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

In the Matter of the Petition to Revoke Probation Against:	)	
ATA-OLLAH MEHRTASH, M.D.	)	Case No. 800-2016-026718
Physician's and Surgeon's Certificate No. C38016	)	OAH No. 2017070137
Respondent	)	

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 April 13, 2018.

IT IS SO ORDERED March 14, 2018.

MEDICAL BOARD OF CALIFORNIA

By: Kristina Lawson

Kristina Lawson, JD, Chair
Panel B

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

In the Matter of the Petition to Revoke Probation Against: ATA-OLLAH MEHRTASH, M.D. Physician's and Surgeon's Certificate No. C 38016, Respondent.	Case No. 800-2016-026718 OAH No. 2017070137

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on January 16-18, 2018, in Los Angeles, California.

Nicholas B.C. Schultz, Deputy Attorney General, appeared and represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

Respondent Ata-Ollah Mehrtash, M.D., appeared and represented himself.

After presenting oral and documentary evidence, the parties submitted the matter for decision on January 18, 2018.

FACTUAL FINDINGS

Jurisdictional Facts and Procedural History

1. Complainant brought the Petition to Revoke Probation (Petition) in her official capacity. Respondent timely submitted a Notice of Defense.

2. On May 23, 1978, the Board issued Physician's and Surgeon's Certificate number C 38016 to respondent. Respondent's certificate is in a suspended status based on a Cease Practice Order dated December 16, 2016. Respondent's certificate is scheduled to expire on April 30, 2018.

3. On September 18, 2014, complainant filed an Accusation against respondent in case number 11-2012-225092, pleading causes for discipline based on unprofessional conduct, including gross negligence, repeated acts of negligence, and the failure to maintain adequate and accurate records.

4. The allegations of the Accusation involved respondent's treatment of a 72-year-old patient, who presented to respondent at Bellflower Medical Center on May 10, 2012, "reporting a four-week-long history of abnormal uterine bleeding." (Ex. 1, p. 0025.) While performing a dilation and curettage (D&C) procedure, respondent allegedly perforated the patient's uterus without documenting any suspicion or recognition of the perforation. During an exploratory laparotomy procedure at St. Francis Medical Center, a critical-care surgeon allegedly discovered the perforation. The patient died on May 13, 2012.

5. Respondent testified that a civil lawsuit was filed against him in relation to his treatment of the patient, and that the case was dismissed "because his action or inaction did not cause the death." He presented medical records from Bellflower Medical Center and St. Francis Medical Center, and a legal brief filed in the civil action, collectively marked as Exhibit D and admitted as administrative hearsay. Respondent presented the records to supplement and explain his direct testimony that he committed no wrongdoing in relation to the subject patient.

6. However, on July 16, 2015, respondent and his attorney executed a Stipulated Settlement and Disciplinary Order (Stipulated Order), whereby respondent admitted that complainant could establish a prima facie case with respect to the charges and allegations contained in the Accusation. Having expressly waived his right to a hearing on the charges and allegations in the Accusation, Exhibit D was given no weight.

7. Effective December 4, 2015, the Board adopted the Stipulated Order and revoked respondent's Physician's and Surgeon's Certificate by its Decision and Order dated November 4, 2015 (Disciplinary Order). The revocation was stayed, and respondent was placed on probation for three years on terms and conditions, including the following provision: "Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed." (Ex. 7, p. 0010.)

8. Condition 2 of the Disciplinary Order provided:

> CLINICAL TRAINING PROGRAM. Within 90 calendar days of the effective date of this decision, respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California-San Diego School of Medicine (Program). Respondent shall successfully complete the Program not later than six (6) months after Respondent's

initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of Respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Respondent's area of practice in which respondent was alleged to be deficient, and at a minimum, a 40 hour program of clinical education in the area of practice in which Respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on Respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, Respondent shall submit to and pass an examination. Determination as to whether Respondent successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical training program within the designated time period, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical training program have been completed. If the Respondent did not successfully complete the clinical training program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

9. Condition 14 of the Disciplinary Order required respondent to pay the costs associated with probation monitoring each and every year of probation by January 31 of each calendar year.

Condition 2 - Clinical Training Program

10. Respondent made a good faith effort to comply with Condition 2 of the terms of his probation. Respondent traveled to San Diego and participated in Phase I of the PACE Program on September 20-21, 2016, and Phase II on November 14-18, 2016.

11. On September 20, 2016, respondent was observed as he performed a physical examination of a 32-year-old female mock patient. The patient informed respondent that she had undergone a Lap-Band procedure and a breast lift. Respondent demonstrated difficulty hearing or understanding the patient. He failed to ask pertinent questions that a competent physician would ask under the presented circumstances, particularly in relation to the Lap-Band procedure. Furthermore, the patient became upset when he examined her head, shoulders, and legs while her legs were raised in the stirrups with her private area unnecessarily exposed. In her declaration, the patient expressed, "My opinion is that this is not a position that any woman wants to be in unless required." (Ex. 31.) The patient also exhibited discomfort and experienced pain as respondent inserted a speculum during a pelvic examination. Respondent failed to detect that the patient has a heart murmur, and neglected to wash his hands. The qualified nurse practitioner who observed the examination gave respondent satisfactory results in his clinical judgment, his counseling skills, and overall organization and efficiency; however, she gave respondent unsatisfactory results in his overall medical interviewing skills, his overall physical exam skills, and his professionalism and communications skills.

12. Respondent underwent both physical and mental evaluations. A qualified nurse practitioner performed the physical examination and testified that respondent is "remarkably healthy," except for "some bilateral wheezes" and hearing loss. A mental evaluation was administered by way of the MicroCog test, a computer-based assessment of cognitive skills used only to screen whether a full neuropsychological evaluation is warranted, but not as a diagnostic tool. During the administration of the test, the proctor observed irregularities in respondent's performance in that he "exited the room on five separate occasions to ask [the proctor] questions about the test" and "was very visibly frustrated." (Ex. 32, p. 002.) On September 27, 2016, William Perry, Ph.D., a licensed psychologist, reviewed respondent's results from the Microcog test. He concluded that, relative to a person of similar age and educational background (i.e. 80-89 years of age and with at least a high school diploma), respondent performed above average on the reaction time index, and average on the general cognitive proficiency, information processing speed, reasoning/calculation, memory, and spacial processing accuracy index. However, respondent's performance on all tested indices was "lower than approximately ninety-nine percent of practitioners in the younger physician population." (Ex. 33, p. 003.) Dr. Perry recommended further neuropsychological evaluation. (Ex. 27.)

13. On September 21, 2016, respondent underwent two oral clinical examinations. The clinical examinations took into account that respondent was certified by the American Board of Obstetrics and Gynecology, and that he completed his residency training in 1965, and infertility fellowship training in 1966. The examinations also took into account that respondent was in private practice throughout most of his career in obstetrics and gynecology, and that "more recently [respondent] also worked in urgent care despite having no previous urgent care experience." (Ex. 10.) Respondent's performance on the two clinical examinations is summarized as follows:

(A) Martin C. Schulman, M.D., a family physician and an associate clinical professor at PACE, administered an examination in urgent care. Dr. Schulman presented respondent with six scenarios involving symptoms of chest pain, painful red eye (hyphema), respiratory infections, headache, low back pain, and painful urination. Respondent's case scores were unsatisfactory in all but one area of testing, scoring the lowest possible satisfactory score for his treatment of hyphema. The PACE physician administering the examination observed "deficits in [respondent's] medical knowledge and clinical judgment that put several patients at risk for poor outcomes and raised questions about his suitability to work in an urgent care setting." (Ex. 10, p. 3.)

(B) Christine Miller, M.D., a clinical instructor of gynecology at PACE and board-certified physician in obstetrics and gynecology, administered an examination in a spectrum of women's health conditions. Dr. Miller presented respondent with 13 patient scenarios involving ectopic pregnancy, labor management, assisted professional delivery, shoulder dystocia, postpartum hemorrhage, menorrhagia/polyp/fibroid conditions, operative hysteroscopy, laparoscopy complications, cervical cancer screening, urinary incontinence issues, contraceptive options, pelvic inflammatory disease, and review of fetal heart tracings. Respondent's case scores were unsatisfactory in five of the case scenarios. Dr. Miller concluded, "Overall, [respondent] did not perform well on the oral exam. He lacked fundamental knowledge of many of the topics presented. He suggested that his clinical experience would keep him out of some of the types of scenarios we reviewed and that was the reason he did not know the management. [¶] The overall grade I gave him for his oral clinical exam could be categorized as fail where the potential grades are pass/borderline/fail." (Ex. 17, p. 4.)

(C) Dr. Miller randomly selected and reviewed seven charts from respondent's OB/GYN practice that documented prenatal care only. Dr. Miller observed, "The charts would be improved by making all entries legible and including a pregnancy checklist or problem list to ensure that all prenatal screening is complete." (Ex. 17, p. 2.) The chart audit produced satisfactory scores with respect to six charts, "and one was caution/borderline." (Ex. 25, p. 9.)

14. Respondent completed the women's health version of PRIMUM, a computerized test developed by the National Board of Medical Examiners (NBME). PRIMUM consists of a mix of urgent and non-urgent cases that each participating physician must manage. The examination requires computer literacy, which respondent acknowledged

he lacks. Although respondent scored some results that were satisfactory and superior, his "overall performance was unsatisfactory" and he "displayed a lack of medical knowledge and there were multiple flaws in his clinical judgment." (Ex. 11, p. 4.) Respondent took unfavorable actions on two cases, meaning his actions were "inappropriate, risky, or harmful based on the level of intrusiveness and potential harm to the patient." (Ex. 25, p. 10.)

15. At the completion of the PRIMUM test, respondent submitted to a Transaction Simulated Recall (TSR) interview conducted by Dr. Schulman. Overall, respondent's performance at the TSR interview was unsatisfactory and he displayed a lack of medical knowledge and multiple flaws in his clinical judgment.

16. As part of Phase I of the PACE program, respondent completed a multiple-choice examination created by the NBME. Respondent scored in the lowest quintile in seven of eight tested categories, with a total test percentile rank of one. (Ex. 29.)

17. On November 14, 2016, respondent repeated the oral clinical examination in general health and was presented with six different scenarios, involving symptoms of respiratory infections, diarrhea after antibiotic treatment, left lower quadrant abdominal pain, wrist pain (carpel tunnel syndrome), recurrent urinary tract infection, and miscellaneous cases. Although respondent scored satisfactory results in two scenarios, his overall score was unsatisfactory and he exhibited "errors in medical knowledge and clinical judgment." (Ex. 12, p. 3.)

18. Also on November 14, 2016, respondent underwent a Standardized Patient Evaluation, in which a PACE physician served as a simulated patient in four cases presented by another PACE physician. Both physicians scored respondent's performance as unsatisfactory in three cases and "barely satisfactory in the other case" and observed in respondent's demonstration "serious deficiencies in his medical knowledge and clinical judgment." (Ex. 13, p. 2.)

19. Also on November 14, 2016, David E.J. Bazzo, M.D., FAAFP, a clinical professor of family medicine and director of the PACE program, performed a Chart Simulated Recall (CSR) assessment of respondent. Respondent submitted 30 chart entries from patients that he saw at the urgent care clinics. Dr. Bazzo reviewed all chart entries and testified that he had "concerns about every chart" and that respondent's performance "ranked among the lowest that we have tested." In his written report, Dr. Bazzo concluded, "[Respondent's] documentation was terrible despite taking the PACE Medical Records Keeping Course in April of this year. Additionally, and even more concerning, is his mismanagement, poor reasoning and decision making regarding patient care. I have very serious concerns regarding the safety of patients under his care and believe he poses an immediate risk if he continues to practice medicine at this time." (Ex. 15, pp. 005-006.)

20. Also on November 14, 2016, Daniel E. Zehler, Psy.D, ABPP, interviewed and examined respondent to perform a neuropsychological fitness for duty evaluation. In addition to interviewing respondent, Dr. Zehler administered various tests and procedures to assess claimant's intelligence, reasoning, and cognitive capacity. Respondent demonstrated

"psychometric evidence of cognitive impairment affecting attention, verbal memory and executive functioning." (Ex. 28, p. 13.) In his written recommendations, Dr. Zehler reported: "Findings were at a level where inconsistent cognitive processing, impulsivity, impaired memory and weak problem solving would be likely to impair critical thinking and decision making in unfamiliar or complex problem solving situations. [Respondent's] level of insight regarding potential lapses in problem solving and judgment is insufficient to reliably detect and correct lapses that may occur. This level of functioning does not appear consistent with independent medical practice." (Ex. 28, pp. 14-15.)

21. On November 15, 2016, Dr. Miller conducted a second oral clinical examination of respondent in the field of obstetrics and gynecology. She presented respondent with 10 different patient scenarios, including ectopic pregnancy, laparoscopy complications and technique, menorrhagia, fibroids, cervical cancer screening, family history of cancer, urinary incontinence, contraceptive options, pelvic inflammatory disease, and adnexal masses. Respondent failed seven of the case scenarios. She again gave respondent an overall failing grade. (Ex. 18.)

22. On November 17, 2016, respondent underwent clinical assessments as part of a Phase II evaluation. With respect to his professional behavior, communication skills, and medical knowledge, respondent performed at unsatisfactory levels, according to Dr. Cecilia Gutierrez, the faculty member who performed one evaluation. Dr. Gutierrez reported, "I am profoundly troubled by [respondent's] strong comments regarding patient's rights, treatments and his recommendations," and made the additional comment, "I was deeply troubled by [respondent's] approach to patient care and I strongly think that he be [*sic*] removed from clinical practice as soon as possible." (Ex. 30.) In a declaration presented in support of the Petition, Dr. Gutierrez elaborated, stating that respondent has "extreme ideas about how to treat medical conditions which are not in accordance with most recommendations. He showed no consideration for the patient as a person . . . and also made arrogant and unbelievable comments about patient rights, including very troublesome comments about one patient with a disability." (Ex. 35.)

23. In addition, respondent "shadowed" Esmathullah Hatamy, another faculty member, for a morning and afternoon session as part of a Phase II clinical assessment. Dr. Hatamy reported that respondent "needs a lot of improvement before he starts to practice primary care." (Ex. 30.) In a declaration presented in support of the Petition, Dr. Hatamy explained, "Overall, [respondent] demonstrated gaps in his medical knowledge of primary care. I would characterize his knowledge as 'pragmatic.' Generally speaking, [respondent] requires significant improvement before [he] start[s] seeing patients as a primary care practitioner." (Ex. 34.)

24. William Norcross, the founder and director of the PACE program, testified that all faculty members who participated in the above-described assessments and examinations conferred and discussed respondent's performance after both phases of the program. Pursuant to custom and practice, a committee of PACE faculty members must evaluate a participant's performance and unanimously agree upon a final grade in one of the

following four categories: (1) Clear pass, (2) pass with minor recommendations, (3) pass with major recommendations, or (4) fail, which "signifies a poor performance that is not compatible with overall physician competency and safe practice." (Ex. 25, p. 29.)

25. On December 12, 2016, after deliberation during multiple case conferences, the committee of faculty members reported to the Board that respondent's overall performance in the PACE program was "Fail - Category 4." (Ex. 25, p. 29.)

Condition 14 – Probation Monitoring

26. Dianna Gharibian, an inspector with the Board, was assigned to monitor respondent's progress and compliance with the terms of probation. She testified that respondent was initially "doing well" on probation, having filed his quarterly declarations, paid the first fee, attended numerous consultations, and completed the medical record keeping course.

27. However, after reviewing the reports from PACE and the evaluation of Dr. Zehler, Inspector Gharibian determined that respondent was non-compliant with Condition 2 of the ordered terms of probation.

28. Moreover, Inspector Gharibian's credible testimony established that respondent's current financial obligation to the Board is $11,154, including probation monitoring costs for 2016[1] and reimbursement for medical and neuropsychological evaluations. Respondent has not paid any of these costs.

29. On December 16, 2016, Inspector Gharibian filed a Probation Non-Compliance Report, recommending that complainant file a petition for revocation of respondent's license based on his failure to pass the PACE clinical training program.

Mitigation Evidence

30. Respondent practiced full-time as a gynecologist in California with no record of discipline for more than 35 years until 2014 when the Board filed the Accusation. He previously had academic appointments at Columbia University and the University of Massachusetts. Respondent testified that he has treated thousands of patients and pays a substantially smaller premium for errors and omissions coverage as compared to other physicians, evidence that his insurance carrier does not consider him to be a high risk. There was no evidence of employment discipline by any hospital or medical group that extended privileges to respondent. There was no evidence of any judgments against respondent for negligence or malpractice.

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[1] At the time of the hearing, probation monitoring costs for 2017 had not yet been assessed.

31. The faculty at PACE did not review the St. Francis Medical Center records relating to the allegations of the Accusation. None of the witnesses from PACE expressed an opinion about respondent's treatment of the subject patient.

32. Respondent testified that he remains competent to practice. He presented four character reference letters to supplement and explain his direct testimony as follows:

(A) A colleague at AME Medical Group Urgent Care & Family Medicine, wrote, "I have been working with [respondent] for over 2 years and have found him to be a competent doctor who renders good medical care to his patients." (Ex. A.)

(B) Another colleague wrote, "[Respondent] has provided excellent patient care in his employment with Dusk to Dawn Urgent Care. He is well liked by the patients and the staff. He is dedicated in helping Dusk to Dawn Urgent Care [to provide] quality care to the patients in the medically-underserved population." (Ex. A.)

(C) Another colleague wrote, "[respondent] has been an outstanding physician at Dusk to Dawn Urgent Care. He has been with Dusk to Dawn Urgent Care since June 2015. He is always ready to cover shifts when needed. We mentored him in his patient care and we are extremely proud of his work." (Ex. A.)

(D) The contents of each letter omitted any indication that the writers were aware of the circumstances at Bellflower Medical Center or St. Francis Medical Center that caused respondent to be disciplined and placed on probation.

33. Respondent has been unable to earn income since December 16, 2016, when the Board placed respondent's license in suspended status and issued a Cease Practice Order. (Ex. 9.) Respondent testified that he is relying on "donations from friends" and has no money, and that he is ashamed and desperate.

34. Patrick James Baggot, M.D., testified that, in his opinion, respondent is fit to practice. After reviewing all PACE reports, Dr. Baggot believed that respondent should have "a string of board complaints" and peer review actions if he performed as poorly as described in those reports. He reviewed respondent's charts and observed some "unusual" practices, including the use of trichloracetic acid to treat cervical dysplasia; however, he testified that "just because it is not the way everyone else does it does not mean it is wrong." He further opined that charging $3,500 for a neuropsychiatric evaluation is unreasonable and excessive because Medi-Cal would have paid $30 for the same service. He implied that PACE and the Board are financially motivated, analogizing that "if you paid a cop $10,000 for every speeding ticket, he would write a lot of tickets." Dr. Baggot acknowledged that he participated in the PACE program after a "sham" peer review, and that he "didn't learn a great deal" and that "the tuition is a million dollars a year." He testified that respondent is entitled to great deference as a former professor of medicine, referring to the second paragraph of the Hippocratic Oath.

35. Respondent has completed the Board's requirements for Continuing Medical Education. He has undergone no further medical or neuropsychological assessments and he is not currently under treatment with a neurologist. Respondent testified that he does not believe that he did anything wrong with respect to the allegations of the Accusation.

LEGAL CONCLUSIONS

1. The standard of proof in an administrative action seeking to suspend or revoke a professional license is clear and convincing proof to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

2. The Medical Practice Act governs the rights and responsibilities of the holder of a physician's and surgeon's certificate. (Bus. & Prof. Code, §§ 2000 et seq.) The state's obligation and power to regulate the professional conduct of its health practitioners is well settled. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564; *Fuller v. Board of Medical Examiners* (1936) 14 Cal.App.2d 732.)

3. The purpose of a disciplinary action is not to punish the physician, but to protect the public. (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1416.) Protection of the public is the highest priority for the Board in exercising its disciplinary authority and is paramount over other interests in conflict with that objective. (Bus. & Prof. Code, § 2001.1.)

4. A licensee who has been found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the cost of probation monitoring, or such other action taken in relation to discipline as the Board or administrative law judge deems proper. (Bus. & Prof. Code, § 2227.)

5. Cause exists to revoke probation and rescind the stay of revocation because respondent failed to successfully complete the PACE Program as required by Condition 2 of the Disciplinary Order. (Factual Findings 7-25.)

6. Cause exists to revoke probation and rescind the stay of revocation because respondent failed to pay probation monitoring costs as required by Condition 14 of the Disciplinary Order. (Factual Findings 9 and 26-29.)

7. Pursuant to the Board Guidelines, the minimum penalty for violations of probation is a 30 day suspension, and the maximum penalty is revocation. An administrative law judge of the Medical Quality Hearing Panel is mandated, wherever possible, to 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. (Bus. & Prof. Code, § 2229, subd. (b).)

8. In spite of respondent's good faith efforts to comply with the terms of his probation, clear and convincing evidence shows that his cognitive skills have diminished to the point that he now poses a genuine risk of harm to the public. Respondent offered no competent evidence to rebut the overwhelming evidence presented by complainant, and presented insufficient evidence of mitigation or rehabilitation.

9. Arguably the most important consideration in predicting future conduct is evidence of a change in attitude from that which existed at the time of the conduct in question. (*Singh v. Davi* (2012) 211 Cal.App.4th 141.) In this case, respondent has steadfastly held to his belief that he remains a competent physician, in spite of objective signs of a decline in his abilities. As determined by Dr. Zehler, respondent's level of insight regarding his potential lapses in problem-solving and judgment is insufficient to prevent a recurrence through self-awareness. Respondent exhibited no remorse or acknowledgement of wrongdoing with respect to his treatment of the subject patient of the Accusation, an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933.) Rehabilitative efforts presuppose an admission of the problem, and respondent's failure to recognize that he has suffered cognitive impairments, and its potential effect on his practice, heighten the need for discipline. (*In re Kelley* (1990) 52 Cal.3d 487.)

10. Respondent's witness, Dr. Baggot, was unreliable because he exhibited a palpable disdain for the PACE program. The character reference letters received negligible weight because none of the authors demonstrated any awareness of the circumstances at Bellflower Medical Center or St. Francis Medical Center that caused the Board to discipline respondent's license and place him on probation. Having failed the PACE program, after the opportunity to repeat various clinical assessments, no remedial action and no restrictions on the scope of respondent's practice would provide sufficient public protection.

11. Complainant established that respondent's current financial obligation to the Board is $11,154. However, respondent presented compelling evidence of his inability to pay the unpaid costs associated with his probation. Ordering respondent to pay costs in addition to revoking his license would be unduly punitive. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.) Because probation is neither continued nor extended by this Decision, and considering respondent's state of financial hardship, respondent shall not be ordered to pay the costs of probation monitoring, unless or until he successfully petitions to have his certificate reinstated.

ORDER

1. The Petition is granted and the probation that was granted by the Board in the Disciplinary Order (Case number 11-2012-225092) is revoked.

2. Physician's and Surgeon's Certificate number C 38016 issued to respondent Ata-Ollah Mehrtash is revoked.

3. Respondent's authority to supervise physician assistants and advanced nurse practitioners is revoked.

4. Respondent shall pay the incurred costs of probation monitoring only if he successfully petitions to have his certificate reinstated.

DATED: February 16, 2018

DocuSigned by:
Matthew Goldsby
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MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 5, 2017
BY: ANALYST

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

In the Matter of the Petition to Revoke Probation Against: ATA-OLLAH MEHRTASH, M.D. 5043 Whittier Boulevard Los Angeles, California 90022-3116 Physician's and Surgeon's Certificate No. C 38016, Respondent.	Case No. 800-2016-026718 **PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about May 23, 1978, the Medical Board of California issued Physician's and Surgeon's Certificate Number C 38016 to Ata-Ollah Mehrtash, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on April 30, 2018, unless renewed.

3. In a disciplinary action entitled *In the Matter of the Accusation Against Ata-Olla Mehrtash, M.D.*, Case No. 11-2012-225092, the Board issued its Decision and Order, effective

December 4, 2015, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that Decision and Order is attached as Exhibit A and is incorporated by reference.

4. On December 16, 2016, due to Respondent's failure to comply with Condition No. 2 of the Disciplinary Order in Case No. 11-2012-225092, a Cease Practice Order was issued prohibiting Respondent from engaging in the practice of medicine.

JURISDICTION

5. This Petition to Revoke Probation is brought before the Board under the authority of the Board's Decision and Order in Case No. 11-2012-225092, which provides in pertinent part as follows:

"IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 38016 issued to Respondent Ata-Olla Mehrtash, M.D. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

"....

"2. CLINICAL EDUCATION PROGRAM. Within 90 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ('Program'). Respondent shall successfully complete the Program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

"The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of Respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Respondent's area of practice in which Respondent was alleged to be deficient, and at minimum, a 40 hour program of clinical education in the area of practice in which Respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s),

Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

"Based on Respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with Program recommendations.

"At the completion of any additional educational or clinical training, Respondent shall submit to and pass an examination. Determination as to whether Respondent successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

"If Respondent fails to enroll, participate in, or successfully complete the clinical training program within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical training program have been completed. If the Respondent did not successfully complete the clinical training program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period."

". . .

"12. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

"...

"14. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

"..."

FIRST CAUSE TO REVOKE PROBATION

(Failure to Successfully Complete the PACE Program)

6. At all times after the effective date of Respondent's probation, Condition No. 2 of the Disciplinary Order stated: "Within 90 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ('Program').

"...

"At the completion of any additional educational or clinical training, Respondent shall submit to and pass an examination. Determination as to whether Respondent successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

"...

"If Respondent fails to enroll, participate in, or successfully complete the clinical training program within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical training program have been completed. If the Respondent did not successfully complete the clinical training program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation

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and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period."

7. Respondent's probation is subject to revocation because he failed to comply with Condition No. 2 of the Disciplinary Order, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent participated in Phase I of the PACE Program on or about September 20, 2016, and on September 21, 2016. Overall, Respondent's performance on the Phase I, two-day assessment was unsatisfactory. For example, Respondent was asked to perform a complete history and physical examination of a female mock-patient. Respondent did not inquire about the reason for the mock-patient's visit, did not take her vital signs, and hurt the mock-patient during Respondent's examination of her pelvis because of his improper positioning of the speculum.[1] Respondent also scored in the 1st percentile on the Obstetrics and Gynecology Clinical Science Subject Exam. Additionally, Respondent participated in oral clinical examinations on topics relevant to the fields of Obstetrics, Gynecology and Urgent Care medicine. Respondent performed very poorly on the clinical vignettes demonstrating that he has significant deficits in his medical knowledge and clinical judgment, thereby exposing his potential patients to poor outcomes. Respondent's differential diagnoses were often incomplete and he demonstrated a consistent lack of fundamental knowledge on several medical topics including diagnostic criteria and medical procedures. The PACE Program had significant concerns that Respondent's limited medical knowledge and poor clinical judgment may pose an imminent threat to patient safety.

B. Respondent returned for Phase II of the PACE Program on or about November 14, 2016, through November 18, 2016. Phase II is a five-day clinical education and assessment program provided in the actual clinical environment of the University of California San Diego Medical Center or one of its satellite clinics. It is both a formative and summative assessment of the participant's clinical skills, knowledge, and judgment. However, Respondent's performance

[1] A "speculum" is a medical instrument utilized to investigate and examine orifices of the human body. In the field of obstetrics and gynecology, the speculum is often inserted into the vagina to dilate it for examination of the vagina and cervix.

was unsatisfactory. For example, Respondent gave inaccurate information to patients, often made immediate conclusions without considering a wide differential diagnosis, opted to have the patients undergo extensive medical work-ups as opposed to a reasonable stepwise approach, and lacked medical knowledge of basic medical issues. Furthermore, Respondent completed a neuropsychological Fitness for Duty Evaluation after his performance on the Phase I assessment. Respondent demonstrated psychometric evidence of cognitive impairment affecting attention, verbal memory, and executive functioning. The evaluation also found that Respondent's performance was at a level where inconsistent cognitive processing, impulsivity, impaired memory, and weak problem-solving would be likely to impair critical thinking and decision-making in unfamiliar and complex problem-solving situations. The conclusion derived from the evaluation was that Respondent's level of functioning does not appear consistent with independent medical practice. Overall, Respondent's performance in the PACE Program was unsatisfactory and consistent with a "Fail – Category 4," which signified a poor performance that was not compatible with overall physician competency and safe practice, representing a potential danger to his patients. A physician receiving this score is considered unsafe and, based on the observed performance in the PACE assessment, represents a potential danger to their patients. This score reflects major, significant deficiencies in clinical competence.

8. Due to Respondent's failure to comply with Condition No. 2 of the Disciplinary Order, as set forth above, a Cease Practice Order was issued prohibiting Respondent from engaging in the practice of medicine.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Pay Clinical Training Program Costs and/or Probation Monitoring Costs)

9. At all times after the effective date of Respondent's probation, Condition No. 2 of the Disciplinary Order stated: "Within 90 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ('Program'). Respondent shall successfully complete the Program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee

agrees in writing to an extension of that time.

"The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of Respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Respondent's area of practice in which Respondent was alleged to be deficient, and at minimum, a 40 hour program of clinical education in the area of practice in which Respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

"..."

10. At all times after the effective date of Respondent's probation, Condition No. 14 of the Disciplinary Order stated: "Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year."

11. Respondent's probation is subject to revocation because he failed to comply with Condition No. 14 of the Disciplinary Order, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent failed to pay the 2016 probation monitoring costs of $3,667.00, which was due by January 31, 2017.

B. Respondent completed a neuropsychological evaluation recommended by the PACE Program on October 26, 2016. However, Respondent did not pay the $3,500.00 cost for the evaluation, which was due by January 13, 2017.

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PRAYER

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

1. Revoking the probation that was granted by the Board in Case No. 11-2012-225092 and imposing the Disciplinary Order that was stayed thereby revoking Physician's and Surgeon's Certificate No. C 38016 issued to Ata-Ollah Mehrtash, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. C 38016 issued to Ata-Ollah Mehrtash, M.D.;

3. Revoking, suspending, or denying approval of Respondent's authority to supervise physician assistants and advanced practice nurses;

4. Ordering Ata-Ollah Mehrtash, M.D., to pay, if probation is continued or extended, the costs of probation monitoring; and

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

DATED: June 5, 2017

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

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Exhibit A

Decision and Order

Medical Board of California Case No. 11-2012-225092

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

In the Matter of the Accusation Against:	)	
ATA-OLLA MEHRTASH, M.D.	)	Case No. 11-2012-225092
Physician's and Surgeon's Certificate No. C 38016	)	
Respondent	)	

DECISION

The attached Stipulated Settlement and Disciplinary Order 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 December 4, 2015.

IT IS SO ORDERED: November 4, 2015.

MEDICAL BOARD OF CALIFORNIA

Dev Gnanadev MD

Dev Gnanadev, M.D., Chair
Panel B

MEDICAL BOARD OF CALIFORNIA
I do hereby certify that this document is a true and correct copy of the original on file in this office.

Cynthia Kenyon
Signature

Custodian of records
Title

12/
Date

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E. A. JONES III
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: ATA-OLLA MEHRTASH, M.D. 16444 Paramount Blvd., Suite 206D Paramount, CA 90723 Physician's and Surgeon's Certificate No. C 38016, Respondent.	Case No. 11-2012-225092 OAH No. 2014120188 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Randall R. Murphy, Deputy Attorney General.

2. Respondent Ata-Olla Mehrtash, M.D. ("Respondent") is represented in this proceeding by attorney Anthony Ross, Esq., whose address is: Anthony Ross, Esq., 2000 Marengo Street, Suite G, Los Angeles, California 90033.

3. On or about May 23, 1978, the Medical Board of California issued Physician's and Surgeon's Certificate No. C 38016 to Ata-Olla Mehrtash, M.D. (Respondent). The Physician's

and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 11-2012-225092 and will expire on April 30, 2016, unless renewed.

JURISDICTION

4. Accusation No. 11-2012-225092 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 18, 2014. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 11-2012-225092 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 11-2012-225092. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 11-2012-225092 and that he gives up his right to contest these charges.

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10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 38016 issued to Respondent Ata-Olla Mehrtash, M.D. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education

Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

2. CLINICAL TRAINING PROGRAM. Within 90 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program"). Respondent shall successfully complete the Program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of Respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Respondent's area of practice in which Respondent was alleged to be deficient, and at minimum, a 40 hour program of clinical education in the area of practice in which Respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s),

Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on Respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, Respondent shall submit to and pass an examination. Determination as to whether Respondent successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical training program within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical training program have been completed. If the Respondent did not successfully complete the clinical training program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

3. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree

to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice medicine, and whether Respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a

notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

5. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is prohibited from supervising physician assistants.

6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

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

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

8. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or

its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

11. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

12. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have

continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

13. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation. Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

14. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Anthony Ross, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

Dated: 7/16/15

ATA-OLLA MEHRTASH, M.D.
Respondent

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I have read and fully discussed with Respondent Ata-Olla Mehrtash, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

Dated: 7/16/15

Anthony Ross, Esq
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 7/17/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

RANDALL R. MURPHY
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 11-2012-225092

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO September 18, 2014
BY: ANALYST

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

In the Matter of the Accusation Against: ATA-OLLAH MEHRTASH, M.D. 16444 Paramount Blvd., # 206D Paramount, California 90723 Physician's and Surgeon's Certificate No. C 38016, Respondent.	Case No. 11-2012-225092 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California ("Board").

2. On May 23, 1978, the Medical Board of California issued Physician's and Surgeon's Certificate Number C 38016 to Ata-Ollah Mehrtash, M.D. ("Respondent"). That license was in full force at all times relevant to the charges brought herein and will expire on April 30, 2016, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. The Medical Practice Act (Act) is codified at sections 2000-2521 of the Business and Professions Code.

5. Pursuant to Code section 2001.1, the Board's highest priority is public protection.

6. Code section 2227, subdivision (a), provides as follows:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

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

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

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

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

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

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

7. Section 2234 reads, in relevant part, as follows:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"...

"(b) Gross negligence.

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

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

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

8. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

FACTS

9. Patient E.R., a female, presented to Respondent on May 10, 2012, reporting a four-week-long history of abnormal uterine bleeding. Her past medical history included chronic lung disease, morbid obesity, insulin-dependent diabetes, hypothyroidism, hypercholesterolemia, and hypertension. She was 22 years postmenopausal, and had previously been pregnant five times, one ending in a Cesarean delivery.

10. Respondent performed a pelvic exam and Pap cytologic smear at his office. Respondent noted that the uterus was palpably enlarged. E.R. had a CT scan of the abdomen and pelvis performed at Coast Plaza Doctors Hospital on May 8, 2012. That imaging study described an enlarged uterus, though the dimensions were not specified. A blood count demonstrated a mild anemia, a normal white count, and normal platelet count.

11. Respondent admitted E.R. to Bellflower Medical Center on the evening of May 10, 2012, and performed a comprehensive preoperative medical evaluation. He further obtained a preoperative cardiology consultation by Dr. R. An echocardiogram on April 19, 2011 had shown a normal 82% cardiac ejection fraction. The consent form for a dilation and curettage (D & C)[1] was signed and witnessed at 1900 hours on May 10, 2012. A preoperative pelvic CT scan with contrast was ordered on May 10, 2012, at 1800 hours. It was not done preoperatively, but instead was accomplished on the morning of the first postoperative day.

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[1] A dilation and curettage is a dilation (widening/opening) of the cervix and surgical removal of part of the lining of the uterus and/or contents of the uterus by scraping and scooping (curettage).

12. The medical records show that Respondent did not perform a pelvic examination under anesthesia. A pelvic examination under anesthesia would allow Respondent to better appreciate the actual degree of uterine enlargement prior to instrumenting the uterus.

13. Respondent's dictated an operative report at 1754 hours. The operative report did not specifically mention the use of a sharp metal curette. Nor did that operative report indicate any suspicion of uterine perforation.

14. According to his subsequently dictated History and Physical (H & P) at Saint Francis Medical Center (SFMC), on May 12, 2012, Respondent indicated that he realized the possibility of a uterine perforation caused by the No. 6 suction cannula at the time of D & C. In that dictation, he stated that he realized the perforation, intraoperatively, upon placing the [unknown device] into the uterus. He continued, "minimal amount of D & C was done". However, his Operative Report, dictated immediately postoperatively, included no mention of any suspicion for uterine perforation.

15. Respondent obtained approximately 50 cc of clot and enough tissue to make a conclusive histopathologic diagnosis. The histopathologic report from the D & C procedure gave no indication of any extra uterine tissue suctioned into the specimen. If Respondent suspected uterine perforation intraoperatively, he should have left the offending instrument in place and should have immediately discontinued the procedure.

16. Respondent did not immediately begin prophylactic antibiotics. Ceftriaxone was initiated only after the patient had spiked a temperature, postoperatively, in the ICU. After determining there was excessive uterine bleeding, an immediate laparoscopic or open abdominal pelvic assessment was necessary.

17. The medical records describe a large amount of blood with an estimated blood loss of 400 ml. Postoperatively, the patient was admitted to the ICU for closer observation, in light of the excessive blood loss. The handwritten operative note indicated that no complications were suspected or realized. However, Respondent's postoperative report, dictated the following day, clearly suggests that he was aware of the perforation at the time of surgery.

18. At his Subject Interview, Respondent indicated that he was aware, or at minimum suspected, perforation of the uterus. He also indicated that he did not give prophylactic antibiotics upon suspecting uterine perforation at the time of the D & C.

19. Respondent suspected a uterine perforation had occurred but still curetted the uterine cavity.

20. Postoperatively, the patient continued to have ongoing vaginal bleeding, requiring that pads be changed every several hours. A post-operative blood count showed an elevated white count and a significant and progressive anemia. These values represent marked changes when compared to the corresponding preoperative values.

21. On E.R.'s first postoperative day in the ICU, she experienced a generally declining trend in blood pressure, and no clear trend in pulse rate. Respondent was called approximately twelve hours postoperatively because the patient was crying in pain. However, the records reflect that two hours later she was sleeping soundly. No indication of why this occurred is included in her chart.

22. The morning of the first postoperative day, a CT of the pelvis demonstrated a 15 x 10 mesenteric abscess with free air in the abdominal cavity. Respondent sought to consult with other general surgeons at the hospital but they deferred his request.

23. Approximately 24 hours postoperatively, E.R.'s temperature rose to 101.3 and blood cultures were drawn. Ceftriaxone (a broad-spectrum antibiotic) was begun in the evening of May 12, 2012. Also, that evening blood products were typed and crossed in preparation for a potential transfusion.

24. Respondent spent several hours trying to arrange transfer of the patient, but ICU's contacted were at capacity. Respondent then contacted SFMC, where he had admitting privileges, to arrange for a transfer to their ICU. Medical records were faxed to SFMC at approximately 1900 hours. At approximately 2000 hours, the patient was transferred to SFMC via ambulance.

25. The D & C Surgical Pathology Report demonstrated a malignant mixed Mullerian tumor.[2] Incidentally, that report gave no Indication of extra uterine tissue having been suctioned into the specimen.

26. Upon arrival at SFMC, E.R. was in septic shock and unresponsive. Respondent contacted a gynecological oncologist and a general surgeon. E.R. underwent an immediate hernia repair, hysterectomy, and omentectomy. Dr. J.H., a critical care general surgeon, served as the primary surgeon for this exploratory laparotomy procedure. At his Subject interview, Respondent stated that he felt that it was unwise to take the patient to the OR so quickly at such time that she was suffering from severe diabetic ketoacidosis.

27. During the laparotomy the uterine perforation was discovered. The peritoneum contained 1500 cc of blood and clots. The blood in the peritoneal cavity was foul-smelling, suggesting infection from the perforated uterus. The retroperitoneal space also contained a hematoma and the surgical pathology report indicated an acutely-inflamed hernia sac. The uterine specimen, from the supracervical hysterectomy done by Respondent, featured acute and chronic endometritis, perforation, and a malignant mixed Mullerian tumor. Abscess formation involved the adjacent ovary.

28. Postoperatively E.R. was noted to be severely acidemic. Additionally, her troponin (muscle proteins) was elevated. The patient required intubation. She went into DIC,[3] and had multiple cardiac arrests. She was pronounced dead on May 13, 2012, at approximately 2315 hours. The preliminary cause of death was cardiac arrest secondary to severe sepsis.

29. Respondent's medical records are often illegible and conflicting.

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[2] A malignant mixed Müllerian tumor, also known as malignant mixed mesodermal tumor, is a malignant neoplasm found in the uterus, the ovaries, the fallopian tubes and other parts of the body that contain both carcinomatous (epithelial tissue) and sarcomatous (connective tissue) components.

[3] Diffuse Intravascular Coagulation or disseminated intravascular coagulation (DIC) is a bleeding disorder characterized by reduction in the elements involved in blood clotting due to their use in widespread clotting within the vessels. In the late stages, it is marked by profuse hemorrhaging and can result in death.

30. Respondent dictated his preoperative history and physical on July 18, 2012 for an admission on May 10, 2012, or two-months after the event.

31. Respondent dictated his preoperative history and physical on July 18, 2012 for an admission on May 10, 2012. In that dictation E.R.'s height was listed as "7 feet 3 inches" tall. The dictation was frequently unintelligible and the "7" actually should have been a "5."

32. Respondent's handwritten operative note of May 11, 2012, written at 1800 hours is cursory and does not meet the basic requirements of a postoperative note.

33. Respondent's dictated postoperative note reflects no suspicion or recognition of a uterine perforation.

34. Respondent dictated his Discharge Summary at Bellflower Medical Center reflecting an uncomplicated D & C and a normal brief postoperative course. This representation is not consistent with the patient's actual excessive bleeding at surgery and her complicated postoperative course in the ICU.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Gross Negligence)

35. By reason of the facts set forth above in paragraphs 9 through 34, incorporated herein by this reference, Respondent is subject to disciplinary action under section 2234(b) of the Code, in that he was grossly negligent in the care and treatment of E.R., as more particularly alleged hereinafter. The circumstances are as follows:

36. On or about May 10, 2012, Respondent performed a D & C surgical procedure on E.R. During that procedure he suspected a uterine perforation had occurred. However he proceeded to curette the uterine cavity. Respondent's curetting of the uterine cavity when he suspected a uterine perforation constitutes gross negligence and is a violation of section 2234(b) of the Code.

37. On or about May 10, 2012, Respondent performed a D & C surgical procedure on E.R. During that procedure he suspected a uterine perforation had occurred. However he did not pursue an aggressive evaluation, either a laparoscopy or laparotomy, which failure constitutes gross negligence and is a violation of section 2234(b) of the Code.

SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Repeated Negligent Acts)

38. By reason of the facts set forth above in paragraphs 9 through 37, incorporated herein by this reference, Respondent is subject to disciplinary action under section 2234(c) of the Code, in that he committed repeated negligent acts in the care and treatment of E.R., as more particularly alleged hereinafter. The circumstances are as follows:

39. On or about May 10, 2012, Respondent performed a D & C surgical procedure on E.R. Respondent did not perform a pelvic examination under anesthesia before or during this procedure. Respondent's failure to perform a pelvic examination under anesthesia constitutes negligence.

40. On or about May 10, 2012, Respondent performed a D & C surgical procedure on E.R., but although he suspected a uterine perforation he did not immediately initiate prophylactic antibiotics. Respondent's failure to immediately initiate prophylactic antibiotics in this context constitutes negligence and taken together with his failure to perform a pelvic examination under anesthesia constitutes repeated negligent acts and is a violation of section 2234(c) of the Code.

THIRD CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records)

41. By reason of the facts set forth above in paragraphs 9 through 40 above, incorporated herein by this reference, Respondent is subject to disciplinary action under section 2266 of the Code for failure to maintain adequate and accurate medical records. The circumstances are as follows:

42. Respondent dictated his preoperative history and physical on July 18, 2012 for an admission on May 10, 2012. A two-month gap in time between these two events constitutes a failure to maintain adequate medical records and is a violation of section 2266 of the Code.

43. Respondent dictated his preoperative history and physical on July 18, 2012 for an admission on May 10, 2012. In that dictation E.R.'s height was listed as "7 feet 3 inches" tall.

The dictation was frequently unintelligible and the "7" actually should have been a "5." Dictation of an unintelligible medical report constitutes a failure to maintain adequate medical records and is a violation of section 2266 of the Code.

44. Respondent's handwritten operative note of May 11, 2012, written at 1800 hours, is cursory and does not meet the basic requirements of a postoperative note. This is a failure to maintain adequate medical records and is a violation of section 2266 of the Code.

45. Respondent's dictated postoperative note reflects no suspicion or recognition of a uterine perforation. This is a failure to maintain adequate medical records and is a violation of section 2266 of the Code.

46. Respondent dictated his Discharge Summary at Bellflower Medical Center reflecting an uncomplicated D & C and a normal brief postoperative course ("The dilatation and curettage as well as the hospital course were uneventful"). This representation is not consistent with the patient's actual excessive bleeding at surgery and her complicated postoperative course in the ICU. This is a failure to maintain adequate medical records and is a violation of section 2266 of the Code.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 38016, issued to Ata-Ollah Mehrtash, M.D.;

2. Revoking, suspending or denying approval of his authority to supervise physician's assistants, pursuant to section 3527 of the Code;

3. Ordering him to pay the Medical Board of California the costs of probation monitoring if placed on probation, and;

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

DATED: September 18, 2014

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

Complainant

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