

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

In the Matter of the First Amended Petition
to Revoke Probation Against:

Margaret Melinda Sprague, M.D.

Physician's & Surgeon's
Certificate No G 56228

Respondent.

Case No.: 800-2023-095180

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

No action having been taken on the petition for reconsideration, filed by David M. Balfour, Esq. on behalf of Respondent, Margaret Melinda Sprague, M.D., and the time for action having expired at 5:00 p.m. on December 11, 2023, the petition is deemed denied by operation of law.

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MEDICAL BOARD OF CALIFORNIA
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**In the Matter of the First Amended
Petition to Revoke Probation Against:**

Margaret Melinda Sprague, M.D.

**Physician's & Surgeon's
Certificate No. G 56228**

Respondent.

Case No. 800-2023-095180

ORDER GRANTING STAY

(Government Code Section 11521)

David M. Balfour, Esq. on behalf of Respondent, Margaret Melinda Sprague, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of November 30, 2023, at 5:00 p.m.

Execution is stayed until December 11, 2023, at 5:00 p.m.

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

DATED: November 30, 2023



Reji Varghese
Executive Director
Medical Board of California

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MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the First Amended Petition to
Revoke Probation Against:

Margaret Melinda Sprague, M.D.

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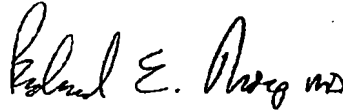
DECISION

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

This Decision shall become effective at 5:00 p.m. on November 30, 2023.

IT IS SO ORDERED October 31, 2023.

MEDICAL BOARD OF CALIFORNIA



Richard E. Thorp, M.D., Chair
Panel B

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

**In the Matter of the First Amended Petition to Revoke
Probation against:**

MARGARET MELINDA SPRAGUE, M.D.,

**Physician's and Surgeon's Certificate No. G 56228,
Respondent.**

Agency Case No. 800-2023-095180

OAH No. 2023040600

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 21, 2023, and September 5, 2023, by videoconference.

Giovanni F. Mejia, Deputy Attorney General, represented the complainant, Reji Varghesi, Executive Director, Medical Board of California (board).

David M. Balfour, Attorney at Law, represented the respondent, Margaret Melinda Sprague.

The record was closed, and the matter was submitted for decision on September 5, 2023.

FACTUAL FINDINGS

Background and Prior Disciplinary History

1. On October 7, 1985, the board issued to respondent Physician's and Surgeon's Certificate Number G 56228 (hereinafter certificate and/or license).
2. The following factual findings pertaining to respondent's disciplinary history and background were derived from documentary evidence (including prior board decisions), testimony presented at hearing, and the factual allegations in the first amended petition to revoke probation that were conclusively deemed established by stipulation.
3. Respondent graduated from the Medical College of Virginia in 1984. After receiving her license in 1985, respondent entered her internship at the University of California, Irvine. Respondent took a one-year leave of absence during her residency for maternity leave. She completed a psychiatric residency for two years at the University of California, San Diego, followed by a fellowship in child psychiatry.
4. Respondent had used cocaine prior to her residency, which later escalated into regular abuse. In the 1990s, respondent entered a residential treatment program at Hazelden, a facility in Minnesota. The in-patient portion of the program lasted 28 days. Respondent relapsed and began using cocaine about six months later. Respondent's husband told one of respondent's colleagues that respondent was abusing cocaine, and the colleague reported it to the board.

DIVERSION IN THE EARLY 2000'S

5. On December 5, 2001, respondent signed a "Statement of Understanding" wherein she expressed an interest in entering the board's diversion program, and she indicated she was aware the board had initiated an investigation. Respondent also admitted that she self-administered alcohol or drugs.

6. On December 10, 2001, respondent completed a "Diversion Program Application." She indicated she had a substance abuse problem, the primary substance was cocaine, and she had used it for 10 years. Respondent also signed an "Agreement During Evaluation Process," which outlined her contractual obligations. That advisement also indicated respondent could face administrative sanctions if she were terminated from the diversion program.

7. Between January 2002 and August 2002, respondent tested positive for cocaine metabolites on several occasions. Respondent was required to enter a halfway house treatment program, attend additional diversion group meetings, and obtain a sponsor, among other conditions. Respondent thereafter incurred multiple violations while within the diversion program, including missed biological fluid tests and relapse. Despite efforts to treat her addiction, respondent continued to test positive for cocaine on several occasions and was terminated from diversion.

2005 REVOCATION

8. On May 19, 2005, in Case No. 10-2001-125460, the board revoked respondent's license due to her inability to practice medicine safely as a result of her cocaine addiction. Pertinent portions of that decision are:

Respondent described the nature of her cocaine addiction as experiencing "fairly strong cravings and obsessions to use." She indicated the cravings were easy to ignore in Minnesota but they intensified in San Diego, and they could last for months. She felt she got some relief while at 12-step meetings but the relief was temporary. She pointed out recovery from crack cocaine addiction was a dismal prospect and most users relapse.

Respondent wrote in her report that a friend of hers called to tell her about a drug called Ibogaine.¹ She indicated it is derived from an African root used in rites of passage rituals for its hallucinogenic properties and it had been used in this country for its potential recreational value and found to relieve heroin addicts of their craving for heroin. She read an article about it and decided ibogaine could buy her some time and create enough mental space to build a strong program of recovery. She saw Ibogaine as an adjunct to a 12-step program. Respondent found a clinic in Rosarito Beach, Mexico, that administered ibogaine.....She experienced intense visual hallucinations that lasted hours.

¹ Ibogaine is a Schedule I controlled substance and a hallucinogenic drug. It has no legitimate clinical use in the United States, and has never been the subject of clinical tests. There is no scientific literature that supports its use but there is lay literature that purports to contain anecdotal testimonials.

... [S]he found ibogaine relieved her craving for cocaine. She described it as a "miracle." She felt relief "beyond description."

[¶] ... [¶]

[R]espondent wrote a letter to the diversion program [indicating] she had not ingested any contraband substance. She went on to criticize the diversion program and the violation of her rights.

[¶] ... [¶]

Dr. Kalish testified at the hearing that in his opinion, respondent represented an imminent threat to the public if she were allowed to practice medicine. He reasoned that respondent continued to use cocaine on numerous occasions even while she was actively participating in the diversion program, and she did not complete the program. He pointed out she failed to take advantage of the resources available to her. ...

[¶] ... [¶]

[R]espondent testified at length at the hearing, and her testimony can best be described as alternating between inappropriate laughter and tears. Respondent claimed she has been sober since July 31, 2002, and she had not taken any cocaine in September 2003. Her demeanor while

testifying inspired no confidence that she was either telling the truth or that she has remained sober for the last three years.

2019 PETITION FOR REINSTATEMENT

9. Approximately 11 years later, in 2016, respondent filed a petition to reinstate (reinstatement decision) her license in Case No. 800-2016-028304. During the hearing, respondent presented evidence of her completion of the University of California, San Diego's Physician's Assessment and Clinical Education program, which showed she was able to safely return to the practice of medicine, with certain terms and conditions.

10. Pursuant to a decision after non-adoption effective January 18, 2019, the board granted the petition but immediately revoked the license, stayed the revocation, and placed respondent's license on probation for five years subject to terms and conditions. Among those terms and conditions were:

- Condition No. 5: Biological Fluid Testing. Requires respondent to immediately submit to biological fluid testing upon request, and if positive results ensue, respondent is subjected to a cease practice order (CPO). This condition also requires respondent to maintain the laboratory service contract with the laboratory responsible for the service contract during her period of probation;
- Condition No. 8: Violation of Probation Condition for Substance Abusing Licensees, requires that a CPO be issued immediately and respondent be ordered to undergo a clinical diagnostic evaluation and test negative for a month before being allowed to return to practice;

- Condition No. 10: Alcohol – Abstain from Use. Requires respondent to abstain from the use of products or beverages containing alcohol.

11. Respondent's biological fluid testing program for her board probation consists of urine tests and blood tests administered by Vault Health, formerly FSSolutions. Most of Vault Health's clients are employers or licensing agencies. Vault Health does not operate laboratories to test biological specimens; rather, it acts as a third-party administrator to interface with clients and laboratories. It manages and monitors testing programs. The board contracts with Vault Health to monitor probationers' drug testing programs. Respondent must check every day to determine whether she is required to submit a specimen.

2019 CEASE PRACTICE ORDER

12. On February 6, 2019, less than three weeks after respondent's license was reinstated, the board issued a cease practice order (CPO) because respondent had failed to comply with a condition of her probation by testing positive for metabolites of alcohol on several occasions. The CPO required respondent to complete a clinical diagnostic evaluation (CDE) and show 30 days of negative biological fluid testing before resuming practice. Respondent complied with the conditions and the CPO terminated effective March 29, 2019.

CITATIONS AND ORDERS

13. On April 5, 2019, the board issued a citation order because respondent failed to comply with a condition of her probation on multiple occasions, i.e., she tested positive for metabolites of alcohol on specimens collected on January 29, January 31, February 3, February 22, February 24, and February 27, 2019. The citation order included a \$350 fine and an order of abatement.

14. On May 29, 2019, a board analyst advised respondent about a recent positive biological fluid sample received by the board and also advised respondent that should she continue to use, consume, or ingest any alcohol products, the board may take disciplinary action against respondent.

15. On June 20, 2019, the board issued a citation order because respondent failed to comply with a condition of her probation by failing to provide a required biological fluid sample on June 1, 2019. The citation order included a \$700 fine and an order of abatement.

16. On October 23, 2019, the board issued a citation order because respondent had failed to comply with a condition of her probation on multiple occasions, i.e., she tested positive for metabolites of alcohol on specimens collected on July 29, August 4, August 27, and September 1, 2019. The citation order included a \$1,400 fine and an order of abatement, and included a condition that respondent undergo a CDE and show 30 days of clean biological fluid testing. The order also advised respondent that she could face formal disciplinary action if she did not comply.

2022 PETITION TO REVOKE PROBATION

17. On February 18, 2022, the board filed a first amended petition to revoke probation against respondent in Case No. 800-2021-080216 and the matter proceeded to hearing in June 2022, and the board found cause to revoke respondent's license. The board found the following violations:

- On June 1, 2019, respondent ingested champagne, an alcoholic beverage. This constituted a failure to comply with condition number 10 of her

probation, and pursuant to California Code of Regulations, title 16, section 1361.52, subdivision (a)(6), a major violation of her probation.

- On June 28, 2021, respondent failed to undergo biological fluid testing when ordered. This constituted a failure to comply with condition number 5 of her probation, and pursuant to California Code of Regulations, title 16, section 1361.52, subdivision (a)(5), a major violation of her probation.
- On July 7, October 31, and November 8, 2021, positive biological fluid tests evidenced the use of alcohol, a prohibited substance. Within the terms of California Code of Regulations, title 16, section 1361.51, subdivision (f), those positive tests constitute major violations of Condition 10 of respondent's probation.

18. By decision and order effective January 19, 2023, as a result of the above-referenced probation violations of the probation imposed in the January 18, 2019, reinstatement decision, the board imposed the revocation that was stayed in the January 18, 2019, decision, stayed that revocation, and placed respondent's certificate on probation for five years subject to terms and conditions identical to the 2019 reinstatement decision, but added a few additional terms. Those terms and conditions included requirements that respondent abstain from the use of alcoholic beverages and submit to biological fluid testing, as follows:

ALCOHOL - ABSTAIN FROM USE

[R]espondent shall abstain completely from the use of products or beverages containing alcohol.

[I]f 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 the final decision on an accusation and/or a petition to revoke probation is effective. . . .

BIOLOGICAL FLUID TESTING

[R]espondent 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. 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. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the board or its designee within four hours of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

[¶] . . . [¶]

[I]f respondent fails to cooperate in a random biological fluid testing program within the specified time frame,

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 the final decision on an accusation and/or a petition to revoke probation is effective. . . .

There was substantial evidence presented during the hearing in the 2022 matter regarding respondent's mental health treatment and other evidence concerning whether she was safe to practice. The decision referenced a CDE that respondent was required to undergo pursuant to a CPO issued July 28, 2021, and testimony by the psychiatrist, who subsequently performed that CDE. The purpose of that CDE was to determine whether respondent had a mental condition, in particular, a substance use disorder, that could interfere with her ability to practice medicine safely. According to the psychiatrist that performed the CDE, there was no evidence of an alcohol use disorder or that respondent's continued practice of medicine posed a danger to the public. Respondent was diagnosed with major depressive disorder and cocaine use disorder that was in remission.

Notably, the expert in that hearing testified that the fact that respondent has a cocaine use disorder, in remission, warrants a requirement that she abstain from the use of products or beverages containing alcohol because use of a substance other than cocaine increases the risk of a relapse in the cocaine disorder. Put another way, consuming alcohol is a risk factor for relapsing in the cocaine disorder. The board reasoned [emphasis added]:

17. When a person has a substance abuse disorder, it is appropriate to condition a probationary license on abstinence from use of all substances that can lead to

dependence and abuse. Dr. Badre said the fact that respondent has a cocaine use disorder, in remission, warrants a requirement that she abstain from the use of products or beverages containing alcohol. Use of a substance other than cocaine increases the risk of a relapse in the cocaine disorder. **So in respondent's case, it was and is appropriate to condition her probation on abstinence from the use of alcohol. For at least two reasons, it is imperative that she comply with that condition. First, consuming alcohol could contribute to a relapse in her recovery. Second, in order to demonstrate a commitment to recovery and rehabilitation, probationers must comply with the board's conditions of probation.** So respondent's failure to abstain completely from the use of products or beverages containing alcohol is a matter of great concern. However, in this case, a few factors support the conclusion that respondent should be given another opportunity to abstain. **She should be given another opportunity to demonstrate that she can and will comply scrupulously with the board's conditions.**

[¶] . . . [¶]

22. Respondent testified that she plans to continue seeing Dr. Hubbard and Dr. Lindquist. Respondent has found online groups and usually attends six meetings per week. She plans to continue with SoberLink. She has

completed a third course of 36 treatments of TMS with Dr. Hubbard. In addition to the other 12-step meetings she attends, she continues with the Sunday smart-recovery meeting. Respondent has complied with the condition of her probation that requires additional hours of continuing medical education. Respondent declared that, in the future, she will comply fully with the condition that she abstain from the use of products or beverages that contain alcohol. She is committed to focusing on the critical importance of complying with the board's requirements. Respondent's testimony was highly credible.

23. This record supports a conclusion that respondent's license should be placed on probation again. . . .

19. In sum, the January 19, 2023, decision and order made it clear that respondent's strict compliance with the probationary conditions relating to abstinence from alcohol was necessary due to the danger of relapse in her cocaine use disorder, which could pose a threat to the public. Respondent committed to that premise.

Current Matter

2023 CEASE PRACTICE ORDER

20. Less than one month after the January 19, 2023, decision and order, on February 17, 2023, the board issued a CPO prohibiting respondent from engaging in the practice of medicine due to additional violations of the condition that respondent abstain from the use of alcohol. The CPO was to remain in effect until the resolution of this matter.

FIRST AMENDED PETITION TO REVOKE PROBATION

21. On March 14, 2023, complainant filed a petition to revoke probation against respondent, and on August 18, 2023, a first amended petition to revoke probation, which is the subject of this proceeding. The first amended petition to revoke probation alleged two causes for discipline as follows:

- First Cause to Revoke Probation: Respondent tested positive for metabolites of alcohol on December 29, 2022 (ethyl glucuronide and ethyl sulfate), and January 5, 2023 (phosphatidyl ethanol);
- Second Cause to Revoke Probation: Respondent failed to submit to a required biological fluid test on July 25, 2023, and failed to maintain a current service contract with the laboratory responsible for the biological fluid testing from July 25, 2023, through July 28, 2023.

22. Respondent timely filed a notice of defense to the first amended petition to revoke probation. This hearing followed.

Evidence Presented at Hearing

23. On the first day of hearing, the parties stipulated to the truth of the allegations contained in paragraphs 1 through 13 (background and first cause for discipline) and 18 through 24 (disciplinary considerations) of the first amended petition to revoke probation. The factual allegations in those paragraphs (and the first cause for discipline) are therefore incorporated by reference and deemed established.

TESTIMONY OF RUSSELL HUBBARD

24. Russell Hubbard graduated from Vanderbilt School of Medicine and completed an internship and residency in psychiatry at the University of California, San Diego (UCSD). He has been a licensed psychiatrist since 1972. Dr. Hubbard has served in faculty positions at UCSD in the Department of Psychiatry. Dr. Hubbard has worked in private practice in both outpatient and inpatient settings but stopped doing inpatient treatment about 20 years ago. He now focuses only on outpatient psychiatry. His practice has primarily focused on psychopharmacology. Dr. Hubbard did not testify as an expert, rather, he testified as a psychiatrist familiar with respondent's treatment. Dr. Hubbard also submitted a letter in support of his testimony. Dr. Hubbard's testimony and letter are summarized below.

Respondent started treating with Dr. Hubbard in summer of 2020 for treatment-resistant depression. Respondent continues to treat with Dr. Hubbard at present. Respondent's depression worsened in 2022, and she has also had struggles with Attention Deficit Hyperactivity Disorder and impulsive behavior. Dr. Hubbard does not make it a practice to ask respondent about her alcohol use, but recalled that respondent informed him she consumed alcohol in December 2022. Dr. Hubbard explained that respondent requested that he prescribe Antabuse in March 2023, which is a drug that makes a person sick if they consume any alcoholic beverages (due to a chemical reaction). Respondent has taken the Antabuse daily since March 2023 and has tolerated the medicine well. Respondent also requested he treat her with transcranial magnetic stimulation (TMS) to treat her depression. Respondent's TMS treatments are done in courses/blocks. A typical course or block of treatment lasts approximately seven weeks and consists of 37 separate sessions of about 20 minutes each. Her most recent block of treatment was about a month prior to the hearing.

Respondent is also on medication for her ADHD with positive results. Dr. Hubbard is aware that respondent uses a Soberlink² device, but does not know if she tests daily.

Dr. Hubbard consults with respondent's treating therapist, Patricia Lindquist, Ph.D., to craft appropriate treatment. Since commencing all the different treatments, respondent seems "better centered" in sessions with Dr. Hubbard. Treatment records provided supported Dr. Hubbard's testimony concerning his treatment of respondent.

TESTIMONY OF PATRICIA LINDQUIST

25. Patricia Lindquist obtained her Ph.D. in clinical psychology in 1979, undertook a fellowship in London from 1980 to 1983, and completed post-doctoral training from 1985 to 1990. She has been in practice for 44 years and specializes in the treatment of children and adults with depression, anxiety, and ADHD. Dr. Lindquist did not testify as an expert, rather, she testified regarding her treatment of respondent.

Respondent has been a psychotherapy patient of Dr. Lindquist since March of 2022. She has been working with respondent to address respondent's ADHD, specifically, respondent's impulsivity. Respondent has complained to Dr. Lindquist about difficulty multitasking, and excessive motor restlessness, and general frustration. Dr. Lindquist is aware respondent does a "daily breath test" with a nurse practitioner, attends Alcoholics Anonymous (AA) meetings, and works with Dr. Hubbard. Since March of 2023, as respondent's mood and depression improved, she has exhibited

² According to the board's decision effective January 19, 2023, the SoberLink device randomly advises when one is required to take a test, i.e., breath into the device. At the time one breathes into the device, it takes the person's photograph. Between two and four times a day, the device advises the user to take a test.

improved memory for detail, a greater ability to complete projects, more organization, and less verbal impulsivity. In a letter of support for respondent, Dr. Lindquist wrote that respondent requested a hearing because she is interested in extending her probation and in consolidating efforts for therapeutic self-care.

EVIDENCE REGARDING SECOND CAUSE TO REVOKE PROBATION

26. The following factual findings were derived from Jennifer Saucedo's testimony, and documents she referred to in her testimony. Ms. Saucedo has been an analyst for the board in the probation department since 2017. Her duties include monitoring doctors on probation. Respondent has been in her caseload since the board reinstated respondent's license. Ms. Saucedo reviewed the decision and probation conditions imposed in the reinstatement matter with respondent on January 14, 2019. After respondent violated probation and a petition to revoke probation was filed against her, she was placed on probation again, effective January 19, 2023. Ms. Saucedo reviewed that decision with respondent on January 19, 2023. Both decisions included a biological fluid testing condition and condition that respondent abstain from the use of alcohol. The biological fluid testing condition requires that respondent maintain a current account with Vault Health. It also requires respondent check in with Vault Health on a daily basis to see if a test is required. If one is required, a licensee is required to go to the appropriate location and submit to a biological fluid test.

Ms. Saucedo has access to respondent's status with Vault Health. According to Vault Health, respondent did not maintain a current contract with Vault Health from July 25, 2023, through July 28, 2023. Specifically, respondent's account was in arrears by \$290 on July 25, 2023, so the account was suspended. When an account is in suspended status, account holders do not receive a testing notification, rather, they receive a notification that their account is suspended. Respondent was selected to

submit to a biological fluid test on July 25, 2023. The records from Vault Health show respondent "attempted" to check in on July 25, 2023, through July 27, 2023, but could not do so because her account was suspended. On July 28, 2023, the records show respondent attempted to check in but did so outside of the allowed hours, and regardless, her account was still suspended. The records also show the message respondent would have received upon each check-in, which was accomplished with her cell phone. The message on each of the above-referenced dates stated, "Your account is suspended. You currently owe 290.00. Please pay to see your test message."

On July 28, 2023, Ms. Saucedo sent a letter to respondent advising her that the board was made aware respondent did not provide a biological fluid sample on July 25, 2023, despite having been selected. The letter requested respondent provide a statement regarding the missed test. On that same date, Ms. Saucedo also sent respondent an email advising her that her Vault Health account was in suspended status, and that she was required to maintain the account current to receive testing notifications. Ms. Saucedo also told respondent that she did not check in on July 26 or 27, 2023.

On July 31, 2023, respondent replied to Ms. Saucedo's email, and stated:

Thank you for alerting me to this issue. I thought I was checking in on the days in question. My routine is to check in first thing in the morning. If I do not see a notice to test, I log out and go about my day. I usually do not read the message in the box if I do not have to test. When I went back, logged in, and actually read the message, it was clear my account was suspended.

On that same date, respondent send another email to Ms. Saucedo indicating the following:

As I was reviewing my emails, I realized I totally missed the email from FSSolutions alerting me to my account suspension. I did not include that in the letter I sent but they did try to tell me.

RESPONDENT'S TESTIMONY

27. Respondent recounted in detail the circumstances of her cocaine addiction that led to her history of discipline with the board, most of which has been described above. Following the loss of her license in 2005, she tried many things for her depression but ultimately learned she had treatment resistant depression. At the time she lost her license, she was struggling with caring for her mother and having a sick husband. She was acting as a medical advocate for both of them. Respondent's mother died in 2013, and her husband died in 2014. In 2015, she started the process of trying to re-establish her license. Respondent entered the PACE program at UCSD. Once being deemed safe to practice, she filed a petition for penalty relief and was successful in having her license reinstated. The board imposed standard terms and conditions as well as those for substance abusing licensees, which she did not find to be unreasonable. Respondent understands that the board needs to protect the public.

Respondent acknowledged responsibility for the positive tests for alcohol she has had at hearing, but also admitted she lied in a letter to Ms. Saucedo dated January 9, 2023, wherein she said she did not consume alcohol on December 28, 2022 (and instead blamed it on food she may have eaten almost a week prior). Respondent feels she does not have the same kind of vigilance to remain abstinent from alcohol as she

does to remain abstinent from cocaine because she does not have alcohol use disorder. Respondent knows what addiction feels like and alcohol is not her “drug of choice.” She understands, however, that when people are addicted to one substance there is a concern that use of another substance can cause relapse, so she understands the board’s reason for the abstinence condition.

Respondent explained that she started undergoing TMS treatments in 2020 to help with her anxiety and depression. Respondent felt that it was the lesser of evils, because the only other options were electroconvulsive therapy or ketamine. She undergoes a course of TMS about every four months and feels that it works.

Regarding her consumption of alcohol on December 28, 2022, respondent admitted she consumed alcohol. Respondent’s daughter was in town and the whole family was present, so she had two glasses of wine. At the time she “realized it was just an impulsive thing.” She had been waiting for a decision to be issued on her previous probation violation matter (from 2022), and it was taking a long time. She could not find a job. She was having a lot of difficulty with things “hanging over” her head so it worsened her depression. She explained that because of her ADHD and impulsivity, there is a disconnect between thoughts and reactivity. She opined, “my impulsive problems can get me in trouble . . . it was just so stupid . . . there is no defense for this kind of thing.” Respondent said she has never been intoxicated, never driven intoxicated, and was just “not paying attention.”

Currently, respondent uses the Soberlink device to “try to increase [her] awareness” of alcohol because alcohol just does not raise an alarm for her. She submitted reports from March of 2022 through May of 2023, which showed her testing frequency and results. Those reports, for the most part, show she uses the device consistently, but there were a few times she did not use it. Respondent knows a lot of

people also use Antabuse for alcohol use disorder, so she figured that might help her as well. She asked Dr. Hubbard to prescribe it for her. There are no side effects unless a person consumes alcohol. She feels the use of Antabuse is an "additional deterrent" because it "short circuits" her thinking about "consequences." Respondent attends AA meetings three or four times a week and said she "treasure[s] her recovery community." She sees Dr. Hubbard monthly, Dr. Lindquist once per week for psychotherapy, exercises, sings in a chorus, and spends time with her dog. She also has a fiancé who lives with her who has shown her enormous support.

The last time respondent practiced medicine was Spring of 2020. She was working at a clinic in Los Angeles when the pandemic started and she lost her job due to the uncertainty surrounding the pandemic. She looked around for work but the only types of jobs she could find were home health, and she could not find a practice monitor.

Respondent said she "did PACE again" sometime in 2021 or 2022 and took "another" neuropsychological exam and remains safe to practice, but she just cannot find work.

Regarding the second cause for discipline, respondent said she has always checked in with Vault Health on a daily basis. She brings the application up on her cell phone, clicks into the site, and enters her information. Once signed in, there is a button to check in, and usually after that, it will tell you whether you need to submit to a biological fluid test. Respondent said she checked in July 25, 2023, through July 28, 2023, but did not see anything that told her there was any issue with her account. Respondent noted that she did change her credit card on file with Vault Health on June 30, 2023, so that may have been a problem. As soon as she found out there was a problem, she rectified it. She noted there was nothing on the screen that informed her

any of those days that there might have been a problem with her credit card going through, and she was not aware of any issue until Ms. Saucedo told her on July 28, 2023, that the account was suspended. She also noted that she did not test with Soberlink on July 25, 2023, through July 28, 2023.

Respondent plans to continue following her course of therapy, treatment, self-help groups, and other efforts to remain compliant. She will do "whatever it takes" to remain on probation.

The Parties' Arguments

28. Complainant argued: Respondent has demonstrated a consistent inability to comply with board requirements, and more recently, with probation conditions. Her license was revoked in 2005. After she was reinstated, she was placed on probation. She continued her pattern of noncompliance, which led to a petition in 2022 to revoke probation. She was placed on probation again, and has now violated again. Notably, in the 2022 petition to revoke probation, the board referenced all that respondent was doing to treat her addiction, such as seeing Dr. Lindquist, seeing Dr. Hubbard, and using Soberlink, among other things. Yet, respondent is here again having violated her probation despite doing all these things. Finally, respondent did not exercise due diligence in maintaining a valid account with Vault. Respondent's probation is therefore subject to revocation.

29. Respondent argued: She takes this matter seriously. She admits consuming alcohol in December 2022 and has no excuses. She understands the purpose of the board's testing program is to ensure abstinence and assist in rehabilitation, but the board has not approved any recent employment requests. When respondent had previously been working in 2019 and 2020, however, she remained

abstinent. Since not being able to work, respondent's depression and impulsivity has been worse. She has certainly been more stressed since the February 2023 CPO but continues to pursue rehabilitation. She uses the Soberlink device, takes Antabuse, pursued TMS treatment for medication resistant depression, and has remained abstinent for the past eight months. She is not addicted to alcohol and does not have an alcohol use disorder. Respondent also used due diligence regarding her Vault account. The process of checking in created confusion, but when she found out there was a problem, she immediately updated the account. Respondent is currently on probation until 2028. The appropriate thing to do in this case would be to extend her probation for two years.

LEGAL CONCLUSIONS

Applicable Law

1. Complainant bears the burden of proof of establishing that the charges in the petition to revoke probation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 582; Evid. Code, § 500.)

2. The standard of proof in an administrative proceeding seeking to suspend or revoke a license that requires substantial education, training, and testing, is "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

STATUTORY AND REGULATORY AUTHORITY

3. Business and Professions Code section 2229 provides, in part:

(a) Protection of the public shall be the highest priority for the Division of Medical Quality, . . . [or] an administrative law judge 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, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence.

(c) It is the intent of the Legislature that the division, . . . and the enforcement program shall seek out those licensees who have demonstrated deficiencies in competency and then take those actions as are indicated, with priority given to those measures, including further education, restrictions from practice, or other means, that will remove those deficiencies. Where rehabilitation and protection are inconsistent, protection shall be paramount.

4. California Code of Regulations, title 16, section 1361.52, subdivisions (a), (b), (c) and (e), provide, in part:

(a) A licensee who does any of the following shall be deemed to have committed a major violation of his or her probation:

[¶] . . . [¶]

(2) Commits multiple minor violations of probation conditions and terms;

[¶] . . . [¶]

(5) Fails to undergo biological fluid testing when ordered;

(6) Uses, consumes, ingests, or administers to himself or herself a prohibited substance;

[¶] . . . [¶]

(b) If a licensee commits a major violation, the Board will take one or more of the following actions:

(1) Issue an immediate cease-practice order and order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee. Any order issued by the Board pursuant to this subsection shall state that the licensee must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice.

(2) Increase the frequency of biological fluid testing.

(3) Refer the licensee for further disciplinary action, such as suspension, revocation, or other action as determined by the Board.

(c) A licensee who does any of the following shall be deemed to have committed a minor violation of his or her probation:

[1] . . . [1]

(4) Fails to comply with any term or condition of his or her probation that does not impair public safety.

[1] . . . [1]

(e) Nothing in this section shall be considered a limitation on the Board's authority to revoke the probation of a licensee who has violated a term or condition of that probation.

5. California Code of Regulations, title 16, section 1361.51, subdivision (f), provides:

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

CONDITIONS OF RESPONDENT'S PROBATION

6. Condition 5 of respondent's probation provides, in part:

[Respondent] shall immediately submit to biological fluid testing . . . upon request of 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

7. Condition 10 of respondent's probation provides, in part:

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

Evaluation

CAUSE EXISTS TO REVOKE PROBATION

8. A preponderance of the evidence established the first and second causes to revoke probation.

9. First Cause to Revoke Probation: At all times relevant to the allegations in the first cause to revoke probation, probationary conditions were in effect in the January 18, 2019, decision that required respondent to abstain from the use of alcohol (Condition No. 8) and submit to biological fluid testing (Condition No. 5). In addition to the requirement that respondent check in with Vault Health on a daily basis to see if she was selected for testing, the biological fluid testing condition required respondent

to maintain the laboratory service contract with the laboratory responsible for the service contract during her period of probation.

On December 29, 2022, respondent provided a biological fluid specimen that subsequently tested positive for the presence of EtG and EtS, metabolites of alcohol. On January 5, 2023, respondent provided a biological fluid specimen that subsequently tested positive for the presence of Peth, a metabolite of alcohol. Respondent did not dispute this allegation.

10. Second Cause to Revoke Probation: At all times relevant to the allegations in the second cause to revoke probation, a biological fluid testing condition was in effect from the January 19, 2023, decision. That condition required respondent to check in daily to see if she was required to submit to a biological fluid test and also required her to maintain a current account with Vault Health so she could see daily testing messages.

On July 25, 2023, through July 28, 2023, respondent failed to keep her Vault Health account current. Respondent testified that she changed credit cards before July 25, 2023, and that may have caused the issue. She also provided an email from someone at Vault Health supporting respondent's testimony that the credit card change may have caused the problem. In other words, it was credible that the suspension of respondent's Vault Health account resulted from the change in the card rather than respondent intentionally letting the account lapse.

However, that does not absolve respondent of responsibility. When respondent attempted to check in on July 25, 2023, through July 27, 2028, a message was displayed that notified her of her account suspension and the need to make the account current in order to view testing messages. In addition, respondent admitted in

emails to Jennifer Saucedo that she had received an email from Vault Health, then FSSolutions, informing her of her account suspension, but she missed that email. Respondent also admitted to Ms. Saucedo that she did not read the message in the message box displayed when she checked in on July 25, 2023, through July 27, 2023, because all she did when she checked in was see if she needed to test. Because respondent did not keep her account current, she did not receive the message that she was supposed to provide a biological fluid sample on July 25, 2023. Respondent did not exercise reasonable diligence to ensure she remained in compliance with the biological fluid testing condition.

APPROPRIATE DISCIPLINE

11. Having found cause to revoke probation, the remaining issue is whether probation should continue, probation should be extended, or revocation should be imposed. This issue is a difficult one. Respondent is a very likeable person. She was pleasant during her testimony and acknowledged responsibility. However, cases involving substance abusing licensees, like all licensing matters, do not turn on the likeability of the respondent. Rather, they turn on rehabilitation and whether the public would be adequately protected should the licensee be allowed to continue to practice.

Respondent has a long history of problems with the board. After she had her license revoked in 2005 due to a very serious and out-of-control cocaine addiction, she worked hard to have her license reinstated in 2019. It was not long after that reinstatement that she violated the terms and conditions imposed in the decision that permitted her license to be reinstated. Those violations, which included positive biological fluid tests for alcohol, resulted in a petition to revoke probation being filed in 2022, effective in 2023, which resulted in a 5-year probation. Before the 2023 decision even became effective, respondent had violated the condition that she

abstain from alcohol imposed in the 2019 decision, having tested positive for alcohol on December 29, 2022, and January 5, 2023. Added to the biological fluid testing violations, is the failure to maintain current her Vault Health account. Because she did not do so, she missed a check in and therefore missed a biological fluid test on July 25, 2023. Indeed, since having her license reinstated, respondent has not had any sustained period of time where she has remained violation free.

When considered in isolation, the violations alleged in the first and second causes for discipline in this case might warrant a continuation or extension of probation. However, the violations in this case must be considered in the context of respondent's entire disciplinary history with the board. Respondent's problem was never alcohol; it was cocaine. By all indications, she has not relapsed. However, as noted in the decision effective January 19, 2023, and worth repeating here verbatim, respondent's strict adherence to her probation conditions are necessary for a very important reason (emphasis added):

When a person has a substance abuse disorder, it . . . warrants a requirement that [respondent] abstain from the use of products or beverages containing alcohol. Use of a substance other than cocaine increases the risk of a relapse in the cocaine disorder. **So in respondent's case, it was and is appropriate to condition her probation on abstinence from the use of alcohol. For at least two reasons, it is imperative that she comply with that condition. First, consuming alcohol could contribute to a relapse in her recovery. Second, in order to demonstrate a commitment to recovery and rehabilitation, probationers must comply with the**

board's conditions of probation. So respondent's failure to abstain completely from the use of products or beverages containing alcohol is a matter of great concern.

...

Notwithstanding that concern, the board balanced respondent's desire to continue practicing medicine with its duty to protect the public, and, after the production of substantial rehabilitation evidence, allowed her to continue to serve probation. That evidence included seeking therapy with Dr. Lindquist, therapy with Dr. Hubbard, and treatment for her depression. The board cautioned respondent that it was incumbent upon her going forward to demonstrate that she "can and will comply **scrupulously**" with the board's conditions. She has not done so.

Respondent did produce evidence that she continues to treat with Dr. Lindquist and Dr. Hubbard for her mental health concerns. She started using the Soberlink device to test on a daily basis, although this is voluntary, and offers little assurance to the board that respondent is abstaining from alcohol. More concerning was that respondent missed the July 25, 2023, test because her account with Vault Health was not current, and also did not test with Soberlink – so the board has no way of knowing what occurred during those few days. Respondent is also taking Antabuse, a drug that makes a person ill when they consume alcohol, and she has not had a positive biological fluid test in eight months. Respondent is commended for her recent compliance, but it is simply not enough to overcome the continued pattern and practice of violating the biological fluid testing condition. It is also noted that the December 28, 2022, positive test for alcohol occurred while respondent was waiting for a decision in the 2022 case – and when asked about it by Ms. Saucedo, respondent lied. She blamed the positive test on possibly having consumed a food item that

contained alcohol. Though respondent now admits that she did consume alcohol, it does not excuse the continual failures to adhere to probation since 2019.

Even more concerning is the degree to which respondent has had to go in order to remain compliant with probation. While normally it is a positive factor to show all that licensee has done to address alcohol and or/drug problems, in respondent's case, it tends to sway in the opposite direction. The fact that respondent has done all that she has (diversion, AA, Soberlink, Antabuse, hallucinogenic drugs in Mexico, PACE, psychotherapy, etc.) and **still** continues to violate probation despite being given multiple chances since the reinstatement of her license is of great concern.

At this juncture, the board can no longer risk danger to the public by allowing respondent to continue on probation. Whether respondent's continual violations are intentional, due to negligence, or due to mental health issues (i.e. impulsivity, ADHD, depression), is not the issue. The bottom line is, for whatever reason, respondent will not adhere to the terms and conditions of probation put in place to protect the public. There is nothing more the board can do to balance respondent's desire to continue practicing while ensuring the public is protected. Probation is therefore no longer appropriate, and must be revoked.

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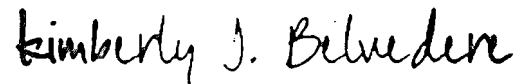
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ORDER

The probation originally imposed in Case No. 800-2016-028304 and reimposed in Case No. 800-2021-080216, is revoked, and the stayed revocation ordered in those cases imposed. Physician's and Surgeon's Certificate Number G 56228, issued to Margaret Melinda Sprague, M.D., is revoked.

DATE: October 5, 2023



KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings