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

In the Matter of the Petition to Revoke
Probation Against:

JAN ADAMS, M.D.

Case No. 8002013001779

OAH No. 2014031080

Physician's and Surgeon's
Certificate No. A 51004

Respondent.

DECISION

The attached Proposed Decision is hereby adopted by the Medical Board of
California, Department of Consumer Affairs, State of California, as its Decision in this
matter.

This Decision shall become effective at 5:00 p.m. on October 10, 2014.

IT IS SO ORDERED September 10, 2014.

MEDICAL BOARD OF CALIFORNIA

By: Barbara Yaroslavsky, Chair
Panel A
BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Petition to Revoke Probation Against:

JAN ADAMS, M.D.

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A 51004,

Respondent.

Case No. 8002013001779
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PROPOSED DECISION

This matter came on regularly for hearing on August 13, 2014, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Richard D. Marino, Deputy Attorney General, represented Complainant, Kimberly Kirchmeyer (Complainant), Executive Director of the Medical Board of California (Board).

Respondent was present and represented himself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

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FACTUAL FINDINGS

1. On July 23, 1992, the Board issued Physician’s and Surgeon’s Certificate Number A 51004 to Respondent. An Accusation was filed against Respondent on April 10, 2007. That pleading was followed by a First Amended Accusation on April 1, 2009. Respondent surrendered his certificate effective April 8, 2009. He filed a Petition for Reinstatement of Surrendered License on June 5, 2012. The matter came before Administrative Law Judge (ALJ) Daniel Juarez on November 2, 2012. Judge Juarez’s proposed decision to grant the petition and place Respondent on probation for three years under various terms and conditions was adopted by the Board effective March 14, 2013. The effective date of the decision was subsequently advanced to May 28, 2013. A Cease Practice Order was issued against Respondent on December 23, 2013. Respondent’s certificate expired on June 25, 2014. The Board maintains jurisdiction over this matter pursuant to Business and Professions Code section 118, subdivision (b).

2. The above summary does not tell the whole story. Respondent has had a difficult time maintaining his certificate in good standing. The more detailed story is set forth in Factual Findings 3 through 13 of Judge Juarez’s Proposed Decision written in connection with Respondent’s petition for license reinstatement. Because that decision is final, those findings are set forth verbatim below and are incorporated as factual findings herein.

3. On April 10, 2007, the Board filed an accusation against Petitioner (In the Matter of the Accusation Against Jan Adams, M.D., case number 17-2006-175650). The complainant in that accusation alleged that Petitioner was convicted of alcohol-related offenses in May 2003 (driving under the influence of alcohol), and December 2006 (driving with a blood alcohol level of .08 percent or greater). Based on these convictions, Petitioner was alleged to have violated Business and Professions Code sections 2239 (the dangerous use of alcohol) and 2234 (unprofessional conduct).

4. Petitioner referred himself to the Board’s then-available physician diversion program in December 2006. The evidence did not establish if he ever participated in the program or the length of time he participated, if at all.

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5. In approximately January 2007, Petitioner voluntarily entered the alcohol dependency program at the Hazelden Clinic (Hazelden) in Newberg, Oregon. He was discharged after three days because he did not meet the criteria for alcoholism or alcohol dependency. In the Board’s investigation report, dated August 23, 2012, the Board’s investigator obtained Petitioner’s medical records from Hazelden. Those records contained the following statements: “The evaluation of [Petitioner] was completed on 01/10/07 resulted [sic] in the diagnosis of alcohol abuse. This diagnosis was based on the available reliable information. However, because the patient has had four prior driving under the influence (over a 25 year period) [sic] there is significant concern that a diagnosis of alcohol dependence may exist as is typical for the vast majority of individuals with his driving record. However, despite our efforts, reliable evidence for the additional criteria to meet this diagnosis was not available. This however does not exclude this diagnosis; however, again there is no reliable evidence to support the diagnosis.” Hazelden recommended discharging Petitioner, having Petitioner continue with Alcoholics Anonymous (AA) meetings, complete a thorough drug and alcohol history, participate in a diversion program, including urine drug screening, and refrain from prescribing his own medications. Hazelden further recommended that Petitioner attend a residential program if a diagnosis of alcohol dependence was found. The evidence established no diagnosis of alcohol dependence.

6. In his narrative statement attached to his Petition, Petitioner disclosed that he was arrested for driving under the influence of alcohol on June 26, 2008. According to the Board’s investigation report, Petitioner was convicted of violating “Vehicle Code section 23151, subdivision (b),” on January 5, 2009, and sentenced to 365 days in jail. The Legislature amended Vehicle Code section 23151 long before January 2009. Given the jail sentence, the ALJ finds that Petitioner was convicted of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of .08 percent or greater). The January 2009 conviction was the result of the June 2008 arrest. Petitioner served eight months in jail. Petitioner accepted responsibility for all of his convictions and for this 2009 conviction in particular, describing it as “unprofessional conduct.” Petitioner enrolled in a court-ordered 18-month multiple offender program in September 2010, and completed the program on April 7, 2012.

7. There was no evidence that Petitioner failed to complete the terms and conditions of any of his criminal probations or that he is currently on probation for any conviction. Neither party offered court records to establish the particulars of any of Petitioner’s convictions.
8. According to the Board’s investigation report, the DMV took action against Petitioner’s driver license as described on the following dates and for the reasons contained in the respective parenthetical: restricted, January 9, 2007 ("[d]runk driving or drugs"), suspended, March 21, 2008 ("[i]nsurance [c]ert canceled"); suspended, September 29, 2009 ("[e]xcessive blood alcohol"), and revoked, January 5, 2009 ("[d]runk driving or drugs").


10. Petitioner’s driver license was reinstated and is currently valid. Presently, there are no restrictions on Petitioner’s driver license.

11. At hearing, petitioner asserted that he has abstained from alcohol since 2008. He attends AA meetings, which he described as “most helpful.” When asked on cross-examination whether he was an alcoholic, Petitioner asserted he was not, emphasizing the findings at Hazelden. Nonetheless, Petitioner affirmatively dealt with his drinking and driving problem, realizing that it was best to abstain from consuming alcohol. He appears to have adequately addressed this problem.

12. On a date undetermined by the evidence, the Board’s investigator checked a website for Petitioner and found that Petitioner identified himself on the website as “doctor.” The Board discussed this finding with Petitioner at his July 11, 2012 interview. Petitioner informed the Board that he did not have the ability to take down the website and did not feel that the website gave the impression that he was a licensed physician. Petitioner did not plan to change the website and felt that he should be allowed to sign his name, “Jan Adams M.D.” The Board discussed the Legislature’s mandate in Business and Professions Code section 2278, and according to the Board investigator, Petitioner “explained why he disagrees with the law.” Aside from the investigation report, neither party addressed this issue at hearing.

13. On July 13, 2012, the Board investigator checked Petitioner’s website and “noted that access was no longer available.” The evidence did not establish what was meant by “access.”

3. In his Proposed Decision, Judge Juarez ordered that Respondent’s license be reinstated, immediately revoked, the revocation stayed, and that Respondent be placed on probation for three years under various terms and conditions. On February 12, 2013, the Board adopted the Proposed Decision with an effective date of March 14, 2013. As indicated above, the effective date was subsequently advanced to May 28, 2013.
4. Among the terms and conditions of Respondent’s probation were the following:¹

Condition No. 2:

Petitioner shall immediately submit to biological fluid testing at Petitioner’s expense, upon request of the Board or its designee. . . . Prior to practicing medicine, Petitioner 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. Petitioner shall maintain this laboratory or service contract during the period of probation.

Condition No. 3:

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

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

¹ Some of the conditions contain multiple paragraphs with language not specifically germane to the issues in this case. Therefore, only the relevant portions of the conditions are quoted in this finding.
Condition No. 4:

Within 60 calendar days of the effective date of this Decision, Petitioner shall submit to the Board or its designee for prior approval a community service plan in which Petitioner shall, within the first two years of probation, provide 144 hours of free medical services to a community or non-profit organization.

Condition No. 8:

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all of the conditions of probation.

Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

5. On July 2, 2013, Respondent signed an Acknowledgment of Decision averring that he had received a copy of the Decision, that his probation inspector had explained all of the terms and conditions of probation to him, and that his probation inspector had addressed any questions Respondent had concerning those terms and conditions. The Acknowledgment of Decision indicates May 28, 2013 as the effective date of probation.

6. On July 3, 2013, Respondent’s probation inspector wrote to Respondent advising him of upcoming deadlines Respondent would have to meet to remain in compliance with the terms and conditions of his probation.

7. Respondent failed to comply with Condition No. 2. He failed to submit to biological fluid testing when required to do so on August 27, November 15, November 20, December 5, and December 10, 2013. In addition, Respondent allowed his contract with the laboratory to lapse on three occasions since the effective date of the Decision. These occurred when there were insufficient funds in Respondent’s debit account to enable the laboratory to deduct payment for its services.

8. Respondent missed his November 15, 2013 testing because he had sustained a serious burn to his left foot that precluded him from traveling to the testing site. He did not provide reasons for missing the other four tests.

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2 These are the dates alleged in the Petition to Revoke Probation. Respondent missed other tests as a result of the suspension of his contract account with the laboratory. He also failed to call the laboratory or go online on numerous occasions to ascertain whether he was required to report for testing. However, the failures to call in and the additional missed tests are not alleged as grounds for license revocation, and therefore, they are viewed only as factors in aggravation. To his credit, when Respondent did appear for biological fluid testing, all of his results were negative.
9. On December 23, 2013, The Board issued a Cease Practice Order against Respondent. The Order was based on Respondent’s failure to comply with Condition No. 2 of his probationary order. Since that time, Respondent permitted his physician’s and surgeon’s certificate to expire.\(^3\)

10. Respondent failed to comply with Condition No. 3 by failing to enroll in the professionalism (ethics) course within 60 days of the effective date of the Decision (May 28, 2013). Respondent attributes his failure to do so to insufficient funds to pay in full and in advance for the program, as the program requires. He also took issue with the price of the program and questioned whether he could learn anything about ethics from someone who so grossly over-charged for his services.

11. Respondent failed to comply with Condition No. 4 by failing to provide the Board with a community service plan. Respondent attributes that failure to his inability to afford malpractice insurance. However, Respondent’s probation inspector testified that other physicians had found volunteer positions at free clinics without the necessity of malpractice insurance.

12. Respondent failed to comply with Condition No. 8. His submission of his quarterly reports for the third quarter of 2013, the fourth quarter of 2013, and the first quarter of 2014 were late.\(^4\) Respondent blamed his probation inspector for the reports’ tardiness, claiming that his probation inspector failed to call him ahead of time as promised and failed to provide him with the reporting forms. That testimony was not convincing. The responsibility of probation compliance lies with the probationer, not with his/her probation inspector. The failure of a probation inspector to follow through on an offer of assistance does not relieve the probationer of his/her compliance obligation.

13. Respondent has never requested an extension of time to fulfill the requirements of any of his probationary terms or conditions due to lack of funds or any other reason. He has never requested a removal or modification of any of the probationary terms and conditions.

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\(^3\) As referenced above, Respondent’s certificate expired on June 25, 2014. Although he is required to maintain an active license as a term of probation (Condition No. 9), his failure to do so is not alleged in the Petition to Revoke Probation, and it is viewed solely as a factor in aggravation.

\(^4\) Respondent has not yet submitted his quarterly report for the second quarter of 2014. However, that fact is not alleged in the Petition to Revoke Probation, and it is viewed solely as a factor in aggravation.
14. In his testimony, and when cross-examining Complainant’s witnesses, Respondent upbraided several Board personnel claiming they lied, delayed, engaged in, ignored, and covered up wrongdoing, falsified documents, abused their discretion, violated his and the public’s trust, and had bullied him, punished him, retaliated against him, and attempted to frame him. He accused them of misconduct ranging from simple negligence to criminal activity. He believes the instant action is a “whistle-blower” case that resulted after he complained to the Board that the individual in charge of the Board’s biological fluid testing unit had insulted him by suggesting he had intentionally burned his foot as a strategy to avoid a biological fluid test. The individuals involved in his asserted mistreatment ranged from one who worked in the former diversion program, to Respondent’s present probation inspector, and from those involved in ministerial acts to the Director of Enforcement and the former Executive Director of the Board. He believes all of the individuals involved developed a jaded and inaccurate view of him after he was demonized on television following the post-operative death of one of his patients who was the mother of a celebrity. He also believes some of those involved have acted out of jealousy of his Harvard, Michigan and UCLA education, his surgical skills, and his celebrity as a medical consultant on television shows. Respondent asked the Administrative Law Judge to impose a variety of sanctions against the individuals who have harmed him, including but not limited to job termination, a public reprimand, a lifelong ban from public service employment, criminal prosecution, and criminal sanctions including incarceration.

15. Respondent went into extensive detail concerning the wrongdoing that had been perpetuated against him and the individuals who were responsible for it. His claims are presented in summary fashion in this Decision because the Administrative Law Judge is without jurisdiction to impose the kinds of sanctions against those individuals that Respondent requested. The Board has brought this action solely against Respondent, and jurisdiction exists only as to him. Therefore, although Respondent may or may not have legitimate claims against the Board and/or its employees/designees, no finding can be or is made with respect to their culpability.

16. Respondent wants his medical license. However, he testified that, although he deserves to keep his license, he is not certain he wants to continue dealing with the Board. He asks only that the Board “leave [him] alone.” (Respondent’s testimony.)

LEGAL CONCLUSIONS

1. Cause exists to revoke Respondent’s probation and impose the license revocation previously stayed as set forth in Findings 1 through 13.

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2. California Code of Regulations, title 16, section 1358, states in pertinent part:

Each physician and surgeon who has been placed on probation by the division shall be subject to the division's Probation Surveillance Compliance Program and shall be required to fully cooperate with representatives of the division and its investigative personnel.

3. Once Respondent sought reinstatement of his surrendered licensed, and the Board adopted Judge Juarez's Proposed Decision, Respondent was obligated to comply in all ways with the terms and conditions of probation. Each probation term/condition was mandatory, and compliance was required throughout the three-year course of probation. Respondent failed to comply with four of his probationary terms, and he committed repeated violations of two of them by failing to submit to biological fluid testing four times and by failing to timely submit quarterly reports three times. The several violations referred to above that were not pled as charging allegations in this Petition to Revoke Probation are troubling in that they constitute serious factors in aggravation.

4. Respondent attributes some of his probation violations to a lack of funds. These are unquestionably difficult economic times, and a physician on probation can face a difficult time finding work. However, the expenses Respondent incurred in connection with his probation are no different from those faced by a great many probationers who manage to procure the funds necessary to remain in compliance. Finding sufficient funds was one of the obligations Respondent undertook and accepted when his license was reinstated. Moreover, Respondent never made any attempt to request from the Board an extension of time to comply with a probationary condition, a removal or modification of a probationary condition, or other provision to reduce the economic strain placed on him by the probationary order.

5. Respondent has hard feelings toward the Board, and he blames the Board and some of its employees/designees for much of the trouble he has experienced. He may or may not be right. However, interpersonal problems with those individuals, justified or not, do not excuse a failure to comply with the terms and conditions of probation.

6. Although Respondent wants only for the Board to leave him alone, the simple truth is that, if Respondent wants to practice medicine as a medical doctor in the State of California, he must necessarily interact with the Board. The Board cannot leave him alone and still comply with the legislative mandate for public protection. (Bus. & Prof. Code, § 2001.1.)
7. At the administrative hearing, Respondent did not offer any assurance that, if he is permitted to keep his medical license, things will change in connection with his compliance with the probationary terms and conditions, or how they will change. He was neither remorseful nor repentant. Given his numerous probation violations, the lack of a reason to change the probationary terms, the absence of a plan to improve compliance, and his continued defiance toward the Board, extending Respondent’s probation would serve no purpose. The license will be revoked. Respondent will be eligible to apply for reinstatement in two to three years (Bus. & Prof. Code, § 2307, subdivision (b)(1)).

ORDER

1. The probation of Respondent, Jan Adams, M.D., is revoked.

2. Physician’s and Surgeon’s Certificate No. A 51004, issued to Respondent, Jan Adams, M.D., is revoked.

3. Pursuant to Business and Professions Code section 3527, the approval of Respondent, Jan Adams, M.D.’s authority to supervise physician assistants is revoked.

Dated: August 19, 2014

[Signature]

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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5 Although a respondent is not required to demonstrate artificial acts of contrition (Calaway v. State Bar (1986) 41 Cal.3d 743, 747-748; Hall v. Committee of Bar Examiners (1979) 25 Cal.3d 730, 744-745), Respondent did not deny many of the probation violations alleged against him. Therefore, any acts of contrition would not have been artificial.