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

In the Matter of the Statement of Issues Against:	)	
BASEL KASABALI	)	**Case No. 800-2018-043583**
Applicant.	)	

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 November 22, 2019. All remaining requirements for licensure must be completed prior to the license being reissued.

IT IS SO ORDERED October 24, 2019.

MEDICAL BOARD OF CALIFORNIA

By: Ronald H. Lewis, MD
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 Statement of Issues Against:

Basel Kasabali, Applicant.

Agency Case No. 800-2018-043583

OAH No. 2019050354

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on July 25, 2019, in Oakland, California.

Lawrence Mercer, Deputy Attorney General, represented Kimberly Kirchmeyer, Executive Director of the Medical Board of California, Department of Consumer Affairs.

Derek F. O'Reilly-Jones, Attorney at Law, Bonne, Bridges, Mueller, O'Keefe & Nichols, LLP, represented applicant Basel Kasabali.

The record was held open until August 15, 2019, to allow the parties to submit written closing arguments and rebuttal. Applicant timely filed a closing argument, marked for identification as Exhibit II, and a rebuttal, marked for identification as Exhibit JJ. Complainant timely filed a closing argument, marked for identification as Exhibit 16.

The record closed and the matter was submitted for decision on August 15, 2019.

FACTUAL FINDINGS

Procedural History and Summary of Allegations

1. Complainant Kimberly Kirchmeyer brought the Statement of Issues in her official capacity as Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. The Board issued Physician's and Surgeon's Certificate No. A49814 to applicant Basel Kasabali on August 6, 1991. Applicant's Certificate expired on May 31, 1995. According to a printout from the Board's website, applicant's Certificate was canceled. The date that the Certificate was canceled was not established by the record.

3. On September 6, 2017, applicant signed an application to have his Certificate re-issued. By letter dated May 4, 2018, the Board informed applicant of its determination that he did not qualify for a full and unrestricted medical license based upon his failure to disclose his malpractice history on his license application. On July 24, 2018, the Board denied applicant's request for reconsideration. Applicant appealed, and this hearing followed.

Applicant's Education, Training, and Experience

4. Applicant received his medical degree in 1983 from Damascus University and completed a one-year residency in internal medicine at Damascus University Hospital and Medical Center. He completed a fellowship in nuclear medicine at Michael Reese Hospital and Medical Center in Chicago, followed by a three-year

internal medicine residency at Christ Hospital and Medical Center in Oak Lawn, Illinois. Applicant completed his second and third fellowships in cardiology and electrophysiology at the Louisiana State University School of Medicine. Applicant is board-certified by the American Board of Nuclear Medicine and the American Board of Internal Medicine in Cardiology and Electrophysiology.

5. Applicant has practiced medicine for about 30 years and is currently licensed to practice medicine in Louisiana. He held previous licenses, now inactive, in Illinois, Indiana, and Texas. Applicant decided to apply for the re-issuance of his California Certificate because, while vacationing in California with his family in 2017, he thought that he might want to eventually move back to California and practice medicine.

6. Between 1997 and 2016, applicant was a partner in a group practice, Cardiovascular Consultants, LLP. In December 2016, Willis-Knighton Medical Center acquired the practice; since then, applicant has practiced at Willis-Knighton Cardiology and is on the medical staff of Willis-Knighton medical facilities.

False Statement on Applicant's Application

COMPLAINANT'S EVIDENCE

7. In applicant's license application, he certified under penalty of perjury that he read the complete application and was fully aware of its contents, and that all of the information in his application was true and correct.

8. Question 26 of the application asks: "Has a claim or an action ever been filed against you for the practice of medicine that resulted in a malpractice settlement,

judgment, or arbitration?" Applicant answered "no" to this question.[1] Applicant's answer to this question was false because a malpractice claim had been previously filed against him and resulted in a settlement.

9. On October 16, 2017, the Board received a report from the National Physician's Data Bank (NPDB), which stated that in 2004 and 2005, two payments had been made in settlement of a single malpractice claim involving applicant, another physician, and Willis-Knighton Medical Center. According to the NPDB report, applicant was the on-call physician for a patient on March 15, 2000, and failed to timely respond to the patient, who developed hypovolemia from a retroperitoneal bleed. The patient's family settled the matter out-of-court with applicant.[2] The settlement, totaling $97,500, was paid to the patient's family in two separate payments.

10. On October 30, 2017, Board Staff Services Analyst Elsa Angulo[3] completed her review of the application and wrote applicant a letter requesting additional information regarding a number of matters in his application, including an additional response to question 26. By letter dated December 5, 2017, applicant

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[1] If applicant answered "yes" to this question, the application directed him to provide a signed and dated written explanation.

[2] The other physician and the Medical Center also entered into out-of-court settlements.

[3] Angulo previously used the name Angulo-Grant.

authorized Board staff to communicate with Elizabeth Plauche, Clinic Manager at Willis-Knighton Cardiology, regarding the status of his application.

11. Angulo made a number of attempts, via email and voicemail with Plauche, to obtain information regarding applicant's malpractice history. The Board received a signed statement from applicant dated December 14, 2017, that he "never had any claims or actions filed against [him] for the practice of medicine that resulted in a malpractice settlement, judgment, or arbitration."

12. Applicant submitted additional signed explanations to the Board on April 4, 2018, in which he acknowledged the malpractice settlement described in Finding 9. He explained that he answered "no" the question 26 because he thought that his settlement was not reportable to the Board because it was more than five years old. In his correspondence with the Board on April 4, he explained that he thought that Louisiana law would govern his application, and under Louisiana law, he was only required to report malpractice claims within the last five years.

13. April Alameda, the Board's Chief of Licensing, explained at hearing that the Board is diligent in its efforts to provide applicants with the opportunity to provide the Board with the information required to be included on license applications. In this case, Angulo made repeated efforts to facilitate applicant's provision of information to the Board regarding his malpractice history.

APPLICANT'S EVIDENCE

Facts and Circumstances Surrounding Submission of License Application and Correspondence

14. Applicant's testimony as to the facts and circumstances surrounding his answer to question 26 on his application for licensure, as well as his correspondence with the Board, set forth below, was credible and candid in all respects.

15. Applicant has an extremely busy cardiology practice. He is one of the two doctors in his practice who accepts patients who are uninsured or on Medicaid. He works between 14 and 16 hours each day during the week, and some weekends. Applicant has also devoted time to assisting refugees from Syria, his native country.

16. Due to applicant's rigorous work schedule, he became accustomed to relying on Gail Dooley, his administrative assistant, to prepare his license renewals and applications. In applicant's words, Dooley "took care of everything" and performed these tasks accurately. When Plauche took over after Dooley retired, applicant assumed that she would also perform these tasks accurately. Plauche never asked applicant about his malpractice history, and she did not consult with him about how to answer the question 26 on the application.

17. When Plauche presented applicant with his application for signature in the clinic, he was preoccupied with treating patients, and he signed the application without reading it. He does not remember if Plauche gave him the entire application or just the signature page, or what she said when she handed the application to him. At the time, applicant did not realize that he was signing the documents under penalty of perjury or that he was certifying that he had read and reviewed the contents of the application.

18. Applicant does not remember receiving a letter from the Board, dated October 30, 2017, informing him that there were problems with his application. Applicnat believes that he gave the letter, unopened, to Plauche. Plauche did not discuss the contents of the Board's letter with applicant. Due to the press of his work and his assumption that Plauche was appropriately handling the matter, he did not read the December 14, 2017, handwritten note written to the Board by Plauche before he signed it.

19. On April 4, 2018, applicant was informed by Plauche and her supervisor Alan J. Beason, Chief Operating Officer and Administrator at Willis-Knighton Cardiology, that mistakes were made on his application for licensure, but they were being taken care of. Applicant had worked with Beason for about 20 years and greatly trusted his competence. Applicant was reassured that Beason was assisting Plauche in resolving the matter the with Board. Beason's involvement included drafting a letter to the Board from applicant, which explained the circumstances surrounding applicant's omission of his malpractice claim to the Board. Because applicant was confident in Beason's ability to clear up any mistakes that Plauche made on his application, he did not review either the handwritten note or the typed letter to the Board from him, dated April 4, 2018, before he signed them. Applicant was not aware when he signed the April 4 correspondence that it did not address some of the Board's concerns or include important factors surrounding Plauche's submission of his application.

20. It was only after applicant read the letter from the Board, dated May 4, 2018, denying his application that he fully understood that Plauche had provided incorrect answers to the Board regarding his malpractice history. Upon learning that the Board declined to issue him a full and unrestricted license due to his failure to disclose his malpractice history, he was devastated. Applicant was particularly upset

over language in the Board's proposed Stipulation, that applicant had engaged in dishonesty and deceit in connection with his license application. Applicant immediately asked Plauche and Beason for additional information, and was only then made aware that Plauche had made false statements on his application and in the December 14, 2017, correspondence that she had written on applicant's behalf, and that he had signed.

21. Applicant obtained counsel to assist him with explaining to the Board what had occurred, and on June 1, 2018, submitted a voluminous packet to the Board documenting the circumstances surrounding his failure to include his malpractice settlement on his license application. In materials he provided to the Board, he points out that physicians who seek to renew their applications in Louisiana are only required to disclose settlement agreements that occur within 10 years of their application date, and that applicant's application was the first that Plauche had completed.

22. Applicant realizes that he made a mistake by entrusting Plauche with the task of completing his application. He is genuinely remorseful for neglecting his responsibility to review the application before he signed it. The notion that he would engage in dishonest or deceitful conduct greatly upsets him, as such conduct is inconsistent with his character. He explained that he would have no motive to conceal his malpractice history since such information was readily available from the NPDB and had been previously disclosed by him in other professional applications and renewal forms. Applicant wishes the Board to re-issue his Certificate.

23. Appicant's testimony regarding the circumstances surrounding the submission of his application for licensure and other correspondence to the Board, was corroborated by letters submitted to the Board by Plauche and Beason.

24. In a May 21, 2018, letter submitted to the Board by Plauche, she explains that she became Clinic Manager in September 2017, following the retirement of Dooley, who had performed that job for 20 years. In her letter, she described "inheriting" the doctors' files from Dooley, which included their licenses, continuing medical education and malpractice insurance certificates, and claims histories. According to Plauche, applicant's file did not contain any information about his past malpractice claim.

25. In her letter to the Board dated May 21, 2018, Plauche explained that she had never submitted an initial application for a medical license prior to doing so for applicant in September 2017. She had completed license renewal applications, which in her experience asks the physician to disclose malpractice claims within the last 10 years. Plauche wrote that when she prepared applicant's application for licensure, she assumed that the question about prior malpractice claims in question 26 was the same as for license renewals, and only required the physician to disclose claims for the last 10 years. In her letter, Plauche explained that because applicant had not had any malpractice claims for the 10 years prior to his application, Plauche checked "no" to question 26.

26. Plauche further wrote in her letter to the Board dated May 21, 2018, that she was in touch with Angulo regarding applicant's application status. According to Plauche, she was told by Angulo that she needed to submit a letter of explanation to question 26, but Plauche was confused because she had answered "no" to this question. Plauche wrote that she checked in applicant's file and saw that he did not have any claims in the past 10 years, and therefore, did not ask him about malpractice claims that pre-dated the 10-year time frame. For this reason, in the note dated December 14, 2017, that she wrote on behalf of applicant, she stated that applicant

did not have any malpractice claims against him. In her letter to the Board dated May 21, 2018, Plauche explained that she presented the December 14 note to applicant for his signature while he was seeing patients, and that he signed it without reading it.

27. In her letter dated May 21, 2018, Plauche also explained that she had not known about the NPDB, and it was not until she received a voicemail from Angulo on April 2, 2018, that she realized that she had erred by failing to disclose applicant's malpractice claim. Plauche wrote that she apologized to Angulo for her error, and reported her error to Beason. Plauche wrote that neither she nor Beason informed applicant about the specific problems with his application regarding the omission of his prior malpractice settlement.

ULTIMATE FINDING

28. While applicant's answer to question 26 on his application was false in that it omitted material information regarding his malpractice history, the evidence failed to establish that he knowingly or purposefully omitted this information, that intended to deceive the Board in his application, or that he committed any acts of dishonesty in connection with his application. The evidence also failed to establish that applicant committed any acts of dishonesty or deception in connection with other correspondence that was submitted to the Board on his behalf by Plauche.

Rehabilitation Evidence

29. Applicant fully accepts responsibility for his mistakes. He realizes that his license application is an "important business document," and that he exercised poor judgment and was neglectful when he signed his application under penalty of perjury without first reviewing it. He is thoroughly embarrassed by his error, and in particular, any inference that he intended to deceive the Board.

30. Applicant's failure to read his application and other correspondence with the Board served as a wake-up call to better understand his professional duties and obligations. Towards this end, in February 2019, he traveled to the University of California, Irvine School of Medicine, where he completed a two-day Board-approved seminar entitled PBI Medical Ethics and Professionalism Course. He described this course as "superb," and credits it with helping him "see that he took things for granted." He no longer signs documents without first reviewing them. His motto is "trust, but verify."

Reference Letters

31. The following individuals submitted reference letters on behalf of applicant:

a. Phillip Rozeman, M.D., wrote a letter to the Board, dated May 24, 2018, in support of applicant. In his letter, Dr. Rozeman explains that as founder of Willis-Knighton Cardiology and Cardiovascular Consultants, LLP, he has enjoyed a long-term professional relationship with applicant. Dr. Rozeman describes applicant as "one of the hardest working and most dependable physicians that [he has] worked with [in his] lifetime." Dr. Rozeman praises applicant for his "integrity, his willingness to help others, and his compassion." Given Dr. Rozeman's familiarity with applicant, he states that he "cannot conceive that this was a result of deliberate dishonesty, fraud, or deceit." In Rozeman's view, the incident occurred due to the mistake by his staff and applicant's lack of attentiveness to the application.

b. Pratap C. Reddy, M.D., is a Professor and Chief of Cardiology at Louisiana State University (LSU) Medical Center in Shreveport. In a letter to the Board dated May 23, 2018, he describes applicant as a "respected cardiologist," with an "exceptional

knowledge base with superb clinical skills" who is "liked and respected by his patients." Dr. Reddy writes that he met applicant in 1992, when applicant joined LSU as a cardiology fellow. Over the years, applicant continued to serve LSU as attending staff as a "gratis faculty providing care to any type of patient including indigent patients at LSU/University hospital." Dr. Reddy commented that applicant is "one of the very few cardiologists in the community who sees Medicaid patients and sometimes even nonpaying patients." Based upon his longstanding professional association with applicant, Dr. Reddy opines that applicant would "not deliberately, knowingly provide wrong information or hide truth."

c. Michael G. Futrell, M.D., was Chief of Cardiology at Willis-Knighton Healthcare Systems for 37 years, prior to his retirement in December 2017. Dr. Futrell has known applicant since 1997. In a letter dated May 23, 2018, he writes that after speaking to applicant and others about the incident involving the submission of applicant's application for licensure, he "can assure you that [applicant] in no way tried to deceive the Board and unwittingly signed the reapplication form without close attention to the details." Dr. Futrell writes:

> I always have known where Dr. Kasabali stands on any issue and if he gave me his word on some issue, I could certainly "take it to the bank." During my tenure as Chief of Cardiology, I frequently had to deal with issues involving various cardiologists' behavior, medical ethics, and competency. I never had to deal with any of these issues with Dr. Kasabali. In fact, I am not aware of any peer review issues he was ever involved in.

Dr. Futrell describes applicant as someone who is "a devoted physician and probably one of the busiest doctors I have ever known," and one of two physicians in their group who readily accepted Medicaid, indigent, and self-pay patients. Dr. Futrell also mentions that applicant has rescued his immediate and extended family members from the civil war in his native Syria. At the close of his lengthy letter, he makes an impassioned plea to the Board to "revisit" its decision to place applicant on probation with restrictions.

d. Anil Chhabra, M.D., is a cardiologist who worked with applicant for over 20 years at Cardiovascular Consultants. In a letter to the Board dated May 23, 2018, Dr. Chhabra describes applicant as the "workhorse" of the practice, who made himself available to cover night calls and see patients on short notice. Dr. Chhabra observes that applicant is "loved and respected by his patients and peers alike. He has been the most ethical in his work and everyone in the group can vouch for his integrity and honesty."

e. Jaf Fielder, Senior Vice President, Willis-Knighton Health System, wrote a letter to the Board dated May 25, 2018, in support of applicant. Fielder has worked with applicant for 15 years. Fielder praises applicant for his talent, his hard work, and his willingness to treat Medicaid and indigent patients. Fielder is aware of the circumstances surrounding the submission of applicant's license application. He writes that "[a]s sometimes happens with very busy physicians, [applicant] placed faith in the work of those supporting him and signed documents with incorrect responses." Fielder strongly believes that applicant's mistakes in his application did not stem from any effort to deceive the Board.

f. Marwan Kaskas, M.D., submitted a letter dated July 7, 2019, in support of applicant. Dr. Kaskas has known applicant for 20 years. He describes applicant as

someone who possesses "one of the highest moral values" and provides "unrelenting care for his patients and the will to offer help at any time day or night." Dr. Kaskas writes that applicant's patients, staff and co-workers view applicant as someone with the "utmost caliber of integrity and character."

g. Jihad Michel El-Hayek, M.D., submitted a letter to the Board dated July 12, 2019, in support of applicant. Dr. El-Hayek is an infectious disease specialist who has known applicant for about eight years. Dr. El-Hayek attests to applicant's honesty and professionalism. He also praises applicant for his generosity in treating underserved patient populations in Shreveport and in Syrian refugee camps.

h. Ajaya K. Tummala, M.D., submitted a letter to the Board dated July 15, 2019, in support of applicant. Dr. Tummala is a cardiologist who has practiced medicine with applicant for 23 years. Dr. Tummala describes applicant as an extremely hardworking practitioner who is devoted to his patients as well as his family. He has never known applicant to lie about any matters. He believes that applicant delegated the completion of his application to the staff at Willis-Knighton, the staff made an honest mistake in filling out such materials, and applicant overlooked the errors due to his busy practice.

i. Lonnie G. Hardy, C.P.A., submitted a letter to the Board, dated May 24, 2018. Hardy writes that he has provided tax and accounting services to the physician community in Shreveport for over 40 years. He describes applicant as one of the most successful physicians in the community who is a "tireless servant to his patients" and "one of the most productive physicians in our community." Hardy writes that it would be "totally inconsistent with how [applicant] conducts his affairs" to conclude that he was intentionally dishonest in his submission of his license application.

LEGAL CONCLUSIONS

Cause for Discipline (Dishonest Acts/Material Omission/Unprofessional Conduct)

DISHONEST ACTS

1. Pursuant to Pursuant to Business and Professions Code[4] section 480, subdivision (a)(2), a Board may deny an application for licensure where the applicant commits an act involving "dishonesty, fraud, or deceit with the intent to substantially benefit himself . . . ." Based upon the matters set forth in Factual Finding 28, it was not demonstrated that applicant committed an act of dishonesty, fraud, or deceit on his application for licensure. As such, cause was not established to deny his application for licensure under this section.

2. Section 2221, subdivision (a), provides that the Board may deny an application for a Certificate if the applicant has committed unprofessional conduct or any conduct that would subject a licensee to license suspension or revocation. Section 480, subdivision (a)(3)(A), provides that a Board may deny an application for licensure where the applicant commits any act that if done by a licensee, would be grounds for discipline. Pursuant to section 2234, subdivision (e), the Board may take disciplinary action against a licensee who commits "any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon." Based upon the matters set forth in Factual Finding 28, it was not

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[4] All further citations are to the Business and Professions Code, unless otherwise indicated.

established that applicant committed an act of dishonesty or corruption that is substantially related to the practice of medicine on his application for licensure. As such, cause was not established to deny his application for licensure under this section.

FALSE STATEMENT/MATERIAL OMISSION OF FACT IN APPLICATION

3. Pursuant to sections 475, subdivision (a)(1), and 480, subdivision (d), a Board may deny an application for licensure where the applicant knowingly makes a false statement of fact or knowingly omits a material fact that is required to be disclosed in the application for licensure. Based upon the matters set forth in Factual Finding 28, it was not demonstrated that applicant knowingly made a false statement of fact on his license application. As such, cause was not established to deny his application for licensure under these sections.

GENERAL UNPROFESSIONAL CONDUCT

4. Under section 2234, a licensee may also be disciplined for general unprofessional conduct. In this case, applicant submitted an application for licensure that omitted material information; and he attested to the truth of the contents of the application under penalty of perjury, in spite of the fact that he had not read it. Based upon the matters set forth in Factual Findings 16 to 18 and 26 to 28, applicant's omission of material information regarding his malpractice history on his application; his failure to review his application, submitted to the Board under penalty of perjury; and his failure to review his correspondence to the Board before he signed it, amounts to general unprofessional conduct under section 2234. Accordingly, cause for denial of applicant's license application exists under sections 2221, subdivision (a), and 480, subdivision (a)(3)(A), based upon applicant's commission of general unprofessional conduct.

Determination of Applicant's License Application

5. The written arguments of the parties have been read and considered in determining the appropriate outcome to applicant's license application. In exercising its licensing functions, the Board's highest priority is the protection of the public. (§ 2229.) The Board seeks to ensure that licensees will, among other things, be completely candid and worthy of the responsibilities they bear by reason of their licensure. The outcome of this case, therefore, turns on whether applicant has established that he has taken responsibility for his misconduct and taken steps to rehabilitate himself to the extent that he can be trusted to practice medicine in a manner consistent with public safety.

6. Applicant's submission of his application for licensure under penalty of perjury, without reading the contents contained therein, reflects a dereliction of his professional obligations. Applicant is accountable for his lack of diligence in failing to read his application, which he signed under penalty of perjury, as well as for the lack of diligence he exercised in his communications with the Board in general. His unprofessional conduct is not absolved by the press of his medical practice.

7. The most important factors in analyzing the appropriate disposition of this case are applicant's honesty and candor at hearing, his insight into his misconduct, the coursework he completed to obtain a deeper understanding of his professional and ethical obligations, and his commitment to verify documents he signs to eliminate the possibility of a similar error in the future. These factors, together, provide sufficient assurances to the Board that public protection does not require that applicant be supervised on probation.

8. And, while applicant's misconduct is not excusable, the following mitigating factors are noted: Applicant has had a long and successful career as a cardiologist and has no disciplinary history. His professional integrity, generosity and expertise are highly regarded by physicians who are familiar with his work and know him well. And, when applicant discovered the myriad of problems that he created by neglecting his application, he took immediate action to explain the situation to the Board. Thus, while applicant's unprofessional conduct is concerning, the evidence at hearing demonstrated that it was an isolated incident in an otherwise distinguished career, applicant he has learned from his mistake, and he has taken action to ensure that it will not occur again.

9. Based upon the foregoing, it is found that the public will be sufficiently protected by granting applicant's application for a Certificate, followed by the issuance of a public letter of reprimand, pursuant to section 2221.05, subdivision (a).

ORDER

The application of applicant Basel Kasabali for a Physician's and Surgeon's Certificate is granted, and the Certificate is publicly reprimanded pursuant to Business and Professions Code section 2221.05, subdivision (a).

DATE: September 23, 2019

DocuSigned by:
Diane Schneider
DIANE SCHNEIDER

Administrative Law Judge

Office of Administrative Hearings

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
LAWRENCE MERCER
Deputy Attorney General
State Bar No. 111898
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3488
Facsimile: (415) 703-5480
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO October 26 20 18
BY K. Voong ANALYST

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

In the Matter of the Statement of Issues Against: **BASEL KASABALI** 5081 Westrilee Dr. Benton, LA 71006-4351 Applicant.	Case No. 800-2018-043583 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On August 6, 1991, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A49814 to Basel Kasabali. Said certificate expired on May 31, 1997, and was canceled by operation of law on June 2, 2002. On or about October 11, 2017, Basel Kasabali, (Applicant), applied to have his canceled certificate re-issued. Applicant certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on May 4, 2018.

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JURISDICTION

3. This Statement of Issues is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2221 of the Code states:

"(a) The board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license. The board in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

"(1) Practice limited to a supervised, structured environment where the licensee's activities shall be supervised by another physician and surgeon.

"(2) Total or partial restrictions on drug prescribing privileges for controlled substances.

"(3) Continuing medical or psychiatric treatment.

"(4) Ongoing participation in a specified rehabilitation program.

"(5) Enrollment and successful completion of a clinical training program.

"(6) Abstention from the use of alcohol or drugs.

"(7) Restrictions against engaging in certain types of medical practice.

"(8) Compliance with all provisions of this chapter.

"(9) Payment of the cost of probation monitoring.

"(b) The board may modify or terminate the terms and conditions imposed on the probationary certificate upon receipt of a petition from the licensee. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board.

"(c) The board shall deny a physician's and surgeon's certificate to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to

an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

"(d) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate for a minimum of three years from the effective date of the denial of his or her application, except that the board may, in its discretion and for good cause demonstrated, permit reapplication after not less than one year has elapsed from the effective date of the denial."

5. Section 2234 of the Code, states, in pertinent part:

"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:

". . . (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.

"(f) Any action or conduct which would have warranted the denial of a certificate."

6. Section 475 of the Code states:

"(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

"(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

"(2) Conviction of a crime.

"(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

"(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a) .

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"(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits."

7. Section 480 of the Code states:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

"(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

"(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

"(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,

1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

"(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license."

CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct/Dishonest Acts/Material Omission)

8. Applicant's application is subject to denial under section 2234 and/or 2234(e) and/or 475(a)(1) and/or 480(a)(2) and/or 480(d) in that Applicant knowingly omitted a material fact on his license application. The circumstances are as follows:

9. On his application, which was signed under penalty of perjury on September 6, 2017, Applicant was asked: "Question 26: Has a claim or action ever been filed against you for the practice of medicine that resulted in a malpractice settlement, judgment, or arbitration?" Applicant checked the box "No."

10. On October 16, 2017, the Board received a report that listed two payments in settlement of a malpractice action. The report stated that the Applicant was the on-call physician for a patient who had undergone a procedure and that Applicant failed to timely respond to a patient with hypovolemia (decreased blood supply) secondary to a retroperitoneal bleed.

11. On December 14, 2017, in response to a request for explanation of his negative answer to Question 26, Applicant stated: "I have never had any claims or actions filed against me for the practice of medicine that resulted in a malpractice settlement, judgment, or arbitration."

12. On April 4, 2018, Applicant provided a further explanation of his answer to Question 26, acknowledging that he did have a reportable claim and disclosing the facts pertaining to the claim. Applicant stated that he believed that Louisiana law would apply to his California license application and that, as Louisiana only required reports of claims within the last five years, his 2004 settlement was not reportable to California.

13. On May 4, 2018, the Board denied Applicant's application due to his failure to disclose the malpractice claim.

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. Denying the application of Applicant for a Physician's and Surgeon's Certificate;

2. If issued a probationary license, ordering Applicant to pay the Board the costs of probation monitoring;

3. If placed on probation, revoking, suspending or denying approval of the Applicant's authority to supervise physician assistants and advanced practice nurses; and,

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

DATED:
October 26, 2018

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

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