

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

In the Matter of the Petition to Revoke)
Probation Against:)
)
)
JAMES KIEFFER MCDONNEL, M.D.) Case No. 800-2016-019757
)
Physician's and Surgeon's) OAH No. 2016050139
Certificate No. G 63465)
)
Respondent)
_____)

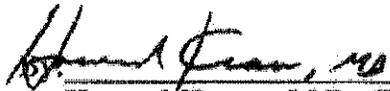
DECISION

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 September 23, 2016.

IT IS SO ORDERED August 24, 2016.

MEDICAL BOARD OF CALIFORNIA


Howard Krauss, M.D., Chair
Panel B

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

In the Matter of the Petition to Revoke
Probation Against:

JAMES KIEFFER MCDONNEL, M.D.

Physician's and Surgeon's
Certificate No. G63465

Respondent.

Case No. 800-2016-019757

OAH No. 2016050139

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on July 21, 2016, in Oakland, California.

Carolyn Evans, Deputy Attorney General, represented Complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

No appearance was made by or on the behalf of Respondent James Kieffer McDonnel, M.D.¹ Upon proof that notice was given as required by law, the matter was convened without Respondent's participation.

The record closed on July 21, 2016.

FACTUAL FINDINGS

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

2. On July 25, 1988, the Board issued Physician's and Surgeon's Certificate No. G63465 to James Kieffer McDonnel, M.D. (Respondent). Respondent's certificate bears the expiration date of August 31, 2017.

¹ Ms. Evans advised that Respondent's attorney, John Fleer, asked her to report that neither he nor Respondent would be attending the hearing.

3. On June 30, 2015, an Accusation was filed against Respondent charging him with failing to comply with the Board's March 20, 2015, Order requiring him to submit to an evaluation pursuant to Business and Professions Code 820.

4. Effective November 30, 2015, following an evidentiary hearing, the Board revoked Respondent's certificate, stayed the revocation, and placed it on probation for five years pursuant to terms and conditions. Respondent's Petition for Reconsideration was denied and the Decision became effective on January 8, 2016.

5. On February 17, 2016, a Petition to Revoke Probation was filed against Respondent, alleging that he failed to comply with Condition Nos. 1, 2, 3, 9, 18, and 13.

6. Official notice is taken that an Interim Order of Suspension was issued against Respondent's certificate on March 3, 2016. The Order prohibits Respondent from practicing as a physician pending a final decision and order in this case.

Probation violations

7. Complainant contends that Respondent's probation is subject to revocation because he failed to comply with Condition No. 1, which states:

1. Clinical Diagnostic Evaluations and Reports – Condition Precedent

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

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with Respondent within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether respondent has a substance abuse problem, whether Respondent is a threat to himself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to Respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that Respondent is a threat to himself or herself or others, the evaluator shall notify the Board within 24 hours of such a determination.

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

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed 30 days from the date the evaluator was originally assigned the matter.

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

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

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that he or she is 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. Respondent shall undergo biological fluid testing as required in this Decision at least two times per week while awaiting the notification from the Board if he is fit to practice medicine safely.

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

8. Susan Dvorak is an Inspector I with the Board and she was assigned to be Respondent's probation monitor. Dvorak wrote letters and emails to Respondent advising him of his responsibilities, including meeting with her for an intake interview to go over the terms of probation. She scheduled an evaluation with expert reviewer Salma Khan, M.D., to coincide with the interview, for the convenience of Respondent. Dvorak received two email messages from Respondent. On January 3, 2016, he wrote and asked a question to clarify the purpose of the meeting. She wrote back and answered, and also again explained Respondent's responsibilities. On January 4, 2016, Respondent wrote "Hi Susan, I will have to reschedule the meeting with Dr. Khan." Dvorak wrote back to supply the contact information for Dr. Khan. Respondent did not schedule an evaluation and although she sent further letters and information, that is the last correspondence Dvorak received from Respondent.

9. The evidence established that Respondent failed to comply with Condition No. 1 by February 8, 2016, as ordered and there is no evidence that he has complied with it since that time. The Board has not been informed by an evaluator that he is fit to practice medicine safely.

10. Further, Respondent violated Condition No. 1 in that he practiced medicine without undergoing the ordered evaluation. In a declaration dated January 21, 2016, Edward Nichols, M.D., President, Sillect Integrated Medical Services, PC, wrote that Respondent had worked for that company as a locum tenens physician since October 2014. He advised that the company was unaware that Respondent was on probation. The company discovered the information when a certification specialist notified them of a Board alert received January 12, 2016. Dr. Nichols reported that Respondent worked 12-hour shifts in the Emergency Room at Tehachapi Hospital on January 10 and 11, 2016.

11. Complainant contends that Respondent's probation is subject to revocation because he failed to comply with Condition No. 2, which states:

2. Notice of Employer or Supervisor Information

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

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

12. The evidence established that Respondent failed to comply with Condition No. 2. Respondent provided no information to the Board about his employment situation. As set forth above, Respondent was employed as a locum tenens by Sillect Integrated Medical Services, PC, and he did not inform the Board about this employment.

13. Complainant contends that Respondent's probation is subject to revocation because he failed to comply with Condition No. 3, which states:

3. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order Respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the Respondent.

During the first year of probation, Respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five consecutive years of probation, may testing be reduced to one time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

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

- (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
- (b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.
- (c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.
- (d) Its specimen collectors observe the collection of testing specimens.
- (e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.
- (f) Its testing locations shall submit a specimen to a laboratory within one business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven business days of receipt of the specimen. The Board will be notified of non-negative results within one business day and will be notified of negative test results within seven business days.

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

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

(i) It maintains testing sites located throughout California.

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

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

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

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

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

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

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

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

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

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

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

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by Respondent and approved by the Board, alcohol, or any other substance Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself.

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

14. The evidence established that Respondent violated Condition No. 3. The Board sent him a letter dated December 17, 2015, describing the process of enrolling in

FirstLab, the laboratory service utilized by the Board. Respondent did not enroll in the service and had not done so as of July 20, 2016.

15. Complainant contends that Respondent's probation is subject to revocation because he failed to comply with Condition No. 9, which states:

9. Notification

Within seven days of the effective date of this Decision, Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

16. The evidence established that Respondent failed to comply with Condition No. 9. He failed to inform Sillect Integrated Medical Services, PC, of his status by providing it with a copy of the Decision and Accusation. Sillect was informed of Respondent's status by a certification specialist.

17. Complainant contends that Respondent's probation is subject to revocation because he failed to comply with Condition No. 18, which states:

18. 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.

18. The evidence established that Respondent failed to comply with Condition No. 18. Respondent failed to interview with a designee of the Board despite his probation monitor's attempts to schedule an interview.

19. Complainant contends that Respondent's probation is subject to revocation because he failed to comply with Condition No. 13, which states:

13. Compliance with Probation Unit

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

20. The evidence established that Respondent failed to comply with Condition No. 13. As described above, he failed to comply with the terms and conditions of his probation.

LEGAL CONCLUSIONS

1. Cause for revocation of probation exists by reason of Respondent's violation of Condition 1: Clinical Diagnostic Evaluations and Reports – Condition Precedent. (Findings 7-10.)
2. Cause for revocation of probation exists by reason of Respondent's violation of Condition 2: Notice of Employer or Supervisor Information. (Findings 11 and 12.)
3. Cause for revocation of probation exists by reason of Respondent's violation of Condition 3: Biological Fluid Testing. (Findings 13 and 14.)
4. Cause for revocation of probation exists by reason of Respondent's violation of Condition 9: Notification. (Findings 15 and 16.)
5. Cause for revocation of probation exists by reason of Respondent's violation of Condition 18: Interview with the Board or its Designee. (Findings 8 and 18.)
6. Cause for revocation of probation exists by reason of Respondent's violation of Condition 13: Compliance with Probation Unit. (Findings 7-20.)

Analysis

7. As multiple probation violations have been established, it remains to determine the appropriate consequence. The Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines sets forth recommended dispositions. The recommended minimum discipline for probation violations is a 30-day suspension and the maximum is revocation of probation. Also relevant here is Business and Professions Code, section 2229, subdivision (a), which states that public protection is the Board's "highest priority."

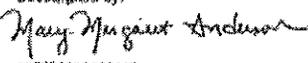
Respondent failed to comply with a probation order that would have allowed him to continue to practice if it were shown that his patients were not at risk of harm due to his substance abuse. Although he corresponded minimally with the Board following the

issuance of the Order, he essentially ignored it, practicing medicine after the effective date of January 8, 2016. until an alert notified his employer that he was on probation. He did not appear at hearing and there is no reasonable basis upon which to conclude that he will comply with a probation order in the future. In these circumstances the only result that protects the public is revocation of his certificate.

ORDER

The Petition to Revoke Probation concerning Physician's and Surgeon's Certificate No. G63465, issued to Respondent James Kieffer McDonnel, M.D., is granted; the stay is lifted and the certificate is revoked.

DATED: July 29, 2016

Dec/Signed by:

33F76828/33217
MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

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 8. Section 2234 of the Code, states in pertinent part:

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 "..."

10 **FIRST CAUSE TO REVOKE PROBATION**

11 (Failure to Comply with Probation Condition No. 1- Clinical Diagnostic Evaluations and Reports-
Condition Precedent)

12 9. At all times after the effective date of the Board's Decision and Order in Case No.
13 800-2015-014278, Probation Condition 1 stated:

14 "1. Clinical Diagnostic Evaluations and Reports – Condition Precedent

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

21 The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon
22 who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of
23 physicians and surgeons with substance abuse disorders, and is approved by the Board or its
24 designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable
25 professional standards for conducting substance abuse clinical diagnostic evaluations. The
26 evaluator shall not have a current or former financial, personal, or business relationship with
27 respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and
28 independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's

1 opinion, whether respondent has a substance abuse problem, whether respondent is a threat to
2 himself or herself or others, and recommendations for substance abuse treatment, practice
3 restrictions, or other recommendations related to respondent's rehabilitation and ability to practice
4 safely. If the evaluator determines during the evaluation process that respondent is a threat to
5 himself or herself or others, the evaluator shall notify the Board within twenty-four (24) hours of
6 such a determination.

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

15 For all clinical diagnostic evaluations, a final written report shall be provided to the Board
16 no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator
17 requests additional information or time to complete the evaluation and report, an extension may
18 be granted, but shall not exceed thirty (30) days from the date the evaluator was originally
19 assigned the matter.

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

28

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

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

10 Respondent shall comply with all restrictions or conditions recommended by the examiner
11 conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified
12 by the Board or its designee.” (Emphasis added).

13 10. Respondent’s probation is subject to revocation because he failed to comply with
14 Probation Condition No. 1, as required by the Board’s Order of November 30, 2015. Probation
15 Condition No. 1 requires as a condition precedent that Respondent undergo and complete a
16 clinical diagnostic evaluation (CDE) by a Board appointed board certified physician and surgeon
17 by February 8, 2016 and be notified by the Board that he is fit to practice medicine safely *before*
18 he is permitted to practice medicine. Respondent is currently practicing medicine but *has not*
19 timely undergone and completed a CDE and *has not* been notified by the Board or its designee
20 that he is fit to practice medicine safely.

21 **SECOND CAUSE TO REVOKE PROBATION**

22 (Failure to Comply with Probation Condition 2-Notice of Employer or Supervisor
Information)

23 11. At all times after the effective date of the Board’s Decision and Order in Case No.
24 800-2015-014278, Probation Condition 2 stated:

25 “2. Notice of Employer or Supervisor Information:

26 Within seven of the effective date of this Decision, Respondent shall provide to the Board
27 the names, physical addresses, mailing addresses, and telephone numbers of any and all
28 employers and supervisors. Respondent shall also provide specific, written consent for the Board,

1 Respondent's worksite monitor, and Respondent's employers and supervisors to communicate
2 regarding Respondent's work status, performance, and monitoring. For purposes of this section,
3 "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or
4 equivalent, if applicable, when Respondent has medical staff privileges."

5 12. Respondent's probation is subject to revocation because he failed to comply with
6 Probation Condition No. 2, as required by the Board's Order of November 30, 2015. Probation
7 condition No. 2 requires that Respondent provide the names and contact information of all
8 employers and supervisors to the Board by January 15, 2016. Respondent is in violation of this
9 condition because to date he has failed to provide the required information to the Board.

10 **THIRD CAUSE TO REVOKE PROBATION**

11 (Failure to Comply with Probation Condition 3-Biological Fluid Testing)

12 13. At all times after the effective date of the Board's Decision and Order in Case No.
13 800-2015-014278, Probation Condition 3 stated:

14 "3. Respondent shall immediately submit to biological fluid testing, at respondent's
15 expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is
16 not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved
17 by the Board or its designee. Respondent shall make daily contact with the Board or its designee
18 to determine whether biological fluid testing is required. Respondent shall be tested on the date
19 of the notification as directed by the Board or its designee. The Board may order a respondent to
20 undergo a biological fluid test on any day, at any time, including weekends and holidays. Except
21 when testing on a specific date as ordered by the Board or its designee, the scheduling of
22 biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall
23 be borne by the respondent.

24 During the first year of probation, respondent shall be subject to 52 to 104 random tests.
25 During the second year of probation and for the duration of the probationary term, up to five (5)
26 years, respondent shall be subject to 36 to 104 random tests per year. Only if there has been no
27 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing
28

1 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number
2 of random tests to the first-year level of frequency for any reason.

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

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

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

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

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

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

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

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

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

26 (i) It maintains testing sites located throughout California.

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

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

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

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

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

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

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

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

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

26 After the issuance of a cease-practice order, the Board shall determine whether the positive
27 biological fluid test is in fact evidence of prohibited substance use by consulting with the
28

1 specimen collector and the laboratory, communicating with the licensee, his or her treating
2 physician(s), other health care provider, or group facilitator, as applicable.

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

5 For purposes of this condition, the term "prohibited substance" means an illegal drug, a
6 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by
7 respondent and approved by the Board, alcohol, or any other substance the respondent has been
8 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

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

14 14. Respondent's probation is subject to revocation because he failed to comply with
15 Probation Condition No. 3, as required by the Board's Order of November 30, 2015. Probation
16 condition No. 3 requires that Respondent enroll with a laboratory prior to practicing medicine.
17 Respondent is in violation because he has failed to enroll with a laboratory prior to practicing
18 medicine.

19 **FOURTH CAUSE TO REVOKE PROBATION**

20 (Failure to Comply with Probation Condition 9-Notification)

21 15. At all times after the effective date of the Board's Decision and Order in Case No.
22 800-2015-014278, Probation Condition 9 stated:

23 "9. Notification: Within seven (7) days of the effective date of this Decision, the
24 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
25 Chief Executive Officer at every hospital where privileges or membership are extended to
26 Respondent, at any other facility where Respondent engages in the practice of medicine, including
27 all physician and locum tenens registries or other similar agencies, and to the Chief Executive
28 Officer at every insurance carrier which extends malpractice insurance coverage to Respondent.

1 Respondent shall submit proof of compliance to the Board or its designee within 15 calendar
2 days.

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

5 16. Respondent’s probation is subject to revocation because he failed to comply with
6 Probation Condition No. 9, as required by the Board’s Order of November 30, 2015. Probation
7 condition No. 9 requires that Respondent provide a copy of the Decision and Accusation to the
8 Locum Tenens Registry. Respondent is in violation of Probation Condition No. 9 because he has
9 failed to provide a copy of the Decision and Accusation to the Locum Tenens Registry.

10 **FIFTH CAUSE TO REVOKE PROBATION**

11 (Failure to Comply with Probation Condition 18-Interview with Board)

12 17. At all times after the effective date of the Board’s Decision and Order in Case No.
13 800-2015-014278, Probation Condition 18 stated:

14 “18. Interview with the Board or its Designee:

15 Respondent shall be available in person upon request for interviews either at Respondent’s
16 place of business or at the probation unit office, with or without prior notice throughout the term
17 of probation.”

18 18. Respondent’s probation is subject to revocation because he failed to comply with
19 Probation Condition No. 18, as required by the Board’s Order of November 30, 2015. Probation
20 condition No. 18 requires that Respondent be available for interviews with the Board.
21 Respondent is in violation of this condition because he has not made himself available for
22 interviews. The Board has made numerous attempts to contact Respondent for the purposes of
23 interviewing him but Respondent has not made himself available for an interview.

24 **SIXTH CAUSE TO REVOKE PROBATION**

25 (Failure to Comply with Probation Condition 13-Compliance with Probation Unit)

26 19. At all times after the effective date of the Board’s Decision and Order in Case No.
27 800-2015-014278, Probation Condition 13 stated:

28 “13. Compliance with Probation Unit:

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

3 20. Respondent's probation is subject to revocation because he failed to comply with the
4 Probation Unit and all the terms and conditions of probation, as more particularly alleged herein
5 in paragraphs 9 through 18, above, which are hereby incorporated by reference and realleged as if
6 fully set forth herein.

7 21. Grounds exist to revoke probation and to impose the order of revocation in that
8 Respondent has failed to comply with the Probation Unit and all the terms of his probation, as
9 alleged above, and the Board is therefore authorized to take further action and to obtain the relief
10 requested 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 or suspending Physician's and Surgeon's certificate Number G 63465,
15 issued to James Kieffer McDonnel, M.D.;

16 2. Revoking the probation and imposing discipline that was stayed in Case No. 800-
17 2015-014278, i.e., revocation of Physician's and Surgeon's Certificate No. G 63465, issued to
18 James Kieffer McDonnel, M.D.;

19 3. Revoking, suspending, or denying approval of Respondent James Kieffer McDonnel,
20 M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

21 4. Ordering Respondent James Kieffer McDonnel, M.D. to pay the Medical Board of
22 California, if placed on probation, the costs of probation monitoring; and

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

24
25 DATED: February 17, 2016

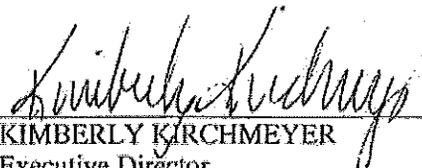

26 KIMBERLY KIRCHMEYER
Executive Director
27 Medical Board of California
Department of Consumer Affairs
28 State of California
Complainant

Exhibit A

Decision and Order

Medical Board of California Case No. 800-2015-014278

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

In the Matter of the Accusation Against:)	
)	
James Kieffer McDonnel, M.D.)	Case No. 800-2015-014278
Physician's and Surgeon's)	
Certificate No. G 63465)	OAH No. 2015014278
)	
Respondent.)	
)	
)	
)	
)	
)	

**DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION**

No action having been taken on the petition for reconsideration, filed by James Kieffer McDonnel, M.D., and the time for action having expired at 5 p.m. on January 8, 2016, the petition is deemed denied by operation of law.

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

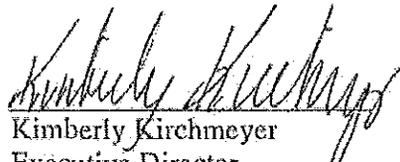
In the Matter of the Accusation)	
Against:)	
)	MBC No. 800-2015-014278
JAMES KIEFFER MCDONNEL, M.D.)	
)	OAH No. 2015014278
Physician's & Surgeon's)	
Certificate No. G-63465)	ORDER GRANTING STAY
)	
)	(Gov't Code Section 11521)
<u>Respondent</u>)	

James Kieffer McDonnel, M.D., has filed a Petition for Reconsideration of the Decision in this matter with an effective date of December 30, 2015.

Execution is stayed until January 8, 2016.

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

DATED: December 28, 2015


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 Accusation)	
Against:)	
)	
JAMES KIEFFER MCDONNEL, M.D.)	Case No. 800-2015-014278
)	
Physician's and Surgeon's)	OAH No. 2015080192
Certificate No. G 63465)	
)	
Respondent)	
<hr/>		

DECISION

The Proposed Decision of Mary-Margaret Anderson, Administrative Law Judge, dated November 9, 2015 is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C), to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

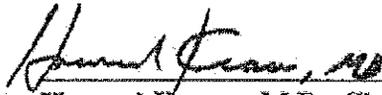
1. Page 1, Case No. 800-2014-003700 is stricken and replaced with Case No. 800-2015-014278

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

This Decision shall become effective at 5:00 p.m. on December 30, 2015.

IT IS SO ORDERED: November 30, 2015.

MEDICAL BOARD OF CALIFORNIA



Howard Krauss, M.D., Chair
Panel B

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

In the Matter of the Accusation Against:

JAMES KIEFFER MCDONNELL,

Physician's and Surgeon's Certificate
No. G 63465

Respondent.

Case No. 800-2014-003700

OAH No. 2015080192

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on October 20, 2015, in Oakland, California.

Emily L. Brinkman, Deputy Attorney General, represented Complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

James Kieffer McDonnell, M.D., represented himself.

The record closed on October 20, 2015.

FACTUAL FINDINGS

1. Complainant Kimberly Kirchmeyer issued the Accusation in her official capacity as Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On July 25, 1988, the Board issued Physician's and Surgeon's Certificate No. G 63465 to James Kieffer McDonnell, M.D. (Respondent). It will expire August 31, 2017, unless renewed.

3. The standard of proof applied in making the factual findings is clear and convincing evidence to a reasonable certainty.

4. The Accusation alleges that Respondent's certificate is subject to discipline in that he failed to comply with an order of the Board. It is brought under the authority of Business and Professions Code sections 820 and 821, which provide that where it appears that a licensee is mentally or physically impaired, he or she may be ordered to submit to an examination by an appropriate health professional, and if the licensee does not comply with the order, that the license may be disciplined. As more fully described below, Respondent was ordered to submit to an examination, but has not complied.

5. Respondent is an emergency medicine physician currently working at Bakersfield Heart Hospital. Prior to December 2013, he was a partner with CEP America, which he describes as a "big ER Physician corporation with more than 1000 providers." Respondent worked at AGC Hospital in Arroyo Grande and French Hospital in San Luis Obispo.

Basis for order of examination

6. On February 28, 2014, the Board received a Business and Professions Code, section 805, Health Facility/Peer Review Reporting Form (805 Report) from California Emergency Physicians Medical Group (CEP). It was reported that Respondent had entered into CEP's Impairment Monitoring Program on June 25, 2010, for alcohol dependency, and signed a contract to continue in the program for five years. Respondent was in full compliance until he voluntarily terminated his work at his clinical practice sites on November 9, 2013. He indicated that he no longer felt obligated to continue the monitoring program once his association with CEP ended. Respondent was formally separated from CEP on February 13, 2014.

7. The matter was eventually assigned to Board Investigator Ralph Hughes, who was instructed on December 2, 2014, to arrange for Respondent to be interviewed by a Board physician.

8. Hughes undertook efforts to contact Respondent to arrange the interview. He called the only telephone number he had, but the line was disconnected. He mailed a letter to Respondent at his residence address in Santa Margarita as well as to another possible address in Pismo Beach. A delivery receipt for the Pismo Beach mailing was returned to Hughes. The Santa Margarita mailing was not returned to Hughes. Nonetheless, Respondent did not contact Hughes, Complainant, or the Board.

9. On March 20, 2015, the Board issued an Order Compelling Mental and/or Physical Examination of Licensee, which directed Respondent to submit to an examination within 30 days of service. On March 20, 2015, the Order was sent to Respondent by certified mail to his business address of record, a post office box in San Luis Obispo, and to the Santa Margarita address. The Order was accompanied by a letter instructing Respondent to take immediate steps to arrange for the examination. The San Luis Obispo mailing was signed for by J. Baugh on April 2, 2015. At hearing, Respondent stated that Baugh is his girlfriend's mother, but did not explain why she would sign for a mailing sent to his post office address. Respondent asserts that he did not receive the mailing.

10. Hughes continued to search for Respondent, including by contacting postmasters in San Luis Obispo and Bakersfield with address information requests. The last address supplied to him was the Santa Margarita address; no address was found in Bakersfield.

11. No response having been received from Respondent, Complainant filed this Accusation on June 30, 2015, serving it by certified mail at the San Luis Obispo address. Respondent signed a Notice of Defense on July 31, 2015, and disclosed a Bakersfield mailing address. His address of record was changed to that address on August 25, 2015.

12. The evidence establishes that Respondent failed to comply with the Order of the Board that he submit to an examination no later than 30 days following service.

Respondent's testimony

13. Respondent testified that he did not receive the information from the Board until June 2015, when his current employer, Barton Associates, notified him that they had received some paperwork. He had quickly moved in with his girlfriend in Bakersfield in September 2014, and neglected to notify the Board of his new address. He asserts that he "take[s] the Board seriously," and he apologized, saying that this would not happen again. Respondent feels, however, that the investigator could have done more to locate him. He represents he has had the same telephone number for ten years, and the same email.

14. Respondent testified that when he lost his job with CEP, he had completed four years of a five-year alcohol program that involved random testing and weekly group meetings. He reports that he had over 200 random drug and alcohol screening tests, and that all were negative. Respondent asserts that the loss of his job at CEP had nothing to do with substance abuse; that he was in full compliance with the program. He saw no need to continue participating in the program as "there is no magic about five years." Also, it was very expensive. Respondent recognizes that his alcohol problem is a life-long condition, requiring him to be diligent for the rest of his life. He was aware that CEP might file an 805 Report, but was not sure it would happen.

LEGAL CONCLUSIONS

1. Business and Professions Code section 820 provides that whenever it appears that a licensee may be unable to practice his profession safely because of impairment due to mental illness, or physical illness affecting competency, the Board may order the licensee to be examined by one or more physicians and surgeons or psychologists designated by the Board.

2. Business and Professions Code section 821 provides that a licensee's failure to comply with an order issued under section 820 constitutes grounds for suspension or revocation of the licensee's certificate or license. Under Business and Professions Code section 2234, subdivision (a), such failure is unprofessional conduct for physicians. Cause to discipline

Respondent's license exists under these sections based upon the matters set forth in Findings 6 through 12.

Discussion

3. Before the Board is a physician with a history of substance abuse who left employment without completing a substance abuse program required by the employer. The background is otherwise unknown, but the employer filed an 805 Report with the Board upon his separation. The Board reasonably sought to, at a minimum, interview Respondent, but he could not be found. He failed to notify the Board that he had a new address, despite knowing that an 805 Report might be filed. His address of record was a post office box in another city which he still maintained, and the Board's examination order was signed for by his girlfriend's mother, and yet he asserts that he did not learn of these proceedings until many months later, and after an accusation was filed.

The rationale for the provisions requiring submission to examinations is public protection; hence, the failure to comply is serious. It is Respondent's responsibility to keep the Board informed of his contact information, and in these circumstances, he was on notice by the circumstances surrounding his job change that such was particularly important. Complainant is understandably greatly concerned about Respondent's fitness to practice. Given Respondent's failure to submit to an examination, public protection requires a term of probation pursuant to appropriate conditions. Respondent's certificate will be in a revoked status until he is found safe to practice by an examining physician. Following compliance with that condition precedent, his certificate will be placed on probation for five years pursuant to standard terms and conditions and any additional conditions found to be appropriate following the examination.

ORDER

Physician's and Surgeon's Certificate No. G 63465, issued to Respondent James Kieffer McDonnell, M.D., is revoked; however, revocation is stayed and Respondent is placed on probation for five years under the following terms and conditions.

1. Clinical Diagnostic Evaluations and Reports – Condition Precedent

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

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

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

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed 30 days from the date the evaluator was originally assigned the matter.

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

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

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that he or she is 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. Respondent shall undergo biological fluid testing as required in this Decision at least two times per week while awaiting the notification from the Board if he is fit to practice medicine safely.

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

2. Notice of Employer or Supervisor Information

Within seven of the effective date of this Decision, Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's worksite monitor, and Respondent's employers and supervisors to communicate regarding Respondent's work status, performance, and monitoring. For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when Respondent has medical staff privileges.

3. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order Respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of

biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the Respondent.

During the first year of probation, Respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five consecutive years of probation, may testing be reduced to one time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

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

- (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
- (b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.
- (c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.
- (d) Its specimen collectors observe the collection of testing specimens.
- (e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.
- (f) Its testing locations shall submit a specimen to a laboratory within one business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven business days of receipt of the specimen. The Board will be notified of non-negative results within one business day and will be notified of negative test results within seven business days.
- (g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test Respondent on any day of the week.
- (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

- (i) It maintains testing sites located throughout California.
- (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows Respondent to check in daily for testing.
- (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.
- (l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.
- (m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if Respondent holds a valid prescription for the substance.

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

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

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

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

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

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

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

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by Respondent and approved by the Board, alcohol, or any other substance Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself.

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

4. Substance Abuse Support Group Meetings

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

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

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

5. Worksite Monitor for Substance-Abusing Licensee

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 worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring Respondent at work.

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

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

Respondent shall pay all worksite monitoring costs.

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

The worksite monitor shall verbally report any suspected substance abuse to the Board and Respondent's employer or supervisor within one business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one hour of the next business day. A written report that

includes the date, time, and location of the suspected abuse; Respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

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

If the worksite monitor resigns or is no longer available, Respondent shall, within five 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 calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

6. Alcohol - Abstain From Use

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

If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide respondent with a hearing within 30 days of the request, unless Respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days

unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

7. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of title 16, California Code of Regulations section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

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

8. 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 calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, Respondent's practice setting changes and Respondent is no longer practicing in a setting in compliance with this Decision, Respondent shall notify the Board or its designee within five 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 calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

9. Notification

Within seven days of the effective date of this Decision, Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

10. Supervision of Physician Assistants

During probation, Respondent is prohibited from supervising physician assistants.

11. 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.

12. 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.

13. Compliance with Probation Unit

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

14. 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, subdivision (b).

15. 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.

16. License Renewal

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

17. 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 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.

18. 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.

19. 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 in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event 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 years.

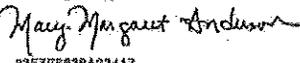
Periods of non-practice will not apply to the reduction of the probationary term.

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.

20. 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.

DATED: November 9, 2015

DocuSigned by:

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MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings