

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

In the Matter of the Accusation
Against:

Derakhsh Fozouni, M.D.

Physician's & Surgeon's
Certificate No A95051

Respondent.

Case No. 800-2016-027417

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 17, 2020.

IT IS SO ORDERED August 18, 2020.

MEDICAL BOARD OF CALIFORNIA

By: 

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

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 ROSEMARY F. LUZON
Deputy Attorney General
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600 West Broadway, Suite 1800
5 San Diego, CA 92101
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6 San Diego, CA 92186-5266
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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 In the Matter of the Accusation Against:

Case No. 800-2016-027417

14 **Derakhsh Fozouni, M.D.**
15 **555 E. Tachevah Drive**
16 **Suite 2W-103**
Palm Springs, CA 92262

OAH No. 2019110175

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 **Physician's and Surgeon's Certificate**
18 **No. A 95051**

Respondent.

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical
24 Board of California (Board). This action was brought by then Complainant Kimberly
25 Kirchmeyer solely in her official capacity.¹ Complainant is represented in this matter by Xavier
26 Becerra, Attorney General of the State of California, by Rosemary F. Luzon, Deputy Attorney
27 General.

28 ¹ Ms. Kirchmeyer became the Director of the Department of Consumer Affairs on October 28, 2019.

1 7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently
2 waives and gives up each and every right set forth above.

3 **CULPABILITY**

4 8. Respondent does not contest that, at an administrative hearing, Complainant could
5 establish a *prima facie* case with respect to the charges and allegations contained in Accusation
6 No. 800-2016-027417, a true and correct copy of which is attached hereto as Exhibit A, and that
7 he has thereby subjected his Physician’s and Surgeon’s Certificate No. A 95051 to disciplinary
8 action.

9 9. Respondent agrees that if an accusation is ever filed against him before the Medical
10 Board of California, all of the charges and allegations contained in Accusation No. 800-2016-
11 027417, except the allegations contained in the FOURTH CAUSE FOR DISCIPLINE
12 (specifically, paragraphs 31 and 32, at page 8, lines 13-20), shall be deemed true, correct and fully
13 admitted by Respondent for purposes of that proceeding or any other licensing proceeding
14 involving Respondent in the State of California.

15 10. Respondent agrees that his Physician’s and Surgeon’s Certificate No. A 95051 is
16 subject to discipline and he agrees to be bound by the Board’s imposition of discipline as set forth
17 in the Disciplinary Order below.

18 **CONTINGENCY**

19 11. This Stipulated Settlement and Disciplinary Order shall be subject to approval by the
20 Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
21 submitted to the Board for its consideration in the above-entitled matter and, further, that the
22 Board shall have a reasonable period of time in which to consider and act on this Stipulated
23 Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully
24 understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation
25 prior to the time the Board considers and acts upon it.

26 12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null
27 and void and not binding upon the parties unless approved and adopted by the Board, except for
28 this paragraph, which shall remain in full force and effect. Respondent fully understands and

1 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and
2 Disciplinary Order, the Board may receive oral and written communications from its staff and/or
3 the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify
4 the Board, any member thereof, and/or any other person from future participation in this or any
5 other matter affecting or involving Respondent. In the event that the Board does not, in its
6 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the
7 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
8 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
9 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order
10 be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any
11 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
12 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

13 **ADDITIONAL PROVISIONS**

14 13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein
15 to be an integrated writing representing the complete, final and exclusive embodiment of the
16 agreements of the parties in the above-entitled matter.

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

20 15. In consideration of the foregoing admissions and stipulations, the parties agree that
21 the Board may, without further notice or opportunity to be heard by the Respondent, issue and
22 enter the following Disciplinary Order:

23 **DISCIPLINARY ORDER**

24 IT IS HEREBY ORDERED that Respondent Derakhsh Fozouni, M.D., Physician's and
25 Surgeon's Certificate No. A 95051, shall be and is hereby Publicly Reprimanded pursuant to
26 California Business and Professions Code section 2227, subdivision (a), subsection (4). This
27 Public Reprimand is issued in connection with the allegations relating to Respondent's care and
28 treatment of Patient A, which are set forth in Accusation No. 800-2016-027417, as follows:

1 1. PUBLIC REPRIMAND:

2 In or about June 2015, you failed to adequately manage and document the C-
3 section delivery of Patient A and you exhibited a lack of professional conduct during
4 a visit with Patient A, in violation of California Business and Professions Code
5 sections 2234 and 2266, as more fully described in Accusation No. 800-2016-027417.

6 2. EDUCATION COURSE.

7 Within 60 calendar days of the effective date of this Decision, Respondent shall submit to
8 the Board or its designee for its prior approval educational program(s) or course(s) which shall
9 not be less than 40 hours. The educational program(s) or course(s) shall be aimed at correcting
10 any areas of deficient practice or knowledge and shall be Category I certified. The educational
11 program(s) or course(s) shall be at Respondent's expense and shall be in addition to the
12 Continuing Medical Education (CME) requirements for renewal of licensure. Following the
13 completion of each course, the Board or its designee may administer an examination to test
14 Respondent's knowledge of the course. Within one (1) year of the effective date of this Decision,
15 Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in
16 satisfaction of this condition.

17 3. MEDICAL RECORD KEEPING COURSE.

18 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
19 course in medical record keeping approved in advance by the Board or its designee. Respondent
20 shall provide the approved course provider with any information and documents that the approved
21 course provider may deem pertinent. Respondent shall participate in and successfully complete
22 the classroom component of the course not later than six (6) months after Respondent's initial
23 enrollment. Respondent shall successfully complete any other component of the course within
24 one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense
25 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
26 licensure.

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

6 Respondent shall submit a certification of successful completion to the Board or its
7 designee not later than 15 calendar days after successfully completing the course, or not later than
8 15 calendar days after the effective date of the Decision, whichever is later.

9 4. PROFESSIONALISM PROGRAM (ETHICS COURSE).

10 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
11 professionalism program, that meets the requirements of Title 16, California Code of Regulations
12 (CCR) section 1358.1. Respondent shall participate in and successfully complete that program.
13 Respondent shall provide any information and documents that the program may deem pertinent.
14 Respondent shall successfully complete the classroom component of the program not later than
15 six (6) months after Respondent's initial enrollment, and the longitudinal component of the
16 program not later than the time specified by the program, but no later than one (1) year after
17 attending the classroom component. The professionalism program shall be at Respondent's
18 expense and shall be in addition to the Continuing Medical Education (CME) requirements for
19 renewal of licensure.

20 A professionalism program taken after the acts that gave rise to the charges in the
21 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
22 or its designee, be accepted towards the fulfillment of this condition if the program would have
23 been approved by the Board or its designee had the program been taken after the effective date of
24 this Decision.

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

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1 5. CLINICAL COMPETENCE ASSESSMENT PROGRAM.

2 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
3 clinical competence assessment program approved in advance by the Board or its designee.
4 Respondent shall successfully complete the program not later than six (6) months after
5 Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension
6 of that time.

7 The program shall consist of a comprehensive assessment of Respondent's physical and
8 mental health and the six general domains of clinical competence as defined by the Accreditation
9 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to
10 Respondent's current or intended area of practice. The program shall take into account data
11 obtained from the pre-assessment, self-report forms and interview, and the Decision(s),
12 Accusation(s), and any other information that the Board or its designee deems relevant. The
13 program shall require Respondent's on-site participation for a minimum of three (3) and no more
14 than five (5) days as determined by the program for the assessment and clinical education
15 evaluation. Respondent shall pay all expenses associated with the clinical competence
16 assessment program.

17 At the end of the evaluation, the program will submit a report to the Board or its designee
18 which unequivocally states whether the Respondent has demonstrated the ability to practice
19 safely and independently. Based on Respondent's performance on the clinical competence
20 assessment, the program will advise the Board or its designee of its recommendation(s) for the
21 scope and length of any additional educational or clinical training, evaluation or treatment for any
22 medical condition or psychological condition, or anything else affecting Respondent's practice of
23 medicine. Respondent shall comply with the program's recommendations.

24 Determination as to whether Respondent successfully completed the clinical competence
25 assessment program is solely within the program's jurisdiction.

26 If Respondent fails to enroll, participate in, or successfully complete the clinical
27 competence assessment program within the designated time period, Respondent shall receive a
28 notification from the Board or its designee to cease the practice of medicine within three (3)

1 calendar days after being so notified. The Respondent shall not resume the practice of medicine
2 until enrollment or participation in the outstanding portions of the clinical competence assessment
3 program have been completed. If the Respondent did not successfully complete the clinical
4 competence assessment program, the Respondent shall not resume the practice of medicine until a
5 final decision has been rendered on the accusation and/or a petition to revoke probation. The
6 cessation of practice shall not apply to the reduction of the probationary time period.

7 6. FAILURE TO COMPLY.

8 Any failure by Respondent to comply with the terms and conditions of the Disciplinary
9 Order set forth above shall constitute unprofessional conduct and grounds for further disciplinary
10 action.

11 7. FUTURE ADMISSIONS CLAUSE.

12 If Respondent should ever apply or reapply for a new license or certification, or petition for
13 reinstatement of a license, by any other health care licensing action agency in the State of
14 California, all of the charges and allegations contained in Accusation No. 800-2016-027417,
15 except the allegations contained in the FOURTH CAUSE FOR DISCIPLINE (specifically,
16 paragraphs 31 and 32, at page 8, lines 13-20), shall be deemed to be true, correct, and admitted by
17 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
18 restrict license.

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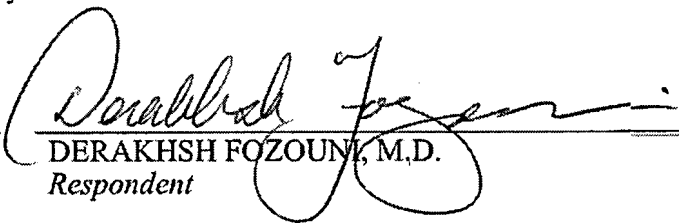
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1 ACCEPTANCE


2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Dennis Ames, Esq. and Pogey Henderson, Esq. I understand the
4 stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A 95051.
5 I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
6 intelligently, and agree to be bound by the Decision and Order of the Medical Board of
7 California.

8 DATED: 6/7/2020

9 
DERAKHSH FOZOUNI, M.D.
Respondent

10
11 I have read and fully discussed with Respondent Derakhsh Fozouni, M.D., the terms and
12 conditions and other matters contained in the above Stipulated Settlement and Disciplinary
13 Order. I approve its form and content.

14 DATED: June 08, 2020

15 
DENNIS AMES, ESQ.
POGEY HENDERSON, ESQ.
Attorneys for Respondent

16
17
18 ENDORSEMENT

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

21 DATED: _____

Respectfully submitted,

22 XAVIER BECERRA
23 Attorney General of California
24 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

25
26 ROSEMARY F. LUZON
27 Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Dennis Ames, Esq. and Pogey Henderson, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A 95051. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: _____
DERAKHSH FOZOUNI, M.D.
Respondent

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

DATED: _____
DENNIS AMES, ESQ.
POGEY HENDERSON, ESQ.
Attorneys for Respondent

ENDORSEMENT

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


DATED: 6-8-2020 _____ Respectfully submitted,
XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

ROSEMARY F. LUZON
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2016-027417

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 ROSEMARY F. LUZON
Deputy Attorney General
4 State Bar No. 221544
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5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9074
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Sept. 20 20 19
BY A. GERRONIA ANALYST

9
10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:
14 **Derakhsh Fozouni, M.D.**
15 **555 E. Tachevah Drive**
16 **Suite 2W-103**
17 **Palm Springs, CA 92262**
18 **Physician's and Surgeon's Certificate**
19 **No. A 95051,**
20 **Respondent.**

Case No. 800-2016-027417
ACCUSATION

20 Complainant alleges:

21 **PARTIES**

- 22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs (Board).
- 25 2. On or about April 21, 2006, the Board issued Physician's and Surgeon's Certificate
26 No. A 95051 to Derakhsh Fozouni, M.D. (Respondent). The Physician's and Surgeon's
27 Certificate was in full force and effect at all times relevant to the charges brought herein and will
28 expire on September 30, 2021, unless renewed.

1 **JURISDICTION**

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

5 4. Section 2220 of the Code states:

6 Except as otherwise provided by law, the board may take action against all
7 persons guilty of violating this chapter. . .

8 5. Section 2227 of the Code states:

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

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

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

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

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

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

24 . . .

25 6. Section 2234 of the Code states:

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

...
...

(b) Gross negligence.

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

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

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

9 ...

10 7. Section 2266 of the Code states:

11 The failure of a physician and surgeon to maintain adequate and accurate
12 records relating to the provision of services to their patients constitutes unprofessional
13 conduct.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Gross Negligence)**

16 8. Respondent has subjected his Physician's and Surgeon's Certificate No. A 95051 to
17 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of
18 the Code, in that he committed gross negligence in his care and treatment of Patient A, as more
19 particularly alleged hereinafter:¹

20 9. On or about December 8, 2014, Patient A attended her first obstetric visit with
21 Respondent. On this visit, Patient A was 10.5 weeks pregnant and her due date was July 2, 2015.
22 Patient A continued to see Respondent through on or about June 22, 2015. During a visit that
23 took place on or about May 18, 2015, Patient A's abdominal circumference measured at 37
24 weeks, while the remaining measurements were at 33 weeks. Patient A was 34 weeks and 1 day
25 pregnant on this visit. Respondent noted "poor nutrition" and that he discussed "poor outcome[s]
26 and potential issues with birth and injury" with Patient A and her husband.

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¹ References to "Patient A" herein are used to protect patient privacy.

1 10. On or about the early morning of June 25, 2015, Patient A went to the hospital by
2 ambulance. When speaking with Nurse P.M., the triage nurse, Patient A complained of leaking
3 clear fluid before 3:00 a.m. At approximately 3:50 a.m., Nurse P.M. noted SROM (Spontaneous
4 Rupture of Membranes), negative GBS (Group B Streptococcus), and “Fluid: thick meconium.”²
5 The meconium was described as large in quantity and odorless. Patient A was admitted to the
6 hospital at approximately 4:16 a.m.

7 11. At approximately 5:01 a.m., Nurse P.M. spoke with Respondent by telephone
8 regarding Patient A. Nurse P.M. relayed Patient A’s complaints to Respondent, who then ordered
9 Pitocin³ to be started at 6:00 a.m.

10 12. At approximately 10:46 a.m., Nurse A.N. spoke with Respondent by telephone
11 regarding Patient A and notified him of “prolonged decel[eration], SVE [sterile vaginal exam],
12 contraction frequency, pitocin off, and interventions done.” Respondent ordered that they wait
13 for half an hour more to restart Pitocin and, if the prolonged decelerations continued, to do an
14 amnioinfusion.

15 13. At approximately 2:30 p.m., Respondent was at the nurse’s station reviewing the fetal
16 heart rate (FHR) tracing. He was aware of Patient A’s decelerations. Nurse A.N. noted that no
17 new orders were received from Respondent. Respondent did not document any corresponding
18 assessment or plan, nor the rationale for his decision-making at that time.

19 14. At approximately 5:00 p.m., Respondent was at the nurse’s station and was notified
20 of an SVE, Pitocin dose, and MVUs (Montevideo units). Nurse A.N. noted that no new orders
21 were received. Respondent did not document any corresponding assessment or plan, nor the
22 rationale for his decision-making at that time.

23 15. From approximately 6:15 a.m. until approximately 5:44 p.m., the presence of
24 meconium was documented numerous times in the nurse notations. No subsequent notations
25 regarding meconium were made until the next day during the C-section delivery.

26 _____
27 ² Meconium is the baby’s first stool, or poop, which is sticky, thick, and dark green. It is
28 typically passed in the womb during early pregnancy and again in the first few days after birth.

³ Pitocin is the synthetic version of oxytocin, a natural hormone that helps the uterus to
contract during labor.

1 16. At approximately 7:19 p.m., Respondent was at the nurse's station and ordered that
2 Pitocin be stopped at that time, restarted at 2:00 a.m., and then increased every 20 minutes
3 thereafter by two milliunits. Respondent did not document any corresponding assessment or plan,
4 nor the rationale for his decision-making at that time.

5 17. Between approximately 7:00 p.m. and 7:30 p.m., Respondent visited Patient A and
6 her husband. According to a notation entered at approximately 7:15 p.m. by Nurse D.P., the plan
7 of care was discussed with, and agreed to, by Patient A and her family. Respondent did not
8 document this patient encounter, including any discussions he had with Patient A and her husband
9 regarding the plan of care, the rationale for the plan of care, or any information relating to SROM,
10 meconium, dilation, or the timing and need for a C-section.

11 18. At approximately 11:45 p.m., Respondent was at the nurse's station reviewing the
12 FHR tracing. Nurse D.P. informed Respondent of Patient A's recurrent late decelerations.
13 Respondent ordered Pitocin to be stopped and to prepare Patient A for a C-section in the morning.
14 Respondent did not document any corresponding assessment or plan, nor the rationale for his
15 decision-making regarding the C-section at that time.

16 19. The next day, on or about June 26, 2015, at approximately 4:32 a.m., Nurse D.P.
17 spoke with Respondent and notified him of Patient A's recurrent late decelerations, UC (uterine
18 contraction) pattern, and current temperatures, including a temperature of 100.1°F. Respondent
19 stated that Terbutaline⁴ may be given to Patient A and to consent Patient A for a C-section.
20 Respondent further stated that he would perform a C-section in the morning.

21 20. At approximately 5:00 a.m., Patient A signed a hospital consent form for a primary
22 C-section. According to a nursing note that was belatedly entered at approximately 7:50 a.m.,
23 Respondent was at Patient A's bedside and obtained her informed consent for a C-section.

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28 ⁴ Terbutaline is a medication used to delay preterm labor. It belongs to a class of drugs
called betamimetics, which help to prevent and slow contractions of the uterus.

1 21. According to a late entry nurse note, prior to approximately 7:39 a.m., Respondent
2 was at the nurse's station. Nurse H.A. asked Respondent if he wanted to proceed with Patient A's
3 case first or another scheduled case. Respondent decided to proceed with the other scheduled
4 case.

5 22. According to a late entry nurse note, prior to approximately 7:45 a.m., Respondent
6 was at the nurse's station reviewing the FHR tracings. Nurse L.N. noted that they were to get
7 Patient A ready for a C-section "to follow the scheduled case."

8 23. On or about June 26, 2015, prior to the C-section surgery, Respondent completed and
9 signed a "Physician Progress Note – Obstetrical Pre-Delivery Assessment Note." Respondent did
10 not document the presence of thick meconium in his note.

11 24. At approximately 9:17 a.m., Patient A was transferred to the operating room.
12 According to Respondent's operative report, the indication for surgery was "failure to dilate."

13 25. By the time of the C-section surgery, Patient A had been at 5 cm dilated since
14 approximately 5:44 p.m. the previous day, a period of almost 16 hours. Patient A also had
15 documented ruptured membranes for a period of almost 31 hours, having spontaneously ruptured
16 at approximately 3:00 a.m. the previous day. In addition, Patient A had documented thick
17 meconium. Since approximately 4:15 a.m. the previous day, Patient A also had nine SVEs and
18 two internal devices placed, *i.e.*, an intrauterine pressure catheter and a fetal scalp electrode.

19 26. At approximately 9:56 a.m., Patient A gave birth to a baby girl. In his operative
20 report, Respondent noted the presence of "[e]xtremely thick meconium" and "foul amniotic fluid"
21 during the delivery. The baby required immediate resuscitation and intubation, and was promptly
22 taken to the NICU department and, subsequently, to another hospital. The baby passed away later
23 that night. The documented causes of death were cardiorespiratory failure, severe hypoxemia,
24 severe hypotension, and septic shock from bacterial infection.

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1 27. Respondent committed gross negligence in his care and treatment of Patient A, which
2 included, but was not limited to the following:

3 (a) On or about June 26, 2015, prior to approximately 7:39 a.m., Respondent
4 delayed in proceeding with Patient A's C-section delivery in order to perform the
5 scheduled C-section delivery of another patient, despite the presence of multiple,
6 worsening risk factors that rendered Patient A's condition non-elective.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Repeated Negligent Acts)**

9 28. Respondent has subjected his Physician's and Surgeon's Certificate No. A 95051 to
10 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of
11 the Code, in that he committed repeated negligent acts in his care and treatment of Patient A, as
12 more particularly alleged in paragraphs 9 through 27, above, which are hereby incorporated by
13 reference and re-alleged as if fully set forth herein.

14 29. Respondent committed repeated negligent acts in his care and treatment of Patient A,
15 which included, but were not limited to the following:

16 (a) On or about June 26, 2015, prior to approximately 7:39 a.m., Respondent
17 delayed in proceeding with Patient A's C-section delivery in order to perform the
18 scheduled C-section delivery of another patient, despite the presence of multiple,
19 worsening risk factors that rendered Patient A's condition non-elective.

20 (b) On or about June 26, 2015, at approximately 4:32 a.m., Respondent
21 delayed in proceeding with Patient A's C-section delivery and did not follow up to
22 provide a definitive C-section in a timely fashion, despite ongoing indications of
23 Patient A's failure to progress and the presence of multiple risk factors.

24 (c) Respondent did not document an encounter with Patient A that took place
25 on or about June 25, 2015, between approximately 7:00 p.m. and 7:30 p.m., including
26 his discussion with Patient A and her husband regarding the plan of care, the rationale
27 for the plan of care, or any information relating to SROM, meconium, dilation, or the
28 timing and need for a C-section.

1 (d) Respondent did not document any assessment or plan regarding his
2 decision on or about June 25, 2015, to perform a C-section the following morning,
3 nor did he document the rationale for his decision-making relating to the C-section.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Failure to Maintain Adequate and Accurate Medical Records)**

6 30. Respondent has subjected his Physician's and Surgeon's Certificate No. A 95051 to
7 disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that
8 he failed to maintain adequate and accurate records regarding his care and treatment of Patient A,
9 as more particularly alleged in paragraphs 9 through 29, above, which are hereby incorporated by
10 reference and re-alleged as if fully set forth herein.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(General Unprofessional Conduct)**

13 31. Respondent has subjected his Physician's and Surgeon's Certificate No. A 95051 to
14 disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in conduct
15 which breaches the rules or ethical code of the medical profession, or conduct which is
16 unbecoming to a member in good standing of the medical profession, and which demonstrates an
17 unfitness to practice medicine, as more particularly alleged hereinafter:

18 32. On or about June 22, 2015, Patient A had her last office visit with Respondent.
19 Patient A's spouse was also present during the visit. Respondent performed a cervical exam on
20 Patient A, during which he stated to Patient A: "Oh, I bet you like that."

21 **PRAYER**

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

24 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 95051, issued
25 to Respondent Derakhsh Fozouni, M.D.;

26 2. Revoking, suspending or denying approval of Respondent Derakhsh Fozouni, M.D.'s
27 authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced
28 practice nurses;

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3. Ordering Respondent Derakhsh Fozouni, 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 26, 2019


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

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