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

In the Matter of the Accusation Against:	)	
AKIKUR REZA MOHAMMAD, M.D.	)	Case No. 800-2015-018616
Physician's and Surgeon's Certificate No. A64769	)	OAH No. 2017050642
Respondent	)	

DECISION

The Proposed Decision of Julie Cabos-Owen, Administrative Law Judge, dated November 17, 2017 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. 800-201-018616 is stricken and replaced with Case No. 800-2015-018616.

2. Page 1, in the caption box and the first paragraph, third line, Respondent's first name is corrected to read "Akikur."

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 March 1, 2018.

IT IS SO ORDERED January 30, 2018.

MEDICAL BOARD OF CALIFORNIA

By: Kristina Lawson

Kristina Lawson, JD, Chair
Panel B

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

In the Matter of the Accusation Against: AKIKU REZA MOHAMMAD, M.D. Physician's and Surgeon's Certificate No. A 64769, Respondent.	Case No. 800-201-018616 OAH No. 2017050642

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, on October 26, 2017, in Los Angeles, California. Complainant was represented by Chris Leong, Deputy Attorney General. Akiku Reza Mohammad, M.D. (Respondent) was present and was represented by Gary Wittenberg, Attorney at Law.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on October 26, 2017.

FACTUAL FINDINGS

1. On April 26, 2017, Kimberly Kirchmeyer (Complainant) filed the Accusation while acting in her official capacity as the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

2. Respondent filed a Notice of Defense requesting a hearing on the Accusation, and this matter ensued.

3. On April 3, 1998, the Board issued Physician's and Surgeon's Certificate Number A 64769 to Respondent. That certificate was in full force and effect at all relevant times and is scheduled to expire on August 31, 2019.

4(a). On October 19, 2015, in the Superior Court for the State of California, County of Los Angeles, Respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23103 (alcohol related reckless driving), a misdemeanor.[1]

4(b). Respondent was placed on summary probation for 24 months and ordered to pay $2,445 in fines and to complete an 18-month second offender alcohol and drug counseling program. The court waived the 18-month program, and Respondent was allowed to complete other measures prior to his conviction. (See Factual Finding 6.)

4(c). On October 12, 2017, the criminal court dismissed Respondent's conviction pursuant to Penal Code section 1203.4.

5. The facts and circumstances surrounding Respondent's 2015 conviction are as follows: Just before 1:30 a.m., on July 12, 2012, after Respondent consumed wine at a restaurant with a friend, he decided to drive home while intoxicated. A police officer stopped Respondent for driving too fast. During the stop, the officer smelled the odor of alcoholic beverage emanating from inside Respondent's vehicle. Respondent was asked to perform field sobriety tests, but was unable to do so. Preliminary alcohol screening test results indicated that Respondent's blood alcohol content (BAC) was: .147 percent (at 1:53 a.m.), .164 percent (at 1:57 a.m.), and .158 percent (at 2:00 a.m.). Respondent told the officer that he had undergone a kidney transplant, that he was not feeling well, and that he had to take medication. Respondent was transported to the hospital where he submitted to a blood draw. The result of the blood draw indicated that he had a BAC of .17 percent.

6(a). After his arrest in 2012, but before his sentencing in 2015, Respondent voluntarily took steps to address concerns about his driving under the influence of alcohol.

6(b). For 90 days, beginning September 2, 2012, Respondent voluntarily participated in the SCRAM electronic monitoring program wherein an electronic monitoring bracelet was placed on his ankle to conduct transdermal monitoring of the alcohol in his system. If any measurable amount of alcohol had been detected, the device would have transmitted that information to the SCRAM program. However, the SCRAM system detected no alcohol consumption or tampering by Respondent. Respondent also voluntarily had an ignition interlock device installed on his vehicle for a couple of months, beginning in August 2012.

6(c). Beginning July 19, 2012, Respondent began attending Smart Recovery Groups every Thursday. Respondent described Smart Recovery as a cognitive behavior therapy group which provides a "non-religious" alternative to Alcoholics Anonymous (AA) meetings. Respondent also attended AA meetings two times per week from July 23, 2012

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[1] Respondent was originally charged on August 14, 2012. However, the criminal matter was continued due to an appeal.

through October 8, 2012. After October, 2012 and until the present, Respondent has continued attending Smart Recovery meetings once per week.

6(d). In July or August 2012, Respondent also began attending psychotherapy sessions with licensed clinical psychologist, Dr. Sarabjit Magat, Psy.D. He continued that therapy through November 2015.

6(e). Respondent voluntarily participated in these monitoring and rehabilitative measures to "show in good faith to the criminal court and [the Board] that [he was] taking proactive actions to prevent the mistakes [he] made in [his] life and that it was not going to happen again."

6(f). On October 12, 2012, Respondent submitted to the criminal court proof of his voluntary SCRAM monitoring, ignition interlock installation, attendance at Smart Recovery and AA meetings, and psychotherapy sessions. The court accepted these measures in lieu of an 18-month second offender alcohol and drug counseling program.

7(a). Although it is not, in itself, cause for discipline, the following is considered in determining the level of discipline, if any: On May 17, 2010, in the Superior Court for the State of California, County of Los Angeles, Respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b) (driving with a BAC of .08 percent or higher), a misdemeanor. Respondent was placed on probation for 36 months and ordered to complete a three-month first-offender alcohol and drug counseling program. Respondent's probation was terminated early on January 12, 2012.

7(b). On July 27, 2010, the Board sent Respondent a letter stating, "Thank you for your attorney's notification . . . regarding your misdemeanor conviction on 17 May 2010. The Board has reviewed all relevant court/arrest records and has decided that no further action is warranted at this time. Your case is being closed and will remain on file for future reference. Please be aware that any future arrests of a similar nature may lead to further investigation and possible disciplinary action by the Board." (Exhibit B.)

8. At the time of his 2012 arrest, Respondent had no patients scheduled for the day. Respondent maintained that he has never been intoxicated or impaired when seeing patients.

9. Respondent is ashamed of his intoxicated driving on July 12, 2012. He characterized his decision to drink and drive as "one of the two biggest mistakes in [his] life." He continues to do "everything possible [to ensure] that this will not happen again."

10. Respondent sought to assure the Board that his second alcohol-related arrest was "a wake-up call" and it "will never happen again." He continues to attend Smart Recovery "to give [him] a reminder." He has also continued to abstain from drinking alcohol and does not want to drink because "it impairs a person's judgment." Respondent also

employs a full-time driver, and refrains from driving except for the occasional weekend errand.

11. Respondent is a board certified psychiatrist specializing in addiction. He has a private practice seeing mostly patients suffering from addiction or a dual diagnosis of addiction and another psychiatric disorder. In addition to his private practice, Respondent founded two drug rehabilitation facilities, but is currently involved with only one of those facilities (with multiple locations), performing most administrative duties with some patient care. Respondent is an associate professor at the University of Southern California (USC), teaching medical students and residents on a voluntary basis. Respondent has never had any privileges restricted or revoked.

12. In 2012, Respondent underwent a kidney transplant, and in 2013, he cut back on his work hours.

13. Respondent would like to continue practicing medicine without restriction. He does not believe he suffers from an alcohol use disorder, and he denies that he poses a danger to patients or to the public.

14(a). On November 19, 2012, and August 2, 2017, Respondent voluntarily underwent psychiatric evaluations with Richard S. Sandor, M.D., who specializes in addiction.[2] In his written reports, dated December 13, 2012 and August 2, 2017, Dr. Sandor concluded that Respondent does not have a substance abuse disorder.

14(b). In his December 13, 2012 report Dr. Sandor explained his conclusion:

> Put simply, I find no evidence that [Respondent] has either a psychiatric or substance abuse disorder. He recognizes that his DUI's were serious errors of conduct, for which he is appropriately and genuinely ashamed. He takes full responsibility for his actions and blames no one but himself.
>
> [I] have a number of cases of otherwise thoroughly responsible people (physicians, attorneys, professors) who have had a second DUI – not a third, but a second. Most adults in the United States drink alcohol. Many on one occasion or another, have drunk enough that had they been stopped while driving, would have had a blood alcohol level above the legal limit. One would think that such an event would be enough to "learn the lesson." But for a number of people, it just isn't. For a while after a first DUI, people will remain rigidly abstinent – out

[2] The November assessment was conducted to determine whether there was a basis to require Respondent to undergo treatment for addiction. The August re-evaluation was conducted because this administrative hearing was imminent, and there had been a five-year lapse since the first evaluation.

> of fear, if nothing else. But with time, the fear, shame and remorse fade, and the individual begins to have a drink from time to time. Nothing untoward happens, and the individual gradually forgets the horror of the DUI. They stop being so vigilant and become susceptible to repeating the same situation happening all over again. This sequence of psychological events leading to a second DUI is in no way pathological and, in itself, does not necessarily indicate a more serious problem with alcohol use. The diagnosis of alcohol abuse requires a multiplicity of alcohol-related problems in different areas of an individual's life. Primarily, the condition is marked, as is noted in the Diagnostic and Statistical Manual of Psychiatry [*sic*][[3]](DSM), by "a maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following." There then follow descriptions of different aspects of life which are affected by drinking. Chief among these aspects for a professional life is the "failure to fulfill major role obligations at work." [Respondent] simply does not meet the criteria for this diagnosis. . . .

(Exhibit K.)

14(c). In his August 2, 2017 report, Dr. Sandor noted Respondent's updated history as follows:

> [Respondent] has had no additional problems related to the use of alcohol since I interviewed him five years ago. . . . Interestingly, [Respondent] has become completely abstinent since we last met five years ago. He notes, "I don't miss it. I mean, if I go out I'm perfectly happy to have water or green tea. And anyway, it isn't good for my kidney condition. So I just don't bother with it." He reports that his family life is good. . . [and he] reports no medical problems. He is currently operating two residential treatment programs -- one in Agoura Hills, the other in Malibu. Here he sees patients with substance use disorders and co-occurring psychiatric disorders ("dual diagnosis"). He enjoys his work and feels that he is very good at it. He no longer carries hospital privileges because he no longer wants to do inpatient psychiatry. He has kept his privileges at USC where he still teaches. He has published a book on addiction and lectures to medical students on addiction about every six weeks. In addition, he has medical students participate with him in his practice for periods of two weeks [several] times a year.

(Exhibit L.)

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[3] The Administrative Law Judge takes official notice of the Diagnostic and Statistical Manual of Mental Disorders as a generally accepted tool for diagnosing mental and developmental disorders. The DSM-5, published in 2013, is the most recent edition of the DSM.

14(d). In his August 2, 2017 report, Dr. Sandor concluded, "I stand by my original evaluation of [Respondent]. There is no evidence whatever that he has a substance use disorder." (Exhibit L.) Dr. Sandor also noted Respondent's reputation in the community, stating, "Although we do not work together, and I do not know him except through my evaluations, I work in the same geographic area and with the same kinds of patients that [Respondent] sees. As a result, some of my colleagues have worked with him at other treatment centers, so I have independent information on his reputation among treatment providers in the field. I have never heard any of them say that he was unreliable, unreachable, incompetent or anything else typical of a substance-abusing physician." (*Ibid.*)

15(a). Dr. Sandor testified credibly on Respondent's behalf and reiterated the opinions set forth in his report. He confirmed that he reviewed sufficient materials and spent sufficient time with Respondent to render opinions regarding whether Respondent suffers from alcohol use disorder and whether Respondent is safe to practice medicine without restriction. Based on his evaluations, Dr. Sandor credibly opined, to a reasonable degree of medical certainty, that Respondent does not meet the criteria under the DSM-5 for a diagnosis of alcohol use disorder.

15(b). Dr. Sandor noted that when he is evaluating people with substance use disorders, they are evasive and they tend to "gloss over fact and not tell [him] everything." However, Respondent was "very forthcoming" and "took responsibility for his bad decision to drive after drinking on two occasions."

15(c). The fact that Respondent has suffered two alcohol-related driving convictions prompted Dr. Sandor to "look at [Respondent's case] more carefully" to determine whether the convictions "represent a pattern." However, Dr. Sandor credibly opined that in Respondent's case, his convictions did not represent a pattern but were indicative that Respondent, like others, did "not get the lesson the first time." Dr. Sandor maintained that two convictions do not necessarily establish a substance use disorder, but acknowledged his analysis does not extend to three convictions. Dr. Sandor opined that it was extremely unlikely that Respondent would suffer another alcohol-related driving conviction. Dr. Sandor also noted that Respondent had abstained from alcohol consumption for five years, and with such abstinence Respondent could not have an alcohol use disorder.

15(d). Dr. Sandor pointed out that in order to meet the DSM-5 criteria for an alcohol use disorder there must be a problematic pattern of alcohol use leading to clinically significant impairment, "meaning that the person ought to seek help." The DSM-5 then lists a number of observable manifestations and behaviors typically demonstrated by addicts which Respondent did not display. Dr. Sandor also pointed out that a substance use disorder is a progressive disorder, rather than event-based. Consequently, two isolated events will not qualify for a diagnosis. One of the listed observable behaviors on which to base an alcohol use disorder diagnosis is that there will be a failure to fulfill obligations at work (e.g. not showing up at work, unreachable by staff, etc.) either because the person is intoxicated or is trying to recover. If a problem exists, there will be reports at work. Dr. Sandor saw no

evidence that Respondent was ever intoxicated while practicing medicine, that there were any complaints by staff, or that he had any history of discipline by any hospital or other facility.

15(e). Dr. Sandor's evaluation contained an added avenue of insight, since he and Respondent work in the same geographic area and same area of practice (addiction medicine). According to Dr. Sandor, counselors in addiction treatment programs are either recovering addicts or very well-trained practitioners, so they are "savvy" in determining if someone has a drug or alcohol problem. He noted that a practitioner with an active and untreated disorder "cannot work in this field" and "such a problem is not tolerated in this field." Dr. Sandor is "confident that counselors would pick up on [any] indication [that] someone had a substance use disorder." Respondent received "glowing" letters of recommendation from practitioners who had worked with Respondent for a long time, "and addicts don't get [such recommendations from people who] are trained to know."

15(f). Dr. Sandor also obtained a Controlled Substance Utilization Review and Evaluation System (CURES)[4] report to check Respondent's prescription history and to assess whether he suffered from a drug problem. He determined that the prescriptions issued to Respondent were medically indicated, and there was no evidence of "doctor shopping" to inappropriately obtain medications.

15(g). Dr. Sandor credibly concluded that Respondent does not pose a danger to patients or the public and that he is fit to continue practicing medicine. Dr. Sandor further opined that if there is no diagnosis of a disorder, as in this case, there is no need to recommend restrictions or treatment for a disorder (e.g., random drug testing, alcohol dependency treatment, etc.).

16(a). Respondent has the support of colleagues and friends who submitted letters and testified on his behalf in support of his continued licensure. They collectively characterized him as an outstanding teacher and mentor, and a well-respected, highly-qualified and skilled practitioner.

16(b). Edward Moore, M.D., testified credibly on Respondent's behalf. Dr. Moore is a California-licensed psychiatrist who is board certified in addiction medicine. He suffered from his own addiction problem and participated in the Board's now defunct diversion program. After graduating from that program in 1995 and until approximately 2006, he sat on diversion evaluation committees, tasked with evaluating new participants and guiding their recovery. Dr. Moore is currently an assistant professor of psychiatry at USC. He met Respondent in 2001, when he was going through his psychiatry residency and Respondent was an attending physician, and he has kept in touch with Respondent since that time. Dr. Moore described Respondent as an extremely compassionate and dedicated doctor, and he

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[4] CURES allows healthcare prescribers, pharmacists, law enforcement, and regulatory boards to access patients' and providers' controlled substance prescription histories. CURES is intended to assist in the reduction of prescription drug abuse in California

confirmed that Respondent's "degree of professionalism is unquestioned." Respondent is well-respected in the addiction treatment community of Los Angeles. Dr. Moore has never seen any sign that suggested Respondent was impaired or that he suffers from a substance use disorder.

16(c). Ryan Kerbow, Attorney at Law, testified credibly on Respondent's behalf. Mr. Kerbow is a licensed attorney in Nevada and California. He has known Respondent for 10 years, since being introduced by a mutual friend. Mr. Kerbow observed that Respondent is a reliable person, and he has never seen any indication that Respondent has an alcohol or substance abuse problem. Mr. Kerbow and Respondent share a special bond because Respondent has Mr. Kerbow's kidney. If Respondent had demonstrated a substance abuse problem, Mr. Kerbow would have factored that into his decision to become Respondent's kidney donor. Mr. Kerbow is aware of Respondent's two convictions, but does not believe that these two lapses in judgment are characteristic for Respondent.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code sections 2234, subdivision (a), and 2239, on the grounds that Respondent used alcoholic beverages in such a manner as to be dangerous to Respondent and to the public, as set forth in Factual Findings 4 and 5.

2. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code sections 2234, subdivision (a), 2236, subdivision (a), and 490, and California Code of Regulations, title 16, section 1360, on the grounds that Respondent has been convicted of a crime substantially related to the qualifications, functions and duties of a licensed physician and surgeon, as set forth in Factual Findings 4 and 5.

3. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code section 2234, subdivision (a), on the grounds that Respondent engaged in unprofessional conduct, as set forth in Factual Findings 4 and 5.

4. Pursuant to California Code of Regulations, title 16, section 1360.1:

> When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:
>
> (a) The nature and severity of the act(s) or offense(s).

(b) The total criminal record.

(c) The time that has elapsed since commission of the act(s) or offense(s).

(d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

5(a). "Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public." (*Griffiths, supra*, 96 Cal.App. 4th 757, 768, citing *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785–786.)

5(b). Business and Professions Code section 2229 provides, in pertinent part:

(a) Protection of the public shall be the highest priority for the Division of Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

(b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel, [or] the division . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee . . .

6. Business and Professions Code section 2227, subdivision (a), provides:

(a) A licensee whose matter has been heard by an administrative law , 11371 of the Government Code, . . . and who is found guilty, or who has entered into a stipulation for disciplinary action with the division, may, in accordance with the provisions of this chapter:

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

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

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

(4) Be publicly reprimanded by the division.

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

7(a). In addressing the Board's paramount concern, protection of the public, the analysis must focus on the likelihood that Respondent will again use alcohol in a dangerous manner. The Board is not required to postpone imposition of discipline until a problem with alcohol begins to affect a physician's work. (*In re Kelley* (1990) 52 Cal.3d 487, 495.) A physician suffering from clouded judgment may cause harm or death, and even one instance of work-related alcohol use could pose a grave danger to patients. However, there must be a likelihood of recidivism which requires protection of the public.

7(b). The evidence established that Respondent does not have an alcohol use disorder and does not pose a future threat to patients or to the public in general. The credible testimony of Dr. Sandor established that there is virtually no likelihood of recidivism based on any underlying psychological disorder and that there is no need to provide treatment (counseling, urine testing, etc.) for a disorder which does not exist. Nevertheless, even absent an underlying disorder, the analysis must address the likelihood that Respondent will engage in any future lack of judgment similar to the two times he drove while intoxicated.

7(c). Although Respondent's 2015 conviction was incurred only two years ago, the underlying incident took place over five years ago, and the conviction was dismissed in October 2017. However, this was Respondent's second alcohol-related driving conviction, and it involved driving while intoxicated only a few months after early termination of his prior criminal probation for his 2010 conviction. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that an applicant has engaged in good behavior while on probation or parole. (See, *In re Gossage* (2000) 23 Cal.4th 1080.) In this case, Respondent's probation for his 2015 conviction was terminated only one month ago. Consequently, there has been little passage of time to assess Respondent's rehabilitation while released from the command of the criminal justice system.

7(d). Nevertheless, the extent of Respondent's rehabilitation has surpassed mere adherence to criminal probationary conditions and idly awaiting the passage of time. Recognizing the enormity of the impact of his second alcohol-related driving conviction, Respondent immediately took proactive rehabilitative steps to address any safety concerns and to prevent recurrence. Respondent voluntarily participated in the SCRAM electronic monitoring program, installed an ignition interlock device on his vehicle, attended

psychotherapy sessions with a licensed clinical psychologist from 2012 through 2015, and has been attending Smart Recovery Groups meetings since 2012. He has acknowledged his poor judgement and expressed remorse for his crime. He has also abstained from alcohol use for over five years. Respondent is a highly-skilled, dedicated, and reliable physician, with no indicia of alcohol use at work and an excellent reputation as a practitioner in the addiction medicine community. The totality of the evidence indicates a lesser chance of recidivism, although not a guarantee.

7(e). As set forth in Business and Professions Code sections 2227 and 2229, there are several types of discipline which may be imposed to serve the goals of licensee rehabilitation and public protection. Given the totality of the evidence, imposition of discipline in the form of probation and probationary terms (which would include psychological evaluation, group therapy, and biological fluid testing) is not warranted to ensure public safety, nor is there any need to impose such discipline for rehabilitative purposes. Consequently, a public reprimand will best protect the public without imposing overly harsh and punitive discipline on Respondent.

8(a). The Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition/2016) has been supplemented by the Board's Uniform Standards for Substance Abusing Licensees (2015) as follows:

(1). California Code of Regulations, title 16, section 1361 (Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees), provides in pertinent part:

> (a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the Medical Board of California shall consider the disciplinary guidelines entitled "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (12th Edition/2016) which are hereby incorporated by reference. Deviation from these orders and guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines by adoption of a proposed decision or stipulation that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.
>
> (b) Notwithstanding subsection (a), the Board shall use the Uniform Standards for Substance-Abusing Licensees as provided in section 1361.5, without deviation, for each individual determined to be a substance-abusing licensee. . . . (Emphasis added.)

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(2). California Code of Regulations, title 16, section 1361.5 (Uniform Standards for Substance-Abusing Licensees), provides in pertinent part:

> (a) If the licensee is to be disciplined for unprofessional conduct involving the use of illegal drugs, the abuse of drugs and/or alcohol, or the use of another prohibited substance as defined herein, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code.
>
> (b) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board's disciplinary guidelines referenced in section 1361 that the Board determines is necessary for public protection or to enhance the rehabilitation of the licensee.
>
> (c) The following probationary terms and conditions shall be used without deviation in the case of a substance-abusing licensee: (1) Clinical Diagnostic Evaluations and Reports; [¶] (2) Notice of Employer or Supervisor Information; [¶] (3) Biological Fluid Testing; [¶] (4) Group Support Meetings; [¶] (5) Worksite Monitor Requirements and Responsibilities; [¶] and (6) The licensee must remain in compliance with all terms and conditions of probation. . . . (Emphasis added.)

8(b). The language of California Code of Regulations, title 16, sections 1361 and 1361.5 indicate that, although the Uniform Standards for Substance-Abusing Licensees must be followed without deviation, variation from the Manual of Model Disciplinary Orders and Disciplinary Guidelines is allowed. Given the discretion allowed in Business and Professions Code section 2227, a variation from the Manual of Model Disciplinary Orders and Disciplinary Guidelines would include imposition of discipline other than probation, such as a public reprimand.

8(c). The language of California Code of Regulations, title 16, sections 1361 and 1361.5 requires that, if a licensee is disciplined for unprofessional conduct involving the abuse of alcohol, "the licensee shall be presumed to be a substance-abusing licensee," and the "probationary terms and conditions [from the Uniform Standards for Substance-Abusing Licensees] shall be used without deviation in the case of a substance-abusing licensee." In this case, the presumption that Respondent is a substance-abusing licensee has been rebutted.

8(d). Additionally, the language of the regulations apparently presumes that the discipline imposed on the licensee will be probation, rather than a public letter of reprimand. This language calls into question the effect of the regulations on the statutory discretion afforded when imposing discipline. Business and Professions

Code section 2227 identifies probation and public reprimand as separate and distinct forms of license discipline. In this case, no probation is imposed, and there is no cited statute or case law which specifically requires the probationary terms in the Uniform Standards for Substance-Abusing Licensees to be imposed along with a public reprimand. If the probationary terms set forth in the Uniform Standards for Substance-Abusing Licensees must be imposed with any discipline, this would convert all discipline to probation, including instances where probation is not warranted. This would negate the discretion afforded in Business and Professions Code section 2227 and acknowledged in California Code of Regulations, title 16, section 1361, subdivision (a). Such an unreasonable interpretation of the disciplinary statutes and regulations would result in unduly punitive discipline in some cases. Given the foregoing, California Code of Regulations, title 16, sections 1361 and 1361.5 do not mandate the imposition of the probationary terms and conditions in the Uniform Standards for Substance-Abusing Licensees when a public reprimand is issued, as in this case.

ORDER

Respondent is hereby reprimanded under Business and Professions Code section 2227, subdivision (a)(4).

DATED: November 17, 2017

DocuSigned by:
Julie Cabos-Owen
[illegible]

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the First Amended Accusation Against: **AKIKUR REZA MOHAMMAD, M.D.** **7018 Elmsbury Lane** **West Hills, CA 91307** **Physician's and Surgeon's Certificate No. A 64769,** Respondent.	Case No. 800-2015-018616 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about April 3, 1998, the Medical Board issued Physician's and Surgeon's Certificate Number A 64769 to Akikur Reza Mohammad, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2019, unless renewed.

JURISDICTION

3. This First Amended Accusation is brought before the Medical Board of California

(Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 802.1, of the Code provides as follows:

"(a)(1) A physician and surgeon, osteopathic physician and surgeon, a doctor of podiatric medicine, and a physician assistant shall report either of the following to the entity that issued his or her license:

"(A) The bringing of an indictment or information charging a felony against the licensee.

"(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

"(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or information or of the conviction.

"(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars ($5,000)."

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

6. Section 2234 of the Code states:

"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.

"(b) Gross negligence.

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

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate

for that negligent diagnosis of the patient shall constitute a single negligent act.

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

"(d) Incompetence.

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

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

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

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

7. Section 2236 of the Code states:

"(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. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality[1] of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The

[1] Pursuant to Business and Professions Code section 2002, "Division of Medical Quality" or "Division" shall be deemed to refer to the Medical Board of California.

prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

"(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order 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.

"(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred."

8. Section 2239 of the Code states:

"(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

"(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,

information, or indictment."

9. Section 490 of the Code states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

". . ."

10. California Code of Regulations, title 16, section 1360, states:

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

FACTUAL ALLEGATIONS

Arrest and Conviction – October 19, 2015

11. On or about July 12, 2012, Respondent was driving a 2001 Black Mercedes Benz S550 in the area of Calabasas Road and the 101 Freeway at approximately 1:21 a.m. Los Angeles County Sheriff's Deputy W. observed Respondent turn left (eastbound) onto Calabasas Road and then rapidly accelerate. Deputy W. followed the vehicle as it turned left (northbound) onto Valley Circle Boulevard and then it again rapidly accelerated to 71 m.p.h. in a posted 40 m.p.h.

zone. Respondent's vehicle then swerved from the number 1 lane to the number 2 lane and dangerously accelerated past a vehicle which was in lane number 1. Respondent continued to accelerate. Deputy W. measured Respondent's vehicle speed at 78 m.p.h. in a posted 45 m.p.h. zone.

12. Deputy W. conducted a traffic stop and noticed Respondent's eyes were red and watery and his speech was slurred. Deputy W. smelled the odor of an alcoholic beverage emanating from inside the vehicle. Deputy W. looked at Respondent's eyes and noticed they displayed a pronounced horizontal gaze nystagmus and a lack of smooth pursuit. Respondent agreed and attempted to perform field sobriety tests (FSTs), but he could not perform them. Respondent agreed to and submitted to preliminary alcohol screening (PAS) testing: the results were .147% at 1:53 a.m., .164% at 1:57 a.m., and .158% at 2:00 a.m. Respondent was transported to Los Robles Hospital where he submitted to a blood draw. The result of the blood draw showed a Blood Alcohol Content of .17%. Respondent was placed under arrest for violations of Vehicle Code section 23152, subdivision (a), (driving a vehicle while being under the influence of an alcoholic beverage), and Vehicle Code section 23154, subdivision (a) (probationer with a BAC of .01% or greater).

13. On or about August 14, 2012, in Los Angeles Superior Court in case number MB01716, entitled *People v. Akikur Reza Mohammad*, Respondent was charged with two misdemeanor counts of 1) violation of Vehicle Code section 23152, subdivision (a), (driving a vehicle while being under the influence of an alcoholic beverage), and 2) violation of Vehicle Code section 23152, subdivision (b) (driving a vehicle with .08 percent or more of alcohol in his blood).

14. On or about October 19, 2015, Respondent pled nolo contendere to a misdemeanor violation of Vehicle Code section 23103 (alcohol related reckless driving). Respondent was sentenced to two (2) years of informal probation, with terms and conditions, including, among other things, successfully complete an 18 month second offender alcohol and other drug education and counseling program, and fines in the amount of $2,445.00.

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FIRST CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

15. Respondent is subject to disciplinary action under section 2239 of the Code, in that he used alcoholic beverages to the extent, or in such a manner as to be dangerous or injurious to himself, or to any other person or to the public. The circumstances are as follows:

16. The allegations in paragraphs 11 through 14, inclusive, above are incorporated herein by reference as if fully set forth.

SECOND CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crimes)

17. Respondent is subject to disciplinary action under sections 2236 and 490, of the Code, in that he was convicted of offenses substantially related to the qualifications, functions, or duties of a physician. The circumstances are as follows:

18. The allegations in paragraphs 11 through 14, inclusive, are incorporated herein by reference as if fully set forth.

THIRD CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

19. Respondent is subject to disciplinary action under section 2234 of the Code, generally, in that he committed unprofessional conduct. The circumstances are as follows:

20. The allegations of the set forth in paragraphs 11 through 18, inclusive, above are incorporated herein by reference as if fully set forth.

DISCIPLINARY CONSIDERATIONS

21. On or about September 25, 2009, in Los Angeles Superior Court in case number 9VY04022, entitled *People v. Akikur Reza Mohammad*, Respondent was charged with two misdemeanor counts of: 1) violation of Vehicle Code section 23152, subdivision (a), (driving a vehicle while being under the influence of an alcoholic beverage), and 2) violation of Vehicle Code section 23152, subdivision (b) (driving a vehicle with .08 percent or more of alcohol in his blood). On or about May 17, 2010, Respondent pled nolo contendere to Count 2, a violation of Vehicle Code section 23152, subdivision (b) (driving a vehicle with .08 percent or more of

alcohol in his blood).

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 64769, issued to Akikur Reza Mohammad, M.D.;

2. Revoking, suspending or denying approval of Akikur Reza Mohammad, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Akikur Reza Mohammad, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: September 20, 2017

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

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