

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, ss.

Adjudicatory Case No. 2022-038_____

_____)
In the Matter of)
)
Richard Birkett, M.D.)
_____)

PROBATION AGREEMENT

I. COMPLIANCE WITH AGREEMENT

The Respondent agrees that violation of this Probation Agreement (“this Agreement”), including such provisions which survive this Agreement, shall constitute sufficient grounds for the immediate suspension of the Respondent’s license to practice medicine, or any such lesser sanction as the Board may deem fit to impose, without prior notice to the Respondent as set forth below. The Respondent hereby waives any claim or defense to any subsequent action by the Board to suspend the Respondent’s license or impose such other lesser sanction, for any such violation or violations of this Agreement, except that the Respondent shall be entitled to defend against the assertion of a violation of this Agreement. The Respondent acknowledges and agrees that by entering into this Agreement, the Respondent is relinquishing important procedural and substantive rights.

If the Respondent does not comply with each requirement of this Agreement, or if the Board opens a Subsequent Complaint¹ during the probationary period, the Respondent agrees to the following:

- a. The Board may upon written notice to the Respondent, as warranted to protect the public health, safety, or welfare:
 - i. EXTEND the probationary period; and/or
 - ii. MODIFY the Agreement requirements; and/or
 - iii. IMMEDIATELY SUSPEND the Respondent’s license.
- b. If the Board suspends the Respondent’s license, pursuant to this paragraph, the suspension shall remain in effect until:
 - i. The Board gives the Respondent written notice that the probationary period is to be resumed and under what terms; or
 - ii. The Board and the Respondent sign a subsequent agreement; or

¹ For purposes of this Agreement, the term “Subsequent Complaint” applies to a complaint opened after the effective date of this Agreement, which alleges that the Respondent engaged in conduct that violates Board statutes or regulations, and/or (2) involves a criminal conviction or discipline imposed by another state medical licensing board other than reciprocal discipline for the same conduct resolved in the proceeding that resulted in this Agreement.

- iii. The Board issues a written final decision and order following adjudication of the allegations (1) of noncompliance with this Agreement, and/or contained in the Subsequent Complaint.

II. PARTIES

The parties to this Agreement are the Board of Registration in Medicine (“the Board”) and, Richard Birkitt, M.D. (“the Respondent”).

III. JURISDICTION

The parties agree that the Board has the authority to enter into this Agreement, and that the Board may enforce the terms of this Agreement in accordance with applicable laws and regulations and the provisions of this Agreement.

IV. CONDITIONS OF PROBATION

During the probationary period, which shall be effective on the date the Board accepts this Agreement, the Respondent shall comply with each of the following requirements:

A. The Respondent agrees to undergo monitoring by the Board for at least two years from the date of the Board’s acceptance of this Agreement and for such further period thereafter as the Board may order pursuant to Part I of this Agreement. The Board may also extend the probationary period by the amount of time that the Respondent is not practicing medicine during the probationary period.

B. The Respondent agrees to comply with the following requirements during the probationary period:

- i. He/she will comply with all laws and regulations governing the practice of medicine;

- ii. He/she will notify the Board in writing within ten (10) days of any change in his/her name or address;
- iii. He/she will timely renew his/her license to practice medicine;
- iv. He/she will respond to inquiries from Board staff in a timely manner;
- v. He/she will notify the Board in writing within seven (7) days of receiving notice of any complaint filed against his/her license to practice in any jurisdiction where he/she holds a license-

C. The Respondent shall refrain from all consumption of alcohol, and use of all controlled substances, unless specifically prescribed by a treating physician for a legitimate medical purpose and in the usual course of the treating physician's medical practice. The treating physician shall have been informed of any substance abuse history of the Respondent before issuing any such prescription.

D. The Respondent acknowledges that self-prescribing of controlled substances in Schedules II-IV inclusive is prohibited, and that prescribing controlled substances in Schedules II-IV to an immediate family member is prohibited except in an emergency. *See, 243 CMR 2.07 (19).* Should the Respondent prescribe any controlled substances to himself or any immediate family member, he shall immediately notify the Executive Director of the Board in writing, and shall immediately provide the Executive Director of the Board a written copy of any such prescription and a full and complete written explanation of the reasons for any such prescription.

E. The Respondent has entered into a substance use monitoring contract, dated December 26, 2019, in a form acceptable to the Board, with Physician Health Services, Inc. ("PHS") of the Massachusetts Medical Society. The Respondent agrees to abide fully by all terms of this contract for the duration of this probationary period. This contract includes a provision that PHS

will immediately notify (within 24 hours) the Board of any lapse or violation of its terms by the Respondent, and the contract provides for any necessary waivers of privilege or confidentiality by the Respondent. PHS shall submit quarterly reports to the Board which detail the Respondent's compliance with this contract.

F. The Respondent shall undergo random bodily fluid screenings as required by PHS or as may be required by the Board, which requirement may be reasonably modified from time to time consistent with scientific or practical advances in the field of alcohol and drug detection. The Respondent shall submit random samples at least weekly on average, or at such other frequency as the Board or PHS may require, such as the requirement for daily samples using Sober-link, or a similar type device. An officer of PHS shall file reports of the screening evaluations completed during the previous three months with the Board within thirty (30) days as part of their quarterly report. Said reports shall specify the date range of the tests, number of tests, any missed tests, and any dilute samples. In addition, the Respondent shall obtain the written agreement of PHS to notify the Board immediately by telephone and in writing.

1. a) in the event that Respondent's sample is found to contain any evidence of alcohol or any controlled substance in violation of this Probation Agreement; or
b) in the event that PHS has other reliable evidence that the Respondent has used alcohol or any controlled substance in violation of this Probation Agreement;
2. in the event that the Respondent misses any random bodily fluid test, excluding an administrative or laboratory mistake beyond the Respondent's control;
3. in the event that the Respondent refuses to cooperate with PHS in monitoring bodily fluids in any manner; or

4. in the event that the Respondent withdraws any waiver filed in connection with this Probation Agreement; or
5. in the event that the PHS contract is terminated for any reason other than successful completion of the contract, as determined by the Director of PHS.

The Respondent agrees to waive any privileges he may have concerning such reports and disclosures to the Board by PHS.

G. The Respondent shall at all times during the length of the probationary period be reasonably available to provide an immediate bodily fluid screen at the request of the Board.

H. The Respondent shall be under the care of a Board-approved licensed or certified health care professional experienced in the treatment of substance use disorders or substance abuse disorders in accordance with his/her PHS contract. The health care professional shall immediately notify the Board by telephone whenever, in his or her professional judgment, the Respondent poses a potential danger to the health, safety and welfare of the Respondent's patients. In addition, the health care professional shall immediately notify the Board by telephone and in writing in the event that the Respondent terminates treatment, or is non-compliant with the treatment plan. In the event that the health care professional notifies the Board that the Respondent poses a danger to the health, safety or welfare of the Respondent's patients, or terminates treatment, the Board may obtain any and all information, reports and records from the health care provider concerning the Respondent. The Respondent hereby waives any privileges concerning such information, reports, records and disclosures to the Board. The health care professional shall confirm in writing, within ten (10) days of the Board's accepting this Agreement, his or her agreement and undertaking with respect to the obligations set forth in this Agreement, and shall notify the Board if the Respondent withdraws any waiver

filed in connection with this Agreement. The Respondent shall notify the Board within ten (10) days of any change in health care provider.

I. The Respondent shall engage in the practice of medicine only under such conditions as the Board may impose and at a Board-approved worksite. The Respondent may practice medicine as part of his employment with Beth Israel Lahey Health, including operating at Beverly Hospital and Addison Gilbert Hospital. The Respondent may also see patients at Essex Surgical Associates. The Respondent's practice of medicine will be monitored by Henry A. Frissora, M.D. who shall file quarterly reports to the Board on a form provided by the Board. Respondent shall notify the Board within seven (7) days of any change in the Respondent's employment status, including each change in Employer, each resignation or termination and each change in the name, address and telephone number of any Employer. Respondent shall notify the Board within seven (7) days of receiving notice that the above referenced monitor is no longer available to serve as monitor.

J. The Respondent shall file, within thirty (30) days of the execution of this Probation Agreement, written releases and authorizations sufficiently broad in scope so as to allow the Board to obtain any and all medical and laboratory reports, treating physicians' reports and records concerning the Respondent's treatment during the probationary period.

K. All agreements whereby third parties are to provide written reports, releases, records or any other information to the Board under this Probation Agreement shall be submitted to the Board for approval within thirty (30) days after the Probation Agreement is approved by the Board. All such releases and agreements must, in addition to waiving any relevant state law privileges or immunities, provide the Board with access to all material covered by 42 CFR, Part 2, and the Criminal Offender Records Information (CORI) Act, so-called, M.G.L. c. 6, ss. 167-

178; all such releases and agreements must provide that the released party shall notify the Board if any waiver is withdrawn. In the event that any such releases or waivers are not sufficient to obtain access to any information which the Board in its discretion considers relevant, the Respondent agrees to obtain personally such information and furnish it to the Board, to the extent permitted by law.

L. In the event that the Respondent seeks licensure to practice medicine in another state, the Respondent shall notify the Board of such fact and shall disclose to the licensing authority in such state his status with this Board. The Respondent shall submit to the Board copies of all correspondence and application materials submitted to another state's licensing authority.

M. In the event the Respondent should leave Massachusetts to reside or practice out of the state, the Respondent shall promptly notify the Board in writing of the new location as well as the dates of departure and return. Periods of residency or practice outside Massachusetts will not apply to the reduction of any period of the Respondent's probationary licensure, unless the Respondent enters into a monitoring agreement, approved by the Board, in the new location.

N. The Respondent shall appear before the Board or a committee of its members at such times as the Board may request, upon reasonable advance notice, commensurate with the gravity or urgency of the need for such meeting as determined by the Board or such committee.

O. The Respondent, and not the Board, shall be responsible for the payment of any fee or charge occasioned by the Respondent's compliance with this Probation Agreement.

P. The Respondent may request that the Board modify any of the conditions set forth above. The Board may, in its discretion, grant such modification. Except for requests for modifications related to the Respondent's employment, the Respondent may make such a request not more than

once in any one year period, nor any sooner than one year from the date of this Probation Agreement.

Q. The Respondent shall provide a complete copy of this Probation Agreement, with all exhibits and attachments within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which he practices medicine; any in- or out-of-state health maintenance organization with whom he has privileges or any other kind of association; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-of-state medical employer, whether or not he practices medicine there; the Drug Enforcement Administration, Boston Diversion Group; Department of Public Health Drug Control Program, and the state licensing boards of all states in which he has any kind of license to practice medicine. The Respondent shall also provide this notification to any such designated entities with which he becomes associated for the duration of this Agreement. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive. The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken.

V. TERMINATION OF PROBATION

A. If the Respondent complies with his or her obligations as set forth above, the Board, at the expiration of the two-year period, shall, upon petition by the Respondent, terminate the Respondent's probationary period and probation with the Board, unless the Respondent's probation is extended in accordance with paragraph IV(A).

B. If the Respondent fails to comply with his or her obligations as set forth above, the Respondent's license to practice medicine may be immediately suspended, as agreed in Section I.

11/14/2024
Date

11/19/24
Date

[Signature]
Respondent

David M. Sabel
Attorney for the Respondent

Accepted this 19th ____ day of December ____, 2024 ____, by the Board of Registration in Medicine.

[Signature]
Booker Bush, M.D.
Chair