonest.

35. Respondent was placed on probation at UTS from December 30, 2005, through October 31, 2007. (See Finding 7.) Dr. Bierner wrote letters to respondent over this period, each detailing specific concerns relating to respondent's behavior and job performance as a resident, and summarizing expectations for him that were necessary in order for him to successfully complete the residency program.

Concerns expressed by Dr. Bierner on December 30, 2005, included excessive tardiness and/or absenteeism, unsatisfactory job performance, and unethical conduct. The unethical conduct related to concerns that respondent had advised other residents to wait several days before completing a PM&R consultation. The expectation was that such be completed within 24 hours.

Concerns expressed on June 30, 2006, included respondent's failure to assess an ICU patient for possible rehabilitation transfer, failure to ask for assistance of an attending in appropriate situations of medical complexity, receiving unsatisfactory ratings on his inpatient rehabilitation unit evaluation, issues relating to hearing loss and daytime drowsiness, and unsatisfactory evaluations from St. Paul University Hospital inpatient rotation.

Concerns expressed on September 8, 2006, included delinquent completion of medical records, unsatisfactory job performance during on call period, and drowsiness and falling asleep in lectures. Similar concerns were expressed to respondent on December 29, 2006

On September 24, 2007, Dr. Bierner reminded respondent that he remained on probation through October 31, 2007, and that he was expected to meet all the terms of the previous probation letters, and be removed from probation prior to completion of the UTS residency program.

36. At hearing, respondent addressed the matters set forth in the several letters from Dr. Bierner. He defended himself against most of the criticisms, with only minimal acknowledgement that he had any performance or behavior issues. He admitted that he made no similar defense at the time these same matters were brought to his attention by Dr. Bierner, noting that he "just listened" and that he did not wish

to risk his career. He did not pursue the due process rights specifically afforded him by UTS in relation to his probation. He suggested that to do so would require him to bring up his July 2005 discussions with Dr. Bierner, something he did not wish to do, and which he believes to be the real reason he was placed on probation.

37. Respondent met with COPPRA, and was referred to Dr. Garrett on September 7, 2007. (Finding 31.) Respondent denied being told that he needed to seek mental health counseling, or that he required psychotherapy or medications. He averred that Dr. Garrett did not share with him his diagnosis of major depression. Respondent reversed himself in subsequent testimony, suggesting that he did book and make an appointment for psychotherapy and that he otherwise followed the instructions of COPPRA.

38. Respondent is currently employed as a security officer at Disneyland. He had applied for employment with numerous biotech employers, but was questioned about his medical degree and why he was not working in medicine. He performs volunteer work as a logistics coordinator for the American Red Cross.

Respondent would like to work in the field of spinal cord injury medicine. He desires to work with acute patients as they learn to regain function. He plans to reapply to the Spinal Cord Injury program at the Stanford University/Palo Alto Veterans Administration Health Systems, or to programs with UCI or the Kaiser-Permanente Medical Group.

39. Respondent's knowledge base, ability and skill in PM&R are not in dispute. Keith E. Tansey, M.D., Ph.D., who recommended respondent for the Stanford fellowship in spinal cord medicine, testified on respondent's behalf. Dr. Tansey was an Assistant Professor and Director of Spinal Cord Injury Program at the UTS Medical Center during respondent's residency. Dr. Tansey supervised respondent and observed him practice as a resident. He noted that respondent was an excellent resident who held himself and those he worked with to a very high standard. He also noted that respondent was "hungry to learn about not only the very practical but also the theoretical basis when it came to rehabilitation medicine." Dr. Tansey supports respondent's application for licensure in California.

40. Respondent is currently seeking out low-cost psychotherapy in Orange County. He is willing to accept any probationary terms and conditions the Board chooses to impose on his license. He acknowledges that some of his communications with Board staff were "off-putting" and he is somewhat apologetic. He now believes past poor behaviors were due to his dissatisfaction with the Match program and his reaction to billing irregularities at UTS. He noted that his dissatisfaction impacted his ability to trust others at UTS and that he did not interact with the level of trust needed. He believes this led to him not interacting positively with staff.

Discussion

41. Respondent's application was denied under Business and Professions Code section 820, relating to practice impairment. Section 820 provides:

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.²

Accordingly, the sole issue in this case is whether respondent's ability to practice medicine is impaired due to mental illness, or physical illness affecting competency.

42. Complainant relies upon Dr. Shipko's opinion that respondent suffers from a delusional disorder, persecutory type. Dr. Shipko believes this mental illness emerged during respondent's medical education when he first learned about the match system and has been persistent since that time, even encompassing the Board's decision to deny his application for licensure. Dr. Shipko opined that respondent has a delusional disorder that causes his judgment to be so impaired that he is not in contact with reality. He does not believe respondent is capable of practicing medicine safely because his delusions of persecution have resulted in actual patient neglect in performance of basic responsibilities such as performing examinations. Dr. Shipko believes respondent's persecutory delusions render him unable to interact properly with colleagues and patients alike, and that respondent is unable to follow instructions, refuses to care for patients at times and can exhibit behavioral extremes towards patients.

The evidence, and in particular the testimony of Dr. Ciesla, is persuasive that respondent does not suffer from delusional disorder. Dr. Ciesla noted that a "mistaken belief" is not a delusion and that when a delusion is present, one would

² Business and Professions Code sections 820 and 822 contemplate proceedings involving one who is currently licensed. However, the Statement of Issues makes these allegations in tandem with section 480, which references acts which "if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license."

expect it to be created "out of whole cloth." A delusion is a false belief based on incorrect inference about external reality that is firmly sustained despite what almost everyone else believes and despite what constitutes incontrovertible and obvious proof or evidence to the contrary. Respondent is very likely wrong about why he was placed on probation and about being persecuted over the period of his UTS residency. But these amount to no more than mistaken beliefs, and not delusions. Dr. Ciesla noted, for example, that respondent's beliefs about billing fraud were shared by other serious people.

43. Dr. Ciesla is persuasive that respondent's poor behaviors are better explained by his diagnosis of depression, and by his personality characteristics and the MMPI-2 profile reported by Dr. Caldwell. For example, Dr. Caldwell opined that respondent is prone to react with undue anxiety and poorly regulated emotions to minor threats to his security. He reported that respondent has "strong underlying tendencies to rationalize hostility, to covertly blame others, and to externalize problems away from himself when less depressed." This is an apt description of much of respondent's behaviors complained of over the course of his UTS residency, and also of the quality of his testimony at hearing. Respondent rarely acknowledged wrong or accepted responsibility for inappropriate behaviors or poor performance. At times he was not forthright. For example, he was not honest about being told of Dr. Garrett's diagnosis of major depression and his recommendations for treatment. This and other elements of his testimony were troubling, regardless of causation. His basic inclination is to accept little or no responsibility, to blame others and to externalize problems. This is not the same thing as having a delusion.

Certain of respondent's behaviors are also better explained by a diagnosis of depression. Dr. Garrett diagnosed him with Major Depressive Disorder. Respondent reported to him that he was very angry about being matched to UTS and that he "shut down" when he arrived and was unable to transfer out because he did poorly at work and was put on probation. He reported having no friends and being isolated, if not ostracized, by the program and fellow residents. Importantly, respondent acknowledged signs and symptoms of depression and attributed it to his resentment about being matched to UTS. This is all consistent with depression, and not delusion disorder.

44. Delusion disorder, if an accurate diagnosis, would not be remediable. The non-remediable nature and chronicity of this disease informed Dr. Shipko's recommendation that respondent may not practice medicine safely in California "even under a probationary license with specified terms and conditions." However, this is not true regarding depression, which is treatable. Dr. Garrett recommended weekly psychotherapy as a primary treatment option, with an initial course of therapy lasting six months. He also believed anti-depressant medication would be helpful. Dr. Caldwell's report indicated that diagnoses most commonly associated with respondent's profile are depressive and anxiety neuroses, with the expected response to short-term treatment being "relatively good." Dr. Ciesla endorsed these

recommendations, disagreeing only as to the degree of depression. Dr. Ciesla recommended psychotherapy more directly focused on improving respondent's capacity to apprehend and respond appropriately to affective cues from people he deals with so that he might work comfortably and collaboratively in an institutional setting or smaller clinic settings.

45. Complainant points out that respondent was repeatedly given opportunity to respond to the many performance issues raised by Dr. Bierner, and that never once did he raise the issues about consultations, lack of attending physicians or fraudulent billing practices. Complainant is also troubled that respondent, for the first time at hearing, suggested that his comments about the match program were just a "cover story" for the real reason he was placed on probation. And complainant is concerned by the fact that respondent did not become a whistle-blower until the week that he submitted his application to the Board in August 2009. Complainant contends that regardless of the root cause, respondent should not be granted a license because he has not met his burden of showing that he can practice medicine safely.

Complainant's several concerns about respondent's behaviors are warranted. Indeed, respondent's behaviors may well be explained by matters beyond his personality profile or depression, such as basic character flaws. But the sole issue remains whether his ability to practice is impaired due to mental illness, or physical illness affecting competency. Because the medical evidence in this case does not support a finding of delusional disorder, respondent's ability to practice is not impaired due to that mental illness.

46. Respondent does have depression. He requires further evaluation and treatment for this condition, including psychotherapy. Respondent is willing to undergo such treatment and avers that he is in the process of seeking a medical provider. He should not receive a license until he does so, and is medically released to practice medicine.

47. Because respondent's mental health condition (Depression) is remediable, it is recommended that he be placed on standard terms of probation with the Board. This is consistent with the recommendation of the Board's medical consultant, Jim Nuovo, M.D. (See Finding 11.) Board oversight of respondent's reentry into medical practice is wise given that he has not practiced medicine since 2008. Probation should also include a psychiatric evaluation, some form of psychotherapy, and a practice monitor.

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LEGAL CONCLUSIONS

1. Under Business and Professions Code section 480, the Board may deny a license of an applicant who has done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. (Bus. & Prof. Code, § 480, subd. (a)(3).) The act must be substantially related to the qualifications, functions or duties of the business or profession for which application is made.

2. Business and Professions Code section 820 provides:

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

3. Cause exists to deny respondent's application for licensure under Business and Professions Code sections 480, subdivision (a); and 820, by reason of the matters set forth in Findings 43 through 47.

4. The matters set forth in Findings 41 through 47, have been considered. Respondent does not have delusional disorder. He has depression. His condition is remediable. It would not be contrary to the public interest to issue respondent a probationary license at this time on standard terms of probation with the Board, with the additional conditions that he undergo a psychiatric evaluation, participate in some form of psychotherapy, and have a practice monitor.

The condition that respondent undergo a psychiatric evaluation should be a condition precedent to his licensure.

ORDER

The application of Lien Kyri for a Physician's and Surgeon's license is denied. However, respondent shall be issued a probationary license for three (3) years on the following terms and conditions:

1. Psychiatric Evaluation. As a *condition precedent* to licensure, and within 30 calendar days of the effective date of this Decision, and on a whatever periodic basis thereafter may be required by the Board or its designee, respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

Failure to undergo and complete a psychiatric evaluation and psychological testing, or comply with the required additional conditions or restrictions, is a violation of probation.

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

2. Psychotherapy. Within sixty (60) calendar days of the effective date of this Decision, respondent shall submit to the Division or its designee for prior approval the name and qualifications of a board certified psychiatrist or a licensed psychologist who has doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Division or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Division or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Division or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents the psychotherapist may deem pertinent. Respondent shall have the psychotherapist submit quarterly status reports to the Division or its designee.

If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Division shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Division determines that respondent is mentally fit to resume the

practice of medicine without restrictions. Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency of psychotherapy, is a violation of probation.

3. Monitoring - Practice. Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision and Statement of Issues, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Statement of Issues, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Statement of Issues, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

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

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or

unavailability of the monitor, respondent shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of medicine within 3 calendar days after being so notified by the Board or designee.

In lieu of a monitor, respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

4. Notification. Prior to engaging in the practice of medicine respondent shall provide a true copy of the Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days. This condition shall apply to any change in hospitals, other facilities or insurance carrier.

5. Supervision of Physician Assistants. During probation, respondent is prohibited from supervising physician assistants.

6. Obey All Laws. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

7. Quarterly Declarations. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

8. Probation Unit Compliance. Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division 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). Respondent shall not engage in the practice of medicine in respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

Respondent shall immediately inform the Division or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

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

10. Residing or Practicing Out-of-State. In the event respondent should leave the State of California to reside or to practice respondent shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California totals two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

11. Failure to Practice Medicine - California Resident. In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Division or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation.

Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Division or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically cancelled if respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

12. Violation of Probation. Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

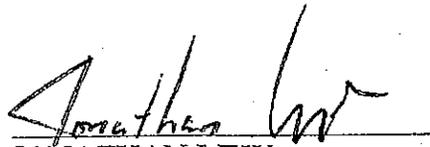
13. License Surrender. Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The Division reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Division or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action.

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. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

15. Completion of Probation. Respondent shall comply with all financial obligations not later than 120 calendar days prior to the completion of probation. Upon completion successful of probation, respondent's certificate shall be fully restored.

DATED: August 1, 2011

A handwritten signature in cursive script, appearing to read "Jonathan Lew", written over a horizontal line.

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings