

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

In the Matter of the Accusation Against:)

Kim A. Gutner, M.D.)

Physician's and Surgeon's)

Certificate No. G 59083)

Petitioner)

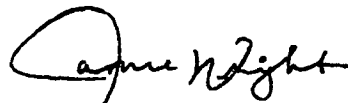
Case No. 09-2012-226543

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by Steven H. Zeigen and David Rosenberg, Esqs., attorneys for Kim A. Gutner, M.D., for the reconsideration of the decision 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 22, 2015.

IT IS SO ORDERED: May 21, 2015



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 Accusation Against:)	
)	MBC No. 09-2012-226543
KIM A. GUTNER, M.D.)	
)	
Physician's and Surgeon's)	ORDER GRANTING STAY
Certificate No. G 59083)	
)	(Government Code Section 11521)
)	
_____ Respondent)	

Steven H. Zeigen and David Rosenberg, Esqs. on behalf of respondent, Kim A. Gutner, M.D., have filed a Request for Stay of execution of the Decision in this matter with an effective date of May 15, 2015.

Execution is stayed until May 22, 2015.

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

DATED: May 14, 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:)

KIM ALLISON GUTNER, M.D.)

Case No. 09-2012-226543

**Physician's and Surgeon's
Certificate No. G 59083**)

Respondent)

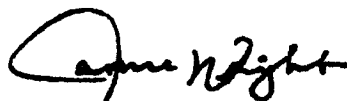
DECISION AND ORDER

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 May 15, 2015.

IT IS SO ORDERED: April 16, 2015.

MEDICAL BOARD OF CALIFORNIA



**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 Accusation Against:

KIM ALLISON GUTNER, M.D.

Physician's and Surgeon's Certificate No.
G59083

Respondent.

Case No. 09-2012-226543

OAH No. 2014050214

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California, on February 4, and 5, 2015.

Martin W. Hagan, Deputy Attorney General, Department of Justice, Office of the Attorney General, represented Kimberly Kirchmeyer, Executive Director, Medical Board of California.

David Rosenberg, Esq., Rosenberg, Shpall & Associates, represented Kim Allison Gutner, M.D., who was present during the hearing.

The matter was submitted on February 20, 2015.¹

¹ The hearing in this matter concluded on February 5, 2015.

During the hearing, respondent offered Exhibit 23 (Paluso Report to Medical Board of California) into evidence; complainant objected. Having considered the arguments of counsel, respondent's motion to admit Exhibit 23 is denied.

The record remained open for receipt of post hearing briefs regarding Business and Professions Code section 2236, subdivision (c). Complainant addressed this issue in her Prehearing Brief. On February 12, 2015, respondent filed her Brief in Opposition to Using the Infraction Conviction as Cause for Discipline Under Business and Professions Code section 2236. This document was marked Exhibit 31. On February 20, 2015, complainant

FACTUAL FINDINGS

1. Kimberly Kirchmeyer (complainant) filed Accusation No. 09-2012-226543, against Kim Allison Gutner, M.D. (respondent), in her official capacity as Executive Director of the Medical Board of California (the board).

The accusation alleged that respondent was arrested for domestic battery and resisting arrest and that she responded falsely to questions asked by the board's investigator and on the questionnaire presented to the board's psychiatric evaluator; that based on the foregoing conduct, respondent: (1) engaged in unprofessional conduct, (2) was convicted of a crime that is substantially related to the qualifications, functions and duties of a physician and surgeon, and (3) engaged in dishonest and corrupt acts.

Respondent filed a timely Notice of Defense and requested a hearing.

2. On November 10, 1986, the board issued physician's and surgeon's certificate number G59083 to respondent. At all times relevant herein her Certificate was in full force and effect and will expire on January 31, 2016, unless renewed or disciplined.

General Unprofessional Conduct

Domestic Violence Incident

3. On August 19, 2012, at 5:12 p.m., three San Diego County Sheriff's Department deputies Michael McManama, Rayyan, and Baquiran² responded to a call made by E.R., who had been in a dating relationship with respondent for six months.

Prior to the call, respondent and E.R. had a dispute, and E.R. returned to his residence. He decided to end the relationship and placed respondent's property outside his residence. When respondent arrived and observed her clothes and toiletries outside the front door, she became upset and embarrassed. After she went inside the residence, she and E.R. had an argument. He told her "to get out" of his residence. She refused and prevented him from moving. E.R. called 911 and reported that she was hitting him and refusing to leave his residence.

filed Complainant's Response to Respondent's Opposition to Using the Infraction Conviction as Cause for Discipline under Code section 2236. It was marked Exhibit 32.

On February 20, 2015, the record was closed, and the matter was submitted.

² The first names of deputies Baquiran and Rayyan were not identified.

After E.R.'s call and prior to the arrival of law enforcement, respondent called 911 and stated that law enforcement did not need to respond to the residence. The sheriff's deputies continued on to E.R.'s residence.

4. The three sheriff's deputies arrived at the residence at or about 5:20 p.m. Respondent was surprised that the sheriff's deputies were at the house. After deputy McManama arrived, he separated the parties (E.R. and respondent). Deputy Rayyan remained in the residence with respondent while deputy McManama took E.R.'s statement. Thereafter, deputy MacManama took respondent's statement. Respondent told deputies McManama and Baquiran that she and E. R. had been at the golf course; he left without her; she was upset when she saw her things outside; they had an argument over a set of keys; and, no battery took place.

After taking the statements, deputy McManama looked for other signs of struggle and physical injuries consistent with the report made to dispatch. Deputy MacManama observed that E.R. had scratch marks on his left forearm and red abrasions and scratch marks on his torso. They looked like fresh injuries. Initially, E.R. said respondent caused the injuries. Deputy MacManama took photographs of E.R.'s injuries. Subsequently, E.R. denied that respondent caused the injuries.³ Then, deputy MacManama checked respondent for injuries. He observed that she had "a small circular cut on [her] left inner wrist" which she said was caused by her bracelet; in addition, he saw a small scratch on her left tricep and a bruise on her right bicep. Deputy McManama asked to photograph respondent's injuries. Deputy MacManama and respondent disagree as to respondent's response to the request for photographs. Deputy McManama stated that respondent refused to have photographs. However, respondent contends that she did not object to photographs but requested that her face not be contained in a photograph.

Respondent "became agitated and said that she did not want any report to be filed" and told deputy McManama that she was a physician and this could affect her career." Deputy McManama described respondent's behavior in the arrest report as follows:

Deputy Baquiran told Gutner to stand up. Deputy [Baquiran] approached Gutner from the right and told her to put her hands behind her back. I approached from the left. I saw Gutner pull away from [deputy Baquiran] with her left arm. I grabbed her right arm and wrist. I felt Gutner tense her right arm. Gutner kicked both her legs out in front of her. [¶] [Deputy Baquiran] and I both told her to stop resisting at least 3 or 4 times. [Deputy Baquiran] told her to put her hands behind her back. [¶] Gutner yelled we did not have to do this. She yelled at us to let her go. Gutner bent her entire torso forward. I held a control hold of her right arm and shoulder. Gutner continued to scream.

³ Deputy Baquiran testified that is common for a complaining party to retract complaints of abuse or to deny that it occurred, as ER did.

[¶] Gutner dropped her body weight two to three times and spread her legs out. She tried to pull away from us. It appeared Gutner was attempting to exit the room through the door. [¶] To prevent Gutner from leaving the room, I pushed Gutner to the ground. I maintained control of her right arm and used my body weight to pin her right shoulder and lower back to the ground. [Deputy Baquiran] placed her left hand into handcuffs. I pulled her right hand to the small of her back. [Deputy Baquiran] placed her right hand into handcuffs. [¶] I told Gutner to stand up. She refused to stand up. [Deputy Baquiran] and I assisted Gutner to her feet. Gutner continued to drop her body weight and pull away from me. Gutner yelled she did not want others to see her. She yelled at us to let her go. [¶] As we escorted Gutner out of the residence [I] heard [E.R.] yelling at Gutner to stop resisting. She continued to drop her weight and pull away from us. [Deputy Baquiran] and I assisted Gutner to her feet several times. Gutner eventually walked out to our patrol car.

5. Respondent was placed under arrest for violations of Penal Code section 243, subdivision (e)(1)[domestic violence battery], and Penal Code section 148, subdivision (a)(1)[obstructing and delaying a peace officer]. Respondent was transported to the Vista Detention Facility, where photographs were taken documenting her injuries.

6. On September 26, 2012, in the Superior Court of California, County of San Diego, a complaint was filed against respondent entitled *In the Matter of the People of the State of California v. Kim A. Gutner*, Case No. CN310719. The criminal complaint charged that respondent violated: (1) Penal Code section 243, subdivision (e)(1) [battery of a current or former significant other), a misdemeanor; and (2) Penal Code section 148, subdivision (a)(1) [resisting an officer], a misdemeanor.

7. On October 9, 2012, a Criminal Protective Order – Domestic Violence was issued for three years. The Protective Order prohibited respondent from coming within 100 yards of E.R. and from having further contact with E.R.

8. On October 30, 2012, the criminal complaint was amended to add Count 3, which charged respondent with violation of Penal Code section 415 [disturbing the peace], an infraction. On her plea of guilty, as part of a plea agreement, respondent was convicted of violating Penal Code section 415. Upon completion of a 12-hour anger management course, the remaining criminal charges were dismissed.

9. Respondent disputed deputy McManama's statements in the police report and his testimony during the hearing.

Respondent testified: (1) When she arrived at E.R.'s residence, he was throwing her things out of the door of his residence. (2) She cooperated with the Sheriff's deputies; she did not refuse to allow deputy McManama to take her picture; rather, she asked that the pictures be taken so that her face was not visible. (3) She disagreed with the manner in which the sheriff's deputies attempted to arrest her. (4) She had no intention of resisting arrest; however, they may have thought she did because her body stiffened.

Interview by Board Investigator

10. On March 26, 2013, respondent appeared for an interview before a board investigator. During the interview, she was asked whether she had ever had any psychiatric treatment, evaluation or hospitalization. Respondent answered "no." In fact, respondent had been under the care and treatment of Mikel Weinberg, M.D. (Dr. Weinberg), a psychiatrist, since 2004, "for ADHD, as well as difficulties with her mood and anxiety."

Also, respondent was asked whether she was taking any prescription medications. Respondent answered that she was taking hormone cream and Synthroid, a thyroid medication, but did not disclose any other medications. Respondent failed to disclose that she was also taking Alprazolam⁴ XR, 0.5 mg, once daily, and Adderall⁵ XR, 20 mg, once daily.

At her board interview, respondent voluntarily agreed to submit to a mental health evaluation under Business and Professions Code section 820.⁶

Evaluation by C.W. Christopher Heh, M.D.

11. On July 16, 2013, Christopher Heh, M.D. (Dr. Heh), a psychiatrist retained by the board, performed a psychiatric evaluation of respondent. Prior to the evaluation, respondent was provided with a psychiatric questionnaire. As part of the questionnaire, respondent was asked whether she had taken any psychiatric medications in the past or present. Respondent answered "NONE." In fact, she had taken psychiatric medications, as

⁴ Alprazolam, a brand name for benzodiazepine, is a Schedule IV controlled substance under Health and Safety Code section 11057, subdivision (d), and a dangerous drug under Business and Professions Code section 4022. It is generally used to treat anxiety disorders, panic disorders, and anxiety caused by depression.

⁵ Adderall, a brand name for dextroamphetamine and amphetamine, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d), and a dangerous drug under Business and Professions Code section 4022. It is an amphetamine salt used for attention-deficit hyperactivity disorder and narcolepsy.

⁶ All subsequent code section references are to the Business and Professions Code, unless otherwise stated.

identified in a Controlled Substances Utilization Review and Evaluation System (CURES) report. The CURES report showed that from March 3, 2010, to March 3, 2013, respondent was prescribed Concerta,⁷ Adderall XR, and Alprazolam XR, by Dr. Weinberg, respondent's treating psychiatrist. In his report dated July 16, 2013, Dr. Heh noted that respondent made false statements during her physician interview with the board and that she made a false statement on the psychiatric questionnaire when she denied ever having taken any psychiatric medications.

Dr. Heh concluded that respondent was not a danger to herself, patients and/or the public, and that she was able to practice medicine safely as long as she remained compliant with her medications and continued with psychiatric follow-up care. No evidence was offered to establish that respondent is not or has not been compliant with medications or that she has not continued with psychiatric follow-up care. However, when questioned about whether she was taking her medications, respondent was evasive.

Prior Domestic Violence Incident

12. E.R. reported to deputy McManama that there had been a prior domestic violence incident that had not been reported to law enforcement. Respondent testified that she had no idea what E.R. was talking about. No other evidence was offered regarding the incident. As such, the evidence regarding this issue is disregarded.

Evidence of Explanation and Rehabilitation

13. Respondent disputed deputy McMamana's statements in the police report and his testimony during the hearing. She felt she had been cooperative with law enforcement but merely requested that her face not be photographed.

Deputy McManama was more credible than respondent. The incident occurred more than two years ago. He drafted his report within four hours of the call from E.R. The police dispatch records of E.R.'s calls regarding the incident were consistent with his testimony and with the injuries deputy McManama observed on E.R. In contrast, when respondent testified in this hearing, she often said she did not recall or did not remember. Finally, she was untruthful to the board investigator and on the psychiatric questionnaire, so she is willing to be untruthful when she thinks the truth might not be in her best interest.

14. She was concerned about telling the truth because she did not know who would get the information. As a psychiatrist, she was concerned about the impact it might have on her career.

⁷ Concerta, a brand name for methylphenidate, is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (d), and a dangerous drug under Business and Professions Code section 4022. It is a central nervous system (CNS) stimulant used to treat ADHD.

15. Based on respondent's admission, it is determined that, when she completed the psychiatric questionnaire she received from Dr. Heh, respondent made false statements; she denied that she had taken any psychiatric medications in the past or present. When she completed the questionnaire for evaluation by Dr. Heh and when Dr. Heh interviewed her, respondent had the same concern as when she was interviewed by the board investigator; she did not know who would get the information or how it would affect her medical career.

16. Mark A. Kalish, M.D., respondent's expert witness, testified that respondent is safe to practice medicine, but there is no excuse for providing false information to a board investigator or as part of a psychiatric evaluation.

17. Respondent regrets her misconduct; she apologized to the administrative law judge, the board, and the medical profession for her dishonest conduct and vowed that it would not happen again. She did not feel comfortable providing the information to the board investigator. Prior to the board interview, respondent had not provided this information to anyone but her doctors. She did not know where the information would go or if it would be published.

18. As a condition of her plea agreement in the criminal matter, respondent was required to complete 12 hours of anger management. She complied, and the fine was reduced. She actually completed an additional 36 hours of anger management.

19. Respondent has been in therapy with Emanuel Paluso, a marriage and family therapist, one to three hours a week.

20. Respondent described anger management strategies that she learned; she learned to identify her triggers (things that lead to hurt or angry feelings), to self-regulate her emotions, to breathe, to walk away, and skills to help her disengage. She acknowledged that the failure to disengage was a contributing factor to her domestic battery arrest.

Education, Background & Medical Practice

21. Respondent described her education, training and experience.

She attended and graduated from the University of California at Santa Barbara with a bachelor's of arts degree in biological sciences; she graduated in 1979 with summa cum laude honors. Thereafter she attended Yale University Medical School; she graduated in 1984. Respondent completed a rotating internship (1984 – 1985) and thereafter a residency (1985 – 1987) at New York Hospital - Cornell Medical Center - Westchester Division. She moved to California and completed a two-year fellowship in child and adolescent psychiatry. Upon completion of the fellowship, for a year or so, respondent began working with the Psychiatric Centers at San Diego, a large, private psychiatric group. In or about 1990, she entered private practice in San Diego County and has maintained that private practice since.

LEGAL CONCLUSIONS

1. The standard of proof in an administrative action seeking to suspend or revoke a physician's certificate is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. Section 2227 of the Code states that a licensee who is found guilty under the Medical Practice Act may have her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded or have such other action taken in relation to discipline as the board deems proper.

3. Section 2234 of the Code states, in part:

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

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

[¶...¶]

(e) The commission of any act involving dishonesty or corruption which [sic] is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct which [sic] would have warranted the denial of a certificate.

[¶...¶]

4. Unprofessional Conduct under Code section 2234 is conduct which breaches the rule or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575).

5. The American Medical Association's Principles of Ethics states, in part:

Preamble

The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize the responsibility to patients first and foremost, as well as to society, to other health professionals, and to self. The following Principles adopted by the American Medical Association are not laws, but standards of conduct which [sic] define the essentials of honorable behavior for the physician.

Principles of medical ethics

[¶...¶]

II. A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physician deficient in character or competence, or engaging in fraud or deception to appropriate entities.

[¶...¶]

III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which [sic] are contrary to the best interests of the patient.

[¶...¶]

6. Section 2236 of the Code states, in part:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of the conviction shall be conclusive evidence of the fact that the conviction occurred.

[¶...¶]

(c) ... the division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine

7. Respondent went to E.R.'s home. They had a dispute, and she caused E.R. physical injury. E.R. called law enforcement, reported the argument, and said that respondent was hitting him. Sheriff's deputies arrived and investigated. They placed

respondent under arrest, and she resisted arrest. Pursuant to a plea agreement, the criminal complaint was amended to include a violation of disturbing the peace, as an infraction. After respondent completed 12 hours of anger management, the remaining criminal charges were dismissed.

When the board learned of the foregoing, the board conducted an investigation and interviewed respondent. When asked about medication that she was taking, respondent answered untruthfully. The board asked for, and respondent voluntarily submitted to, an evaluation by a board-approved psychiatrist. As part of the evaluation, respondent was required to respond to questions regarding psychiatric care and medications that she was taking. Again, respondent was untruthful.

Respondent's misconduct constitutes a violation of the American Medical Association's ethical standards. She was dishonest. As such, she engaged in unprofessional conduct.

8. Pursuant to Code section 2234, cause exists to discipline respondent's certificate in that she engaged in conduct that breached the rules of ethical conduct of the medical profession, that is unbecoming a member in good standing of the medical profession, and that demonstrates an unfitness to practice medicine. (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470.)

9. Complainant alleged that respondent's conviction of disturbing the peace in violation of Penal Code section 415 constituted a basis for discipline under Code section 2236 of the Code.

The language of Code section 2236 is unambiguous. Section 2236, subdivision (a) of the Code requires that an offense [of which respondent had been convicted] be substantially related to the qualifications, functions, or duties of a physician and surgeon. Section 2236, subdivision (c), allows the board to inquire into the circumstances surrounding the commission of a crime "to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon" only after looking at the crime/offense itself.

In this case, respondent was convicted of disturbing the peace in violation of Penal Code section 415. This crime is not substantially related to the qualifications functions or duties of a physician and surgeon.

10. Insufficient evidence was offered to establish that, cause exists to discipline respondent's certificate under section 2236; it was not established that conviction of disturbing the peace was an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

11. Cause exists to discipline respondent's certificate, in that she committed acts of dishonesty in violation of section 2234, subdivision (e).

12. The purpose of the Medical Practice Act is to assure the high quality of medical practice. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.) Conduct supporting the revocation or suspension of a medical license must demonstrate unfitness to practice. The purpose of a disciplinary action is not to punish, but to protect the public. In an administrative disciplinary proceeding, the inquiry must be limited to the effect of the doctor's actions upon the quality of his service to his patients. (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1416.) Because the main purpose of license discipline is to protect the public, patient harm is not required before the board can impose discipline. It is far more desirable to impose discipline on a physician before there is patient harm than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th, 757, 772-773).

13. Rehabilitation requires a consideration of those offenses from which one has allegedly been rehabilitated. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1048.) Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve one who has achieved reformation and regeneration. (*Id.*, at 1058.) The absence of a prior disciplinary record is a mitigating factor. (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132, fn. 10.) Remorse and cooperation are mitigating factors. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) While a candid admission of misconduct and full acknowledgment of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step. A truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.)

14. The board issued respondent's certificate more than 18 years ago. With the exception of this incident, there is no evidence that she has engaged in acts or omissions that may have constituted a basis for discipline. Insufficient evidence was offered to establish that respondent has engaged in similar misconduct previously.

Respondent was untruthful because she was concerned about her career and about what her patients would think of her. During the hearing, when responding to questions that were uncomfortable for her, respondent was evasive, and she looked very uncomfortable. Her responses and demeanor caused questions about the sincerity of her apology and whether she has learned from the experience. As such, some period of probation with appropriate terms and conditions is necessary to protect the public.

Based on the evaluation by Dr. Heh, complainant seeks a term of probation that requires that respondent comply with treatment and medication. However, even with respondent's dishonest answers, Dr. Heh concluded that respondent is safe to practice medicine if she complies with treatment and medication. Of concern was respondent's dishonest conduct during the investigation, evaluation by Dr. Heh and her evasive responses regarding the same issues in the hearing. For the foregoing reasons, this condition is appropriate.

ORDER

Certificate Number G59083 issued to Kim Allison Gutner is revoked. However, the order of revocation is stayed, and Kim Allison Gutner is placed on probation for three years upon the following terms and conditions.

1. 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 she shall successfully complete 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 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.

2. Compliance with Medication and Treatment

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the board or its designee the name and address of her California-licensed board certified psychiatrist. Respondent shall continue treatment with her psychiatrist until the board or its designee deems that no further psychotherapy is necessary.

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

Respondent shall comply with all treatment recommendations and medications prescribed by her psychiatrist.

Respondent shall have the treating psychiatrist 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 psychiatric evaluations and treatment.

3. 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. He 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.

4. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

5. 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.

6. Quarterly Reports

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.

7. General Probation Requirements

- A. ***Compliance with Probation Unit*** – Respondent shall comply with the board’s probation unit and all terms and conditions of this Decision.
- B. ***Address Changes*** – At all times, respondent shall keep the board informed of respondent’s business and residence addresses, email address (if available), and telephone number(s). 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).
- C. ***Places of Practice*** - Respondent shall not engage in the practice of medicine in his place of residence. Except as required by Pacific Medical Care Mobile Services, respondent shall not engage in the practice of medicine in a patient’s place of residence. Should respondent cease employment with Pacific Mobile Services, respondent shall not engage in the practice of medicine in respondent’s or a patient’s place of residence unless the patient resides in a skilled nursing facility or other similar licensed facility.
- D. ***License Renewal*** - Respondent shall maintain a current and renewed California Physician’s and Surgeon’s Certificate.
- E. ***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 that lasts, or is contemplated to last, more than 30 calendar days.

In the event respondent leaves 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.

8. Interview with the Board or Designee

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

9. Non-practice While on Probation

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, as defined in Business and Professions Code sections 2051 and 2052, is any period of time that respondent is not practicing medicine in California, 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 that 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, prior to resuming the practice of medicine, respondent shall successfully complete a clinical training program that meets the criteria of Condition 14 of this Order.

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.

10. 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 board and delivered to the board or its designee no later than January 31 of each calendar year.

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, after giving respondent notice and the opportunity to be heard, the board may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, 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

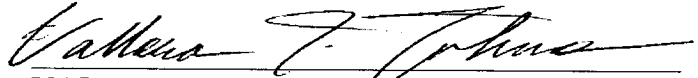
Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his license. The board reserves the right to evaluate respondent's request and to exercise its discretion 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, within 15 calendar days, respondent shall deliver his wallet and wall certificate to the board or its designee, and he

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. 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: March 19, 2015



VALLERA J. JOHNSON

Administrative Law Judge

Office of Administrative Hearings