

She refused to make a false confession—

# California Punishes Physician for Maintaining Personal Dignity

*Petition by attorney John Flear to the Superior Court of California, filed April 13, 2017.*

Petitioner Yolanda Wai Ng, MD, alleges as follows:

1. Petitioner is a physician licensed to practice medicine in California by respondent.

2. Respondent Medical Board of California ("MBC") is an administrative agency of the State of California whose duties include licensing and disciplining licensees.

3. MBC has discretion to determine whether grounds exist for revocation of a physician's license or for other disciplinary decisions. In making this determination, the MBC is required to hold a hearing and take evidence for the determination of facts upon which to base the disciplinary decision. All disciplinary actions must be based on findings supported by clear and convincing evidence.

4. Petitioner is a licensed physician in California and the State of Washington. On or about June 1, 2014, Petitioner began working for a health care network in Washington. During an employment intake examination, Petitioner tested positive for marijuana metabolites. Marijuana is legal in Washington and Petitioner has used it occasionally for back pain and menstrual cramps. Nevertheless, her employer referred her to a physician health program. This program, in turn, referred Petitioner to Hazelden Springbrook for a multi-disciplinary evaluation.

*Hazelden concluded that Petitioner required inpatient treatment for marijuana dependence (to be provided by Hazelden itself, at a cost of \$50,000).*

5. Hazelden concluded that Petitioner required inpatient treatment for marijuana dependence (to be provided by Hazelden itself, at a cost of \$50,000). Petitioner declined to undergo such treatment and agreed to a suspension of her Washington license.

6. The Washington suspension led to a Medical Board Accusation in California similarly seeking to revoke, suspend, or otherwise discipline Petitioner for having been disciplined in the State of Washington.

7. Petitioner returned to California. She last used marijuana in May 2014. She does not believe that she requires any treatment for cannabis dependency.

8. A hearing was held before Administrative Law Judge Diane Schneider on December 1, 2016. The Administrative Law Judge's Proposed Decision, ultimately adopted as an Order of the Board, was revocation stayed with a five year probationary period. Multiple restrictive terms and conditions were attached, including biological fluid testing, participation in substance abuse support groups, work monitoring, and further psychiatric evaluation. A true and correct copy of the transcript of the hearing will be lodged with the Court.

9. At the hearing the MBC had the burden of proving by clear and convincing evidence that good cause existed to discipline Petitioner by way of revocation of license or probation with multiple terms and conditions. The Board's Decision (attached as Exhibit A) exceeds the Board's statutory authority and is subject to a writ of mandamus per Code of Civil Procedure Section 1085.

10. Petitioner has exhausted all administrative remedies.

11. The MBC Decision is invalid in that it is in excess of the MBC's jurisdiction.

12. The MBC Order is invalid in that it is the result of prejudicial abuse of discretion by the MBC.



YOLANDA WAI NG, MD completed a Pediatric Residency at Stony Brook University and Pediatric Nephrology Fellowship at Seattle Children's Hospital. She has done research at UCSF on kidney transplant rejection. (Maybe California has too many pediatric nephrologists or too few children with diabetes.)

**SUPERIOR COURT OF CALIFORNIA – COUNTY OF SAN FRANCISCO**

**UNLIMITED JURISDICTION**

**YOLANDA WAI NG, M.D.,**  
 Petitioner,  
 v.  
**MEDICAL BOARD OF CALIFORNIA,**  
 Respondent.

Case No. **CP.F-17-515578**

**VERIFIED PETITION FOR ADMINISTRATIVE WRIT**  
 [Code of Civ. Proc. §§ 1094.5, 1085, 1095, 1021.5; Gov't Code § 800; Bus. & Prof. Code § 2337]

*Excerpts from the Proposed Decision by Administrative Law Judge Diane Schneider:*

On December 1, 2015, complainant Kimberly Kirchmeyer, acting in her capacity as Executive Director of the Board, issued an accusation against respondent. The accusation alleges that respondent's California certificate is subject to discipline because of actions taken by the Washington Medical Quality Assurance Commission...

RESPONDENT'S EVIDENCE:

Respondent is 40 years old and is originally from San Jose, California. She received her undergraduate degree from the University of California at Los Angeles. She received her medical degree from St. George's University in Grenada in 2007. Respondent completed a residency in pediatrics in 2010 and a fellowship in pediatric nephrology in 2013.

Respondent began smoking marijuana in medical school. Respondent stated that she used marijuana two or three times each month for one year prior to testing positive for marijuana. She used marijuana in part to alleviate bad pain and menstrual cramps. Marijuana is legal in the state of Washington.

Respondent maintains that she did not follow through with Hazelden's recommendation that she complete a 90-day inpatient treatment program because she disagreed that she required treatment for cannabis dependency and because she could not afford the program. (According to respondent, the cost of Hazelden's program was \$50,000)

Respondent is pregnant. She stated that she last used marijuana on May 21, 2014, when she consumed a birthday cake that was made with cannabis. Given respondent's refusal to enter treatment for cannabis dependency, her testimony regarding the date on which she last used marijuana, which was uncorroborated by other evidence, was not convincing.

This is respondent's first disciplinary matter.

Respondent resides in California. Since her suspension in September she has worked editing science papers on a part-time basis, and has also taken art classes.

Respondent firmly believes that she does not require treatment for cannabis dependency. She states that she is willing to submit to a substance abuse evaluation to instill the Board's confidence in her safety to practice medicine.

LEGAL CONCLUSIONS

The conduct for which respondent was disciplined in Washington constitutes cause for disciplinary action in California under sections 2234 (general unprofessional conduct and 2239 (use of controlled substance)...

Respondent shall undergo and complete a clinical diagnostic evaluation including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon...

Respondent shall immediately submit to biological fluid testing, at respondent's expense. Biological fluid testing may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board...

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. Except when testing on specific date as ordered by the Board, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by respondent...

*There follows two pages concerning drug testing procedures and Substance Abuse Support Group Meetings:*

"...Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the US Department of Transportation..."

"Within 30 days of the effective date of this Decision, respondent shall submit to the Board for its prior approval the name of a substance-abuse support group which she shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least one per week or as order by the Board. Respondent shall pay all substance abuse support group costs.

"The facilitator of the substance support group meeting shall have a minimum of three years of experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or a nationally certified organization..."

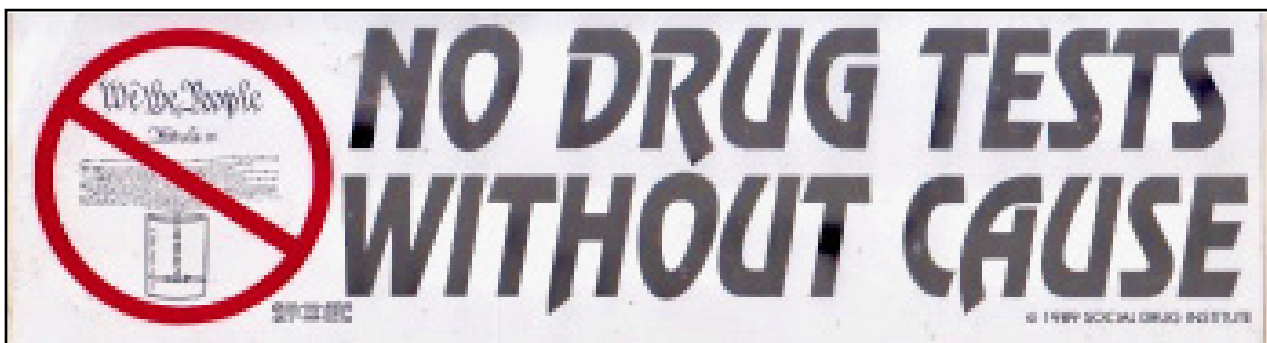
**NG, YOLANDA WAI**

**LICENSE NUMBER: A 131737 LICENSE TYPE: PHYSICIAN AND SURGEON A**

**LICENSE STATUS: LICENSE RENEWED & CURRENT**  **EXPIRATION DATE: MAY 31, 2018**

**SECONDARY STATUS: PROBATION**  **LIMITS ON PRACTICE**  **ADMINISTRATIVE ACTION TAKEN BY OTHER STATE OR FEDERAL GOVT**

**CITY: SAN JOSE STATE: CALIFORNIA COUNTY: SANTA CLARA ZIP: 95120**



BUMPER STICKER PRODUCED BY TOD MIKURIYA, MD, IN 1989 to remind his fellow citizens that the Fourth Amendment to the United States Constitution asserts "The right of the people to be secure in their persons," and that it protects us "against unreasonable searches and seizures." California's Adult Use of Marijuana Act asserts the rights of employers to make employees who show no signs of impairment pee into a cup, and to fire those who test positive for THC metabolites.