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8

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

13 In the Matter of the Accusation Against:

Case No. 800-2022-084746

14 **MOHAMAD HASSAN TOUFAILY, M.D.**
1740 Orangewood Avenue
15 Upland, CA 91784

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

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17 **Physician's and Surgeon's Certificate**
No. A 164638

18 Respondent.
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21 **FINDINGS OF FACT**

22 1. On or about January 23, 2023, Complainant Reji Varghese, in his official capacity as
23 the Interim Executive Director of the Medical Board of California, Department of Consumer
24 Affairs, filed Accusation No. 800-2022-084746 against Mohamad Hassan Toufaily, M.D.
25 (Respondent) before the Medical Board of California.

26 2. On or about August 19, 2019, the Medical Board of California (Board) issued
27 Physician's and Surgeon's Certificate No. A 164638 to Respondent. The Physician's and
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1 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
2 herein and will expire on August 31, 2023, unless renewed. A true and correct copy of this
3 Certificate of Licensure is attached hereto at Exhibit A.

4 3. On or about January 23, 2023, Regina Rodriguez, an employee of the Complainant
5 Agency, served by Certified Mail a copy of the Accusation No. 800-2022-084746, Statement to
6 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
7 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 1740
8 Orangewood Avenue, Upland, CA 91784. A copy of the Accusation, the related documents, and
9 Declaration of Service are attached as Exhibit D, and are incorporated herein by reference.

10 4. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c).

12 5. Government Code section 11506 states, in pertinent part:

13 (c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense, and the notice shall be deemed a specific denial of all parts
15 of the accusation not expressly admitted. Failure to file a notice of defense shall
16 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
17 may nevertheless grant a hearing.

18 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
19 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 800-
20 2022-084746.

21 6. California Government Code section 11520 states, in pertinent part:

22 (a) If the respondent either fails to file a notice of defense or to appear at the
23 hearing, the agency may take action based upon the respondent's express admissions
24 or upon other evidence and affidavits may be used as evidence without any notice to
25 respondent.

26 7. On or about March 3, 2023, Renee Azzari, an employee of the Office of the Attorney
27 General, served by Certified Mail a copy of the Courtesy Notice of Default, along with another
28 copy of the Accusation and related documents, to Respondent's address of record with the Board,
which was and is 1740 Orangewood Avenue, Upland, CA 91784. A copy of the Courtesy Notice

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1 of Default, related documents, and Declaration of Service are attached as Exhibit E, and are
2 incorporated herein by reference. On or about March 21, 2023, the aforementioned documents
3 were returned by the U.S. Postal Service marked "Unclaimed." A copy of the envelope returned
4 by the post office is included in Exhibit E, and is incorporated herein by reference.

5 8. Pursuant to its authority under Government Code section 11520, the Board finds
6 Respondent is in default. The Board will take action without further hearing and, based on
7 Respondent's express admissions by way of default and the evidence before it, contained in the
8 Default Decision Evidence Packet, hereby finds that the allegations in Accusation No. 800-2022-
9 084746, and each of them, separately and severally, are true and correct.

10 9. Section 2227 of the Code states:

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

- 16 (1) Have his or her license revoked upon order of the board.
- 17 (2) Have his or her right to practice suspended for a period not to exceed one
18 year upon order of the board.
- 19 (3) Be placed on probation and be required to pay the costs of probation
20 monitoring upon order of the board.
- 21 (4) Be publicly reprimanded by the board. The public reprimand may include a
22 requirement that the licensee complete relevant educational courses approved by the
23 board.
- 24 (5) Have any other action taken in relation to discipline as part of an order of
25 probation, as the board or an administrative law judge may deem proper.

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

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1 10. Section 2234 of the Code, states:

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

5 ...

6 11. Section 118 of the Code states in pertinent part:

7 ...

8 (b) The suspension, expiration, or forfeiture by operation of law of a license
9 issued by a board in the department, or its suspension, forfeiture, or cancellation by
10 order of the board or by order of a court of law, or its surrender without the written
11 consent of the board, shall not, during any period in which it may be renewed,
12 restored, reissued, or reinstated, deprive the board of its authority to institute or
13 continue a disciplinary proceeding against the licensee upon any ground provided by
14 law or to enter an order suspending or revoking the license or otherwise taking
15 disciplinary action against the licensee on any such ground.

16 ...

17 12. Section 820 of the Code states:

18 Whenever it appears that any person holding a license, certificate or permit
19 under this division or under any initiative act referred to in this division may be
20 unable to practice his or her profession safely because the licentiate's ability to
21 practice is impaired due to mental illness, or physical illness affecting competency,
22 the licensing agency may order the licentiate to be examined by one or more
23 physicians and surgeons or psychologists designated by the agency. The report of the
24 examiners shall be made available to the licentiate and may be received as direct
25 evidence in proceedings conducted pursuant to Section 822.

26 13. Section 821 of the Code provides that the licentiate's failure to comply with an order
27 issued under section 820 shall constitute grounds for the suspension or revocation of the
28 licentiate's certificate or license.

14 14. Respondent has subjected his Physician's and Surgeon's Certificate No. A 164638 to
15 disciplinary action under sections 2227, 2234, and 821 of the Code in that he failed to comply
16 with a Board ordered mental and/or physical evaluation, as more particularly alleged hereinafter.

17 A. On or about March 4, 2022, Respondent was interviewed via telephone by
18 Investigator Curran of the Health Quality Investigation Unit. At the end of the

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1 interview, Respondent was asked if he would voluntarily submit to a physical
2 and mental examination, and he stated, "No." Respondent further stated that
3 the Board could take his license because he does not think he will ever use it
4 again.

- 5 B. On or about September 27, 2022, the Board issued an Order granting the
6 petition to compel a mental and physical examination of Respondent (Order)
7 pursuant to section 820 of the Code.
- 8 C. On or about October 3, 2022, a true and correct copy of the Order was served
9 on Respondent via certified mail and first class mail to his address of record on
10 file with the Board. Included with the Order was an appointment letter
11 informing Respondent of the dates of his scheduled mental and physical
12 examinations. True and correct copies of the Order and appointment letter
13 were also emailed to Respondent.
- 14 D. On or about October 3, 2022, Respondent sent an email reply to Investigator
15 Curran indicating his intention not to comply with the Board's Order and that
16 he would not attend the prescheduled appointments for his mental and physical
17 examinations.
- 18 E. On or about October 24, 2022, Respondent failed to attend the scheduled
19 appointment for mental examination as ordered by the Board pursuant to
20 section 820 of the Code.
- 21 F. On or about October 25, 2022, Respondent failed to attend the scheduled
22 appointment for physical examination as ordered by the Board pursuant to
23 section 820 of the Code.

24 15. The Board further finds that pursuant to Business and Professions Code section 125.3,
25 the costs of investigation and enforcement of the case prayed for in the Accusation total
26 \$17,080.75, based upon the Certification of Costs. (Exhibits G, H, and I.)

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1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Mohamad Hassan Toufaily,
3 M.D. has subjected his Physician's and Surgeon's Certificate No. A 164638 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. Pursuant to its authority under Government Code section 11520, and based on the
6 evidence before it, the Board hereby finds that the charges and allegations contained in
7 Accusation No. 800-2022-084746 and the Findings of Fact contained in paragraphs 1 through 14,
8 above are true and correct.

9 4. Pursuant to its authority under Government Code section 11520, and by reason of the
10 Findings of Fact contained in paragraphs 1 through 14, above, and Determination of Issues 1, 2,
11 and 3, above, the Board hereby finds that Respondent Mohamad Hassan Toufaily, M.D., has
12 subjected his Physician's and Surgeon's Certificate No. A 164638 to discipline in that he failed to
13 comply with a Board ordered mental and/or physical evaluation, in violation of sections 2227,
14 2234, and 821 of the Business and Professions Code.

15 5. Respondent is liable to the Board for the cost of investigation and enforcement in the
16 amount of \$17,080.75.

17 **ORDER**

18 IT IS SO ORDERED that Physician's and Surgeon's Certificate No. A 164638, issued to
19 Respondent Mohamad Hassan Toufaily, M.D., is hereby revoked.

20 If Respondent ever files an application for relicensure or petition for reinstatement in the
21 State of California, the Board shall treat it as a petition for reinstatement of a revoked license.
22 Respondent must comply with all laws, regulations and procedures for reinstatement of a revoked
23 license at the time that the application for relicensure and procedures for reinstatement is filed.

24 Respondent is ordered to reimburse the Board the amount of \$17,080.75 for its
25 investigative and enforcement costs. The filing of bankruptcy by Respondent shall not relieve
26 Respondent of his responsibility to reimburse the Board for its costs. Respondent's Physician's
27 and Surgeon's Certificate No. A 164638 may not be renewed or reinstated unless all costs ordered
28 under Business and Professions Code section 125.3 have been paid.

1 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
2 written motion requesting that the Decision be vacated and stating the grounds relied on within
3 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
4 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

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6 This Decision shall become effective at 5:00 p.m. on July 13, 2023.

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8 It is so ORDERED June 13, 2023.

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JENNA JONES KOR
Reji Varghese, Interim Executive Director
FOR THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

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

13

In the Matter of the Accusation Against:

Case No. 800-2022-084746

14

**MOHAMAD HASSAN TOUFAILY, M.D.
1740 Orangewood Avenue
Upland, CA 91784**

A C C U S A T I O N

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**Physician's and Surgeon's Certificate
No. A 164638,**

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Respondent.

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Complainant alleges:

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PARTIES

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1. Reji Varghese (Complainant) brings this Accusation solely in his official capacity as
23 the Deputy Director of the Medical Board of California, Department of Consumer Affairs
24 (Board).

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2. On or about August 19, 2019, the Medical Board issued Physician's and Surgeon's
26 Certificate No. A 164638 to Mohamad Hassan Toufaily, M.D. (Respondent). The Physician's
27 and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on August 31, 2023, 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 2227 of the Code states:

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

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

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

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

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

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

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

27 5. Section 2234 of the Code, states: The board shall take action against any licensee who
28 is charged with unprofessional conduct....

6. Unprofessional conduct is conduct which breaches the rules or ethical code of the
medical profession, or conduct which is unbecoming a member in good standing of the medical
profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical
Examiners* (1978) 81 Cal.App.3d 564, 575.)

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7. Section 118 of the Code states in pertinent part:

...

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

...

8. Section 820 of the Code states:

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

9. Section 821 of the Code provides that the licentiate's failure to comply with an order issued under section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license.

COST RECOVERY

10. Section 125.3 of the Code provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

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FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with a Board Ordered Mental and/or Physical Evaluation)

11. Respondent has subjected his Physician's and Surgeon's Certificate No. A 164638 to disciplinary action under sections 2227 and 821 of the Code in that he failed to comply with a Board ordered mental and/or physical evaluation, as more particularly alleged hereinafter.

12. On or about March 4, 2022, Respondent was interviewed via telephone by Investigator M.C. of the Health Quality Investigation Unit. At the end of the interview, Respondent was asked if he would voluntarily submit to a physical and mental examination, and he stated, "No." Respondent further stated that the Board could take his license because he does not think he will ever use it again.

13. On or about September 27, 2022, the Board issued an Order to compel a mental and physical examination of Respondent (Order) pursuant to section 820 of the Code.

14. On or about October 3, 2022, a true and correct copy of the Order was served on Respondent via certified mail and first class mail to his address of record on file with the Board. Included with the Order was an appointment letter informing Respondent of the dates of his scheduled mental and physical examinations. True and correct copies of the Order and appointment letter were also emailed to Respondent.

15. On or about October 3, 2022, Respondent sent an email reply to Investigator M.C. indicating his intention not to comply with the Board's Order and that he would not attend the prescheduled appointments for his mental and physical examinations.

16. On or about October 24, 2022, Respondent failed to attend the scheduled appointment for mental examination as ordered by the Board pursuant to section 820 of the Code.

17. On or about October 25, 2022, Respondent failed to attend the scheduled appointment for physical examination as ordered by the Board pursuant to section 820 of the Code.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(General Unprofessional Conduct)**

3 18. Respondent has subjected his Physician's and Surgeon's Certificate No. A 164638 to
4 disciplinary action under sections 2227 and 2234 of the Code in that he committed general
5 unprofessional conduct as more particularly alleged in paragraphs 11 through 17, above, which
6 are hereby incorporated by reference as if fully alleged herein.

7 **PRAYER**

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

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 164638, issued
11 to Respondent Mohamad Hassan Toufaily, M.D.;
- 12 2. Revoking, suspending or denying approval of Respondent Mohamad Hassan
13 Toufaily, M.D.'s authority to supervise physician assistants and advanced practice nurses;
- 14 3. Ordering Respondent Mohamad Hassan Toufaily, M.D., to pay the Board the costs of
15 the investigation and enforcement of this case, and if placed on probation, the costs of probation
16 monitoring;
- 17 4. Taking such other and further action as deemed necessary and proper.

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20 DATED: JAN 23 2023

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22 REJI VARGHESE
23 Deputy Director
24 Medical Board of California
25 Department of Consumer Affairs
26 State of California
27 Complainant

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