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

In the Matter of the First Amended Accusation Against:	)	
Gregory Lamont Belcher, M.D.	)	**Case No. 800-2016-023034**
Physician's and Surgeon's Certificate No. G 66631	)	
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 February 22, 2019.

IT IS SO ORDERED: January 24, 2019.

MEDICAL BOARD OF CALIFORNIA

Ronald H. Lewis, M.D., Chair
Panel A

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

In the Matter of the First Amended Accusation Against: GREGORY LAMONT BELCHER, M.D., Physician's and Surgeon's Certificate No. G 66631 Respondent.	Case No. 800-2016-023034 OAH No. 2018060361

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on November 26 and 27, 2018, in Oakland, California.

Deputy Attorney General Keith C. Shaw represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California, Department of Consumer Affairs.

Brendan M. Hickey, Attorney at Law, represented respondent Gregory Lamont Belcher, M.D., who was present.

The matter was submitted for decision on November 27, 2018.

FACTUAL FINDINGS

Introduction

1. On August 14, 1989, the Board issued Physician's and Surgeon's Certificate No. G 66631 to Gregory Lamont Belcher, M.D. (respondent). The certificate was active and current during all times pertinent here.

2. Complainant Kimberly Kirchmeyer is the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs. On November 20, 2018, she filed the first amended accusation against respondent in her official capacity.

3. Complainant alleges that respondent's license is subject to discipline because: 1) he was convicted of a crime involving dishonesty that is substantially related to the practice of medicine, and 2) he testified untruthfully at his criminal jury trial. Respondent filed a notice of defense and this hearing followed.

Respondent's Criminal Conviction

4. Respondent is married to Vilasini Ganesh, who held a physician's and surgeon's certificate, and practiced family medicine. Respondent and Ganesh practiced in different offices in the same building beginning in 2008.

5. On May 19, 2016, in the United States District Court for the Northern District of California, Ganesh was indicted on five counts of healthcare fraud (18 U.S.C. §§ 2 & 1347) and five counts of false statements relating to health care matters (18 U.S.C. § 1035). Respondent and Ganesh were indicted on one count of heath care fraud conspiracy (18 U.S.C. § 1349), one count of conspiracy to commit money laundering (18 U.S.C. § 1956, subd. (h)), and six counts of money laundering (18 U.S.C. §§ 2 & 1956, subd. (a)(1)(B)(i)).

6. On July 13, 2017, a superseding indictment was issued. The superseding indictment alleged that respondent and Ganesh had violated one count of health care fraud conspiracy, nine counts of health care fraud, eight counts of making false statements relating to health care matters, conspiracy to commit money laundering, and six counts of money laundering.

7. On December 14, 2017, following a jury trial, respondent was found guilty of one felony count of making a false statement relating to health care matters based on a claim respondent submitted to Cigna Health & Life Insurance Company (Cigna) for a service provided to his Patient M.H. The jury found that the service was not rendered on the date and for the duration claimed. Respondent was found not guilty of the remaining counts.[1]

8. The factual circumstances underlying the conviction were that respondent submitted a claim to Cigna for a physical therapy session[2] that a patient had on Monday, November 25, 2013; instead of identifying the correct date, respondent claimed that the session had occurred on Saturday, November 23, 2013.

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[1] Ganesh was found of guilty five felony counts of health care fraud and five felony counts of making false statements relating to health care matters.

[2] In 2009, respondent, an orthopedic surgeon, opened an in-house rehabilitation clinic offering physical therapy to his patients; some years later, a massage therapist was added.

9. The government did not contend, and the jury did not find, that respondent ever submitted a claim for services that were not provided. In her order denying respondent's motion for judgment of acquittal and/or for a new trial, dated February 15, 2018, the trial judge noted:

> As both [respondent] and the government recognize, the evidence produced at trial established that although the November 26, 2013 claim stated that M.H. received a physical therapy session from [respondent's] medical practice on Saturday, November 23, 2013, M.H. actually received that session on Monday, November 25, 2013.

10. On April 6, 2018, respondent was sentenced to 12 months and one day in federal prison, followed by three years of supervised release, and was ordered to pay a $100 assessment and $251.09 in restitution to Cigna. Respondent has appealed the conviction and the sentence. The Ninth Circuit recently ordered approval of a bond to stay the execution of respondent's sentence pending appeal.

11. At sentencing, the trial judge gave respondent credit because: 1) he served as an officer in the United States Navy; 2) he is the primary child care giver to five children ages 9, 10, 11, 17 and 20; 3) he has received respect and deep affection from his patients, colleagues and staff; and 4) he received tremendous support from his mother, stepsons, brothers-in-law, sister, colleagues, friends and patients. However, the judge applied a sentencing enhancement, finding that respondent's testimony at trial was at times inconsistent and untruthful.

Respondent's Trial Testimony

12. Respondent testified in his criminal trial on December 1 and 8, 2017. The following are pertinent portions of respondent's criminal trial testimony, which complainant contends demonstrate his untruthfulness.

13. On December 1, 2017, the Assistant United States Attorney asked respondent concerning the propriety of billing insurers for a different date than a service was rendered:

> Q: Let's start with this. You would agree it's improper to bill an insurance company for – that asserts care was provided on a day when there was no care provided that day. You would agree that's improper?
>
> A: Yes, yes.

On December 8, 2017, respondent testified as follows:

Q: If a patient is seen twice in one day, they get a massage and physical therapy – do you have that in mind?

A: Yes.

Q: You would agree with me it's improper to bill the insurance company as if they were seen on two different days instead of one day, wouldn't you?

A: Well, the way I was taught by who I considered a guru with billing, because she had 35 years of experience, and basically she told me that if – if patients got two procedures done in one day and they were – and the coding was very, very similar, and especially with electronic billing, it would – it would be processed as either a duplicate or a mistake or a resubmission and it would probably all be denied. So her recommendation, or the way she taught me, was that just bill the next day.

So it was sometime later, after she had retired, that I started to work with another biller who I talked to monthly or bimonthly and we were discussing it because [the physical therapist] Abigail had – one of the reasons why I talked with the other biller about it is because Abigail found a niche working with particularly one of the massage therapists where – Brooke – where she felt that it really, really helped what she was doing, and sometimes Abigail felt that she was limited. But if she could combine the treatment?

And so it came to me talking to the other billing expert and she said, "I understand that you do it that way, but my preferred way is to use a modifier."

And a modifier is a two digit code usually and it's another – just like the cluster of codes that we routinely use for therapeutic exercise, it's another set of two codes that if something is out of the ordinary, not straightforward, you can use it. Like, for instance, if I did a surgery and it was really, really more complicated than expected, I can put a 22 modifier on it and that changes – you know, if it takes two or more hours than expected, it changes that whole billing. It changes the billing rate and so forth.

So she said her preferred way, not that she put down the previous billing expert, but she said her preferred way was to use a billing modifier.

[¶] . . . [¶]

Q: Okay. I – let's – I just want to ask you – it sounds like you're saying no, but tell me if I'm wrong. You – did you think it was improper to put the different service date, yes or no?

A: No.

14. On December 1, 2017, respondent testified as follows concerning his practice of billing patients on a different date for rehabilitation services.

Q: All right. Now, you talked earlier that you had a – your patients were commonly being seen twice in one day, like getting massage and getting physical therapy?

A: Not commonly. I said it happens on rare occasions. It wasn't a common thing.

On December 8, 2017, respondent testified as follows:

Q: So, she's on the sign in sheets twice for the 30th, she's on the Google calendar twice for the 30th, but you billed her as being there on the 29th and 30th; correct?

A: Well, I would assume so.

Q: Okay. Let's look at – let's go look at a couple more months. I can do this on almost every month, but let's go to February. Let's go to February. []

A: But it's fine. We're agreeing. So I don't even –

Q: Oh, we are agreeing now?

A: We are agreeing.

Q: You did this throughout 2014?

A: I don't really – I could have, yes.

15. On December 8, 2017, respondent testified concerning whether he billed for services that were rendered, but on a different date than the patient was seen:

> Q: You would agree with me that when patients were seen twice on one day, you would split the bill for two different days all throughout 2012, '13, and '14; correct?
>
> A: It's possible, yes.
>
> [¶] . . . [¶]
>
> Well, there were occasions where we billed the next day for a double session.
>
> [¶] . . . [¶]
>
> Q: And that happened all through 2012, '13, '14; correct?
>
> A: I could have, yes.

Previously, on December 1, 2017, respondent testified: "I did not bill for dates where patients were not seen. I only billed when patients were seen."

16. On December 1, 2017, respondent testified as follows concerning the date he changed his billing practices:

> A: I am saying that early on in the process, we did make some mistakes. I'm saying that Carol Merrill, the billing, you know – she had a billing company for decades. She trained me to bill.
>
> I learned to bill, when there was two treatments done on the same day – I learned that that was wrong was that she told me, because I talked to Julie North from North Billing and she told me how I should – how do I address this problem.
>
> Q: When was that conversation?
>
> A: And it was corrected.
>
> Q: When was that conversation when you learned it was wrong?

A: I'm not sure. It was probably somewhere within that timeframe. Probably somewhere in 2013, or I'm not sure when.

Later on December 8, 2017, respondent testified as follows:

Q: You say you were taught, and then you changed your approach. When did you change your approach?

A: I can't tell you specifically because we're going back in years now. We're going back to 2013, 2014. I am not sure. It was an area of confusion. The modifier made more sense to me.

17. Complainant further contends, without citing the trial transcript, that respondent testified inconsistently when he stated that there was chaos in the office and a lack of coordination concerning scheduling but also that he knew exactly what procedures were provided to his patients.

18. In addition, complainant contends, without citing the transcript, that respondent testified inconsistently when he used the word "we" in describing how patients were billed, and also stated that he was the only one who submitted claims to insurers.

19. On a cold record, the quoted passages relied upon by complainant to prove dishonesty at trial do not appear to be obviously inconsistent or deceptive.

Respondent credibly explained in this proceeding that in his trial testimony he was intending to convey that he is now aware that submitting claims on a different date than the patient was treated is wrong, but at the time, he thought it was acceptable based on the advice he had received. Respondent explained further at hearing that although it was rather uncommon for a patient to be seen twice on one day for therapy, it could have happened on occasion over the course of several years. Respondent does not recall exactly when his new billing consultant advised him to use a modifier instead of submitting a different date; it was likely in 2013 or 2014, but he cannot be certain. Respondent was well aware of the therapy he had ordered, which was documented in the record; however, at some point there was some confusion in the office concerning scheduling therapy patients. Finally, respondent gathered billing information from his medical assistants and therapists; in using the word "we" he was referring to his office staff; however, he alone submitted the claims to insurers.

Considering respondent's credible testimony in this proceeding regarding what he was trying to convey in his trial testimony, it cannot be found that the passages cited by complainant establish by clear and convincing evidence that respondent was untruthful in his federal trial.

Respondent's Background and Training

20. Respondent graduated from the University of California, Los Angeles (UCLA), with a Bachelor of Science degree in June 1983. He earned his medical degree from Tufts University School of Medicine in 1988. Respondent completed a surgery internship through the University of Southern California at the Los Angeles County Medical Center in 1989. Respondent entered the United States Navy as a Medical Officer in 1989; he remained on active duty until 1992. From 1992 through 1993, respondent was a research fellow at the Joint Replacement Institute at UCLA. He completed his residency at Brown University, Department of Orthopedics, in 1998. From 1998 to 1999, respondent attended a fellowship at Stanford Medical Center's Adult Joint Reconstruction program in the Division of Orthopedics.

21. Respondent retired from the U.S. Navy as a Captain after 22 years. From 1990 to 1991, he served in the Central Command during Operation Desert Storm and received citations and awards for his duties as the Medical Department Head onboard the U.S.S. Mobile. Following three years of active duty, respondent continued as an active reservist. In 1996, respondent was nominated for the Junior Medical Corps Officer award. From 2005 to 2006, respondent was mobilized to Camp Pendleton Naval Hospital in support of Operation Enduring Freedom. In 2011, respondent received a certificate of retirement after 22 years of commitment in the U.S. Navy. In 2012, respondent was awarded a certificate of appreciation by then President Obama.

22. Beginning in 1999, respondent opened his own practice in Saratoga, California. From July 2001 until 2017, respondent was an adjunct clinical instructor in the Department of Orthopedic Surgery at Stanford. He served as the Chair of the Department of Orthopedic Surgery at Good Samaritan Hospital from 2005 to 2007.

23. Respondent specializes in revision surgery for patients who have complications after undergoing a total knee or total hip replacement surgery. Revision surgery is highly specialized and complex.

Respondent's patients undergo physical therapy following revision surgery. Some physical therapists who have treated respondent's patients have been unfamiliar with the needs of revision surgery patients, and problems have occurred as a result. On occasion, the surgery had to be repeated, or a patient's condition worsened.

Respondent decided to open an in-house rehabilitation clinic which enabled him to have more control over his patients' physical therapy needs. In 2010, he hired a physical therapist, Abigail Cabral, who was trained in providing therapy to patients with special needs following revision surgery. Having Cabral in-house allowed respondent to communicate directly with her, as needed. In late 2011 or early 2012, Cabral recommended bringing in the services of a massage therapist who could provide deep tissue massage to patients with challenging conditions, including those in wheelchairs, or with extensive scar tissue or

contractures. Cabral reported that the patients benefitted greatly from deep tissue massage performed in conjunction with the physical therapy. Respondent agreed to add massage therapy to the clinic. Respondent would order therapy according to a patient's needs and would have follow up appointments with patients to monitor their progress in therapy.

In-house therapy visits comprised a small percentage of respondent's overall practice and it was uncommon for his patients to receive physical therapy and massage therapy on the same date, but that did occur.

24. When respondent opened his practice, he decided to handle his own insurance billing; he consulted regularly, as needed, with Carol Merrill, who had been a billing expert for many years. Respondent billed for the services based on who received the services as documented by his office personnel. Respondent estimates that he submitted 200 insurance claims per week in 2013, totaling approximately 10,000 per year; a small fraction of those involved billing for physical therapy and massage therapy that occurred on the same date. Respondent did not earn a significant amount of money from offering the physical therapy and massage therapy in house, but his patients were receiving a benefit.

25. Respondent noticed that when he filed a claim with an insurer for a patient being seen for both physical therapy and massage therapy on the same date, one claim would be rejected. Respondent relied on Merrill's advice that as long as the services were provided, he could avoid confusion with the insurers by identifying the date of one of the services as the day prior. When Merrill retired respondent began to work with a new insurance billing consultant who advised him to use a modifier instead. Respondent revised his billing practice accordingly.

Evidence of Character and Rehabilitation

26. Respondent changed his billing practices prior to being arrested or indicted; he will never again submit an insurance claim with the incorrect date of service. He closed his therapy clinic after being indicted. Respondent paid restitution in the amount of $251.09 to Cigna as ordered.

27. Respondent did not bill for services that were not rendered. Respondent has never had an insurer contest his billing. Following his conviction, respondent contacted several insurers to ask whether he should correct the dates on the claims for physical therapy or massage therapy that he submitted for the 10 to 12 patients he is aware of who received those services; he was advised that it was not necessary.

28. Respondent and Ganesh have three young children. Respondent has also been a father to Ganesh's two sons from a former marriage. The impact of respondent's conviction has been devastating to his family. Because of his wife's health issues, respondent is the primary caregiver for their young children.

Respondent's stepsons, Ram Malyala and Prashant Malyala, wrote character letters praising respondent. Respondent has served as a father figure to them, and supported their academic endeavors. They consider respondent to be kind, hardworking and loving.

Respondent's brother-in-law, Ganesan Venkatakrishnan, wrote a letter describing respondent as "incredibly patient, very polite, generous and very tolerant." He also describes respondent as an incredible father, helping with school work, sports, cooking and driving them to activities. Venkatakrishnan also praises respondent for being a loving and patient husband to his sister.

29. Joe Owens is married to respondent's sister; he has known respondent for 45 years. Owens wrote a letter in support of respondent. He describes respondent as an upstanding individual who has worked diligently over the years to achieve excellence in his profession. Respondent's sister, Teresa Owens also wrote a letter praising respondent's character, his military service and professional accomplishments.

30. Several of respondent's patients testified at his criminal trial. They uniformly praised him as an excellent and caring physician and they continue to seek his care.

Luz Brown, a former patient and retired deputy sheriff, wrote a character letter describing respondent as committed, precise, tenacious, composed, good-natured and ethical. Respondent performed several hip surgeries on Lisa Reinshagen; she wrote a letter praising respondent and describing him as a "wonderful, caring human being." Patient E.M. wrote a letter stating that respondent brought a significant level of expertise to her complicated case; she also praises his dedication to his three young children. Edward Ingber wrote a letter in support of respondent in which he reports that he "can't overstate the level of dedication that [respondent] has shown to the care he has provided."

31. Lisa Kumagai, an officer in the U.S. Navy, wrote a letter dated February 4 2018, in which she describes respondent as polite, efficient, team-oriented, driven, and a great motivator. She notes that respondent has volunteered to help when the Navy called. She considers respondent to represent the core values of the Navy: honor, courage and commitment.

32. Edward Littlejohn, M.D., is an orthopedic surgeon who works in Los Gatos. Dr. Littlejohn wrote a character reference for respondent dated February 9, 2018. He is the Medical Director of the Joint Replacement Center at Good Samaritan Hospital. Dr. Littlejohn has known respondent for 15 years, and he has often contacted respondent to assist him with difficult cases. Dr. Littlejohn reports that respondent has always been willing and able to care for the most difficult orthopedic joint replacement cases. Dr. Littlejohn fully supports respondent's continued work as an orthopedic surgeon.

33. Sanaz Hariri, M.D., testified at respondent's criminal trial and at hearing in support of respondent. Dr. Hariri is an orthopedic surgeon in Los Gatos. She did her

undergraduate work at Harvard, graduated from medical school at Stanford, completed her residency at Harvard, then followed her residency by a sports fellowship at Stanford. Dr. Hariri subleased office space from respondent beginning in 2010; their practices were separate, but they shared patients and worked together in the operating room. Respondent's patients were often in dire straits with life shattering issues. Dr. Hariri reports that respondent would spend an extraordinary amount of time and show sincere compassion with these patients. Dr. Hariri has a very high opinion of respondent as a physician, surgeon and colleague. She has never heard a complaint about respondent's work, honesty or character. Dr. Hariri considers him to be an invaluable asset to the medical community.

34. Since retiring from the Navy, respondent has volunteered to train personnel at the Naval Reserves Center in San Jose. Respondent has also volunteered his time on the Board of Directors of the Saratoga Area Senior Coordinating Council (beginning in 2009), with the Health Committee of the Saratoga Retirement Center (beginning in 2000 and serving as chair in 2009), and as a coach for National Junior Basketball Association (beginning in 2008).

35. In January 2018, respondent lost his hospital privileges at Stanford, Good Samaritan and El Camino Hospitals as a result of his felony conviction; he is therefore unable to perform surgery. He has applied to reenter the Navy in order to continue performing surgery and supporting his family. Respondent needs a medical license in order to return to work as a physician in the Navy. He is willing to accept a probationary license with any terms the Board considers to be appropriate and warranted.

LEGAL CONCLUSIONS

Introduction

1. The purpose of an administrative proceeding concerning licensure is not to punish the respondent, but rather is "to protect the public from dishonest, immoral, disreputable or incompetent practitioners [citations omitted]." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The goal is the prevention of future harm and the improvement and rehabilitation of the licensee.

2. The standard of proof regarding the charging allegations is "clear and convincing." (*Ettinger v. Board of Medical Quality Assurance, supra*, 135 Cal.App.3d at 856.) This means the burden rests on complainant to establish the charging allegations by proof that is clear, explicit and unequivocal – so clear as to leave no substantial doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

Unprofessional Conduct: Criminal Conviction involving Dishonesty

3. Business and Professions Code section 2234 authorizes the Board to impose discipline against any licensee who is charged with unprofessional conduct, including an act in violation of the Medical Practice Act (subd. (a)), and/or an act involving dishonesty that is substantially related to the qualifications, functions or duties of a physician and surgeon (subd. (e)).

Business and Professions Code section 2236 defines unprofessional conduct as including the conviction of any offense substantially related to the qualifications, functions or duties of a physician and surgeon.

California Code of Regulations, title 16, section 1360, states that a crime or act will be considered to be substantially related to the qualifications, functions or duties of a physician and surgeon, if to a substantial degree it evidences the present or potential unfitness of the certificate holder to perform the functions authorized by the certificate consistent with the public health, safety or welfare. Respondent's act of making a false statement to an insurer for services provided by his office is substantially related to the practice of medicine.

Business and Professions Code section 2261 defines unprofessional conduct as including knowingly making or signing any document related to the practice of medicine which falsely represents the existence or nonexistence of a state of facts.

Respondent's conviction for making a false statement relating to health care matters involved dishonesty, is substantially related to the qualifications, functions or duties of a physician and surgeon and constitutes unprofessional conduct. (Factual Findings 7 through 10.) Cause for discipline exists pursuant to Business and Professions Code sections 2234, subdivisions (a) and (e), 2236, and 2261, and California Code of Regulations, title 16, section 1360.

Unprofessional Conduct: Dishonest Testimony at Criminal Trial

4. Complainant alleges that respondent testified untruthfully at his criminal trial, constituting additional cause for discipline pursuant to Business and Professions Code section 2234, subdivision (e).

The testimony offered to support this allegation did not establish by clear and convincing evidence that respondent was dishonest when he testified at his criminal trial. (Factual Findings 12 through 19, 26.) Cause for discipline pursuant to Business and Professions Code section 2234, subdivision (e), for dishonesty based on his criminal trial testimony, was not established.

Disciplinary Considerations

5. Cause for discipline having been established, the issue is what level of discipline is appropriate. The protection of the public is the highest priority for the Board; however, in exercising its disciplinary authority, the Board takes action calculated to aid in the rehabilitation of the licensee whenever possible. (Bus. & Prof. Code, § 2229.)

The Board has adopted Disciplinary Guidelines (12th. Ed. 2016), to promote uniformity, certainty and fairness, and deterrence. In matters involving dishonesty or a felony conviction concerning billing practices, the guidelines recommend a minimum penalty of stayed revocation, a one-year suspension, seven years of probation, community service, an ethics course, a psychiatric examination, a medical evaluation and treatment, a practice and/or billing monitor, a solo practice prohibition, and restitution. The maximum recommended penalty is revocation of the certificate.

California Code of Regulations, title 16, section 1360.1, provides that when considering the suspension or revocation of a certificate on the ground that the holder has been convicted of a crime, in evaluating the rehabilitation of such person the following criteria is considered: a) the nature and severity of the acts or offenses; b) the total criminal record; c) the time that has elapsed since commission of the acts or offenses; d) whether the certificate holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed; e) if applicable, evidence of expungement proceedings pursuant to Penal Code section 1203.4; and f) evidence, if any, of rehabilitation.

Respondent was convicted of a felony based on a false statement made to insurer for a medical claim. Respondent admitted at trial and at hearing that he submitted various insurance claims for massage therapy and physical therapy identifying dates that were incorrect throughout 2012, 2013 and 2014. Although the patients received the services, and therefore the misconduct did not involve fraud or unjust enrichment, the claims were made for false dates, and respondent should have realized that the practice was wrong despite the advice he received. Significantly, however, respondent changed the practice after receiving different advice from his new biller, and over a year before he was arrested or indicted for having done so.

Respondent has had a long and distinguished career as a highly-specialized surgeon and his misconduct was not motivated by financial gain. Respondent has volunteered his time extensively with the military and with other organizations. He is roundly praised for his surgical skills as well as his kind and caring nature. Respondent has provided love and guidance to his two stepsons and is the primary caregiver for his three young children.

Respondent has made restitution as ordered. There is no evidence that respondent has a medical or psychiatric condition that requires evaluation or treatment. Nor is there evidence that respondent's practice requires monitoring.

Because there is no evidence that respondent sought payment for services that were not rendered, the fact that he corrected his billing practice before it was brought to his attention by authorities, and in light of his many years as a military officer and an excellent practitioner, a deviation from the guidelines is warranted. The public will be protected from further misconduct by an order including a stayed revocation of respondent's license with a probationary period of three years. In addition to standard conditions, respondent will be subject to conditions requiring community service, a billing monitor, an ethics course and a solo practice prohibition.

ORDER

Physician's and Surgeon's Certificate No. G 66631 issued to respondent Gregory Lamont Belcher, M.D., is revoked; however, the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions.

1. Professionalism Program (Ethics Course)

   Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program that meets the requirements of California Code of Regulations, title 16, section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

   A professionalism program taken after the acts that gave rise to the charges in the First Amended 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 program would have been approved by the Board or its designee had the program 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 program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

2. Monitoring – Billing

   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 billing monitor, 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 and First Amended Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, First Amended Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and First Amended Accusation, 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 billing 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 calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor 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 of billing and whether respondent is billing appropriately. 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 five 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 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 approved in advance by the Board or its designee, 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.

3. Solo Practice Prohibition

Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) respondent is the sole physician practitioner at that location.

If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting 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 calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, respondent's practice setting changes and respondent is no longer practicing in a setting in compliance with this Decision, respondent shall notify the Board or its designee within five calendar days of the practice setting change. If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

4. Community Service - Free Services

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval a community service plan in which respondent shall within the first two years of probation, provide 60 hours of free services (e.g., medical or nonmedical) to a community or non-profit organization. If the term of probation is designated for two years or less, the community service hours must be completed not later than six months prior to the completion of probation.

Prior to engaging in any community service respondent shall provide a true copy of the Decision to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where respondent provides community service and shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also apply to any change(s) in community service.

Community service performed prior to the effective date of the Decision shall not be accepted in fulfillment of this condition.

5. Notification

Within seven days of the effective date of this Decision, respondent shall provide a true copy of this Decision and First Amended 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.

6. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.

7. 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.

8. 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.

9. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

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, subdivision (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 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.

10. 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.

11. 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 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. If respondent resides in California and is considered to be in non-practice, respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve respondent from complying with all the terms and conditions of probation. 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 the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment 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 years.

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

Periods of non-practice for a respondent residing outside of California, 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; General Probation Requirements; and Quarterly Declarations.

12. 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.

13. 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. 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 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.

15. 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.

DATED: December 19, 2018

DocuSigned by:
Jill Schlichtmann
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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Sept 14 20 18
BY D. Richards ANALYST

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

In the Matter of the First Amended Accusation Against: **Gregory Lamont Belcher, M.D.** 555 Knowles Dr. Suite 200 Los Gatos, CA 95032-1549 **Physician's and Surgeon's Certificate No. G 66631,** Respondent.	Case No. 800-2016-023034 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about August 14, 1989, the Medical Board issued Physician's and Surgeon's Certificate No. G 66631 to Gregory Lamont Belcher, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2018, unless renewed.

JURISDICTION

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

A. Section 2227 of the Code provides in part that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act, and may recover the costs of probation monitoring.

B. Section 2234 of the Code, states:

"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:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon."

C. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred."

D. Section 2261 of the Code, states:

"Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

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E. California Code of Regulations, title 16, section 1360, states:

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Criminal Conviction and Dishonest/Corrupt Acts/Creation of False Documents)

4. Respondent is subject to disciplinary action under sections, 2234, 2234, subdivisions (a) and (e), 2236, 2261, and California Code of Regulations, title 16, section 1360 based on the following circumstances.

5. Respondent was found guilty on December 14, 2017, pursuant to a federal jury verdict in United States District Court, Northern District of California, of one felony count of making False Statements Relating to Health Care Matters (Title 18, U.S. Code section 1035), and sentenced to a custodial term of twelve (12) months and one (1) day, based on the following investigation:

a. Beginning on or around July 2009 and continuing through at least September 2014, Respondent and another physician (VG) engaged in a scheme to defraud Health Care Benefits Programs (HCBP), including Blue Cross, Blue Shield, Aetna, Cigna, and UnitedHealthcare, by submitting false and fraudulent bills through their medical practice, Campbell Medical Group, and Respondent's physical therapy practice.

b. Respondent and VG opened a bank account at Bank of America in or around 2011, each having signature authority over the account, which was used almost exclusively to deposit the reimbursement checks received from HCBP as a result of fraudulent billing;

c. On July 13, 2017, Respondent and VG were indicted by a federal grand jury for numerous felony charges, including conspiracy to commit health care fraud, conspiracy to commit money laundering, numerous counts of health care fraud, and making false statements relating to health care matters.

6. Respondent's December 14, 2017 criminal conviction of making False Statements Relating to Health Care Matters is substantially related to the qualifications, functions and duties of a physician and surgeon in that his conviction is directly associated with his medical practice and demonstrates unprofessional conduct, dishonest and corrupt acts, and knowingly creating false health care documents. As such, his conviction and conduct constitute cause for discipline pursuant to Code sections 2336, California Code of Regulations, title 16, section 1360 (criminal conviction), 2234, 2234(a), 2234(e) (unprofessional conduct), and 2261 (false documents).

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dishonest/Corrupt Acts)

7. Respondent is subject to disciplinary action under sections, 2234 and 2234, subdivision (e), based on the following circumstances.

8. Paragraphs 4 through 6, above, are hereby realleged and incorporated by this reference as if fully set forth herein.

9. On or about April 4, 2018, at the sentencing in Respondent's criminal trial, a United States District Judge found that Respondent committed perjury and obstructed justice during his testimony at the criminal trial. A specific factual finding was made that Respondent provided false testimony concerning a material matter with the willful intent to provide that false testimony. As such, his conduct of providing dishonest and false testimony constitutes cause for discipline pursuant to Code sections 2234 and 2234(e) (dishonest/corrupt acts).

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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 or suspending Physician's and Surgeon's Certificate No. G 66631, issued to Gregory Lamont Belcher, M.D.;

2. Revoking, suspending or denying approval of Gregory Lamont Belcher, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Gregory Lamont Belcher, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: September 14, 2018

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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