

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

In the Matter of the Accusation Against:

Simone Melissa Gold, M.D.

Physician's & Surgeon's
Certificate No. G 70224

Respondent.

Case No. 800-2021-074424

DECISION

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

This Decision shall become effective at 5:00 p.m. on February 2, 2024.

IT IS SO ORDERED: January 4, 2024.

MEDICAL BOARD OF CALIFORNIA



Laurie Rose Lubiano, J.D., Chair
Panel A

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

In the Matter of the Accusation Against:

SIMONE MELISSA GOLD, M.D., Respondent

Physician's and Surgeon's Certificate No. G 70224

Case No. 800-2021-074424

OAH No. 2023030252

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by video conference on November 13, 14, and 15, 2023.

Christine A. Rhee, Deputy Attorney General, represented complainant, Reji Varghese, Executive Director of the Medical Board of California (Board).

Heather E. Gibson and Stanley L. Gibson, Attorneys at Law, represented respondent, Simone Melissa Gold, M.D., who was present.

The matter was submitted on November 15, 2023.

SUMMARY

Complainant asserts that respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a physician. After considering the record as a whole, it is determined that respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a licensed physician due to her participation in the riot at the United States Capitol on January 6, 2021. Respondent shall be publicly reprimanded with the condition that she take educational courses in professionalism and ethics approved by the Board. This discipline is adequate to ensure public protection. Reasonable costs are awarded.

FACTUAL FINDINGS

Jurisdiction, and the Board's Investigation into Respondent's Participation in the January 6, 2021, Riot at the United States Capitol

1. On November 5, 1990, the Board issued Physician's and Surgeon's Certificate No. G 70224 to respondent. The license was in full force and effect at all times relevant to the charges and will expire on November 30, 2024, unless renewed. Respondent has no history of discipline.

2. On January 30, 2023, complainant filed the accusation in this matter in his official capacity. Complainant alleges that respondent was convicted of a crime substantially related to qualifications, functions, or duties of a physician, and she engaged in unprofessional conduct due to her misdemeanor conviction for entering and remaining in the United States Capitol on January 6, 2021, for participating in the

riot that occurred at the Capitol that day, while the United States Congress met to certify the vote count for the 2020 presidential election.

3. The Board initiated its investigation into respondent's conduct after news articles showed respondent's arrest for her participation in the January 6, 2021, riot.¹ The matter was assigned to Board Special Investigator Jillian Alexander.

Ms. Alexander testified in this hearing. She stated she tracked respondent's criminal case through the federal court's Public Access to Electronic Records (PACER) system, obtained records of respondent's conviction, the transcript of her sentencing, and interviewed respondent. She said the Board's investigation was not unusual in this regard. Ms. Alexander stated it is typical for the Board to obtain an arrest report regarding a physician and initiate an investigation.

Ms. Alexander further testified she did not communicate with Board president Kristina D. Lawson regarding respondent, contrary to respondent's assertion that Ms. Lawson initiated the Board's action against respondent.²

¹ The term "riot" is used in this decision because in the Statement of Offense respondent signed in connection with her plea, as discussed below, respondent acknowledged she participated in the January 6, 2021, Capitol riot.

² Separate from this hearing, respondent seeks Ms. Lawson's disqualification from deciding this matter due to a letter she wrote to the federal court judge, who sentenced respondent. In her letter, Ms. Lawson stated respondent and her organization, America's Frontline Doctors, had subjected her to a campaign of harassment in her role as Board president to intimidate her. However, the judge at

Respondent's Conviction

4. The facts and circumstances of respondent's 2022 conviction related to her participation in the riot at the Capitol on January 6, 2021, are found in respondent's record of conviction admitted as evidence. These documents show the following:

On January 13, 2021, in United States District Court for the District of Columbia, a criminal complaint was filed charging respondent with entering or remaining in a restricted building or grounds, in violation of 18 U.S.C. §1752(a), and violent entry or disorderly conduct, in violation of 50 U.S.C. § 5104(e)(2).

On February 5, 2021, an Indictment charged respondent with the following: (1) obstruction of an official proceeding and aiding and abetting, a violation of 18 U.S.C. § 1512(c)(2); (2) entering and remaining in a restricted building or grounds, a violation of 18 U.S.C. §1752(a)(1); (3) disorderly or disruptive conduct in a restricted building or grounds, a violation of 18 U.S.C. § 1752(a)(2); (4) disorderly conduct in a Capitol building, a violation of 40 U.S.C. § 5104(e)(2)(D); and (5) parading, demonstrating, or picketing in a Capitol building, in violation of 50 U.S.C. § 5104(e)(2)(G). All the criminal charges in the Indictment were alleged to have occurred on or about January 6, 2021.

On February 8, 2022, respondent signed a plea agreement with the United States Attorney. In the agreement, respondent agreed to plead guilty to entering and remaining in a restricted building or grounds in violation of 18 U.S.C. §1752(a)(1), a misdemeanor. The crime is for "knowingly" entering or remaining in any restricted area

respondent's sentencing noted he had received Ms. Lawson's letter, but he did not consider it in sentencing respondent.

without legal authority to do so. "Restricted buildings or grounds" is defined to include "a building or grounds so restricted in conjunction with an event designated as an event of national significance" or "any posted, cordoned, or otherwise restricted area." (18 U.S.C. §1752(a) & (c).)

On March 3, 2022, in Case No. 21-CR-85-2, respondent pled guilty to violating 18 U.S.C. §1752(a)(1).

On June 21, 2022, the court sentenced respondent to 60 days in the custody of the Federal Bureau of Prisons (BOP) with credit for time served, followed by 12 months of supervised release with various terms and conditions. Respondent was ordered to pay approximately \$10,025 in criminal monetary penalties.

On July 26, 2022, respondent began her period of incarceration with the BOP. As a result, on July 27, 2022, respondent's license was automatically placed on inactive status pursuant to Business and Professions Code section 2236.2. On October 28, 2022, after receiving notification of her release from federal custody, the Board placed respondent's license back in active status.

Facts and Circumstances of Respondent's Conviction

5. In her plea, respondent acknowledged and signed a document entitled "Statement of Offense" on February 8, 2022. By signing this document respondent stipulated that the facts in the Statement of Offense are true and accurate as the basis for her plea. These facts from the Statement of Offense are quoted here in full:

The Attack at the U.S. Capitol on January 6, 2021

1. The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured 24 hours a day by U.S. Capitol

Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification are allowed access inside the U.S. Capitol.

2. On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public.

3. On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

4. As the proceedings continued in both the House and the Senate, and with Vice President Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent

barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

5. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades, and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by U.S. Capitol Police Officers or other authorized security officials.

6. At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of law enforcement, as others in the crowd encouraged and assisted those acts. The riot resulted in substantial damage to the U.S. Capitol, requiring the expenditure of more than \$1.4 million dollars for repairs.

7. Shortly thereafter, at approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. the same day. In light of the dangerous circumstances caused by the unlawful entry to the U.S. Capitol, including the danger posed by individuals who had entered the U.S. Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the U.S. Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

GOLD's Participation in the January 6, 2021, Capitol Riot

8. On January 5, Simone GOLD and co-defendant John Strand traveled to Washington, D.C. from Tampa, Florida. On January 5, GOLD gave a speech in support of the use of hydroxychloroquine and against COVID-19 lockdowns.
9. On January 6, GOLD and Strand entered the restricted area around the U.S. Capitol and stood with a crowd

outside of the East Rotunda door. Directly in front of GOLD and Strand a law enforcement officer was assaulted and dragged to the ground. Shortly after, at approximately 2:27 p.m., GOLD and Strand breached the East Rotunda doors as part of a crowd and entered the U.S. Capitol. At approximately 2:55 p.m. GOLD began to give a speech in Statuary Hall where she stated her opposition to the COVID-19 vaccine mandates and government-imposed lockdowns. Strand recorded GOLD on her phone while she gave her speech. Multiple law enforcement officers had to intervene before GOLD stopped giving her speech, and GOLD and Strand left Statuary Hall.

10. In a story run on January 12, GOLD gave an interview to The Washington Post where she confessed to being inside the U.S. Capitol on January 6, and stated that she regretted going inside. During the same interview Strand stated that he was also inside the U.S. Capitol with GOLD and was there to protect GOLD.

11. On January 18, Strand and GOLD were arrested by Federal Bureau of Investigation (FBI) Agents, and the agents executed a lawful search warrant.

12. When defendant entered the U.S. Capitol Building on January 6, it was a restricted building. The defendant knew at the time she entered the U.S. Capitol Building that she did not have lawful authority to enter the building.

Respondent's Testimony

6. Respondent's testimony is summarized as follows:

Respondent has practiced emergency medicine at hospitals in the Los Angeles area and elsewhere in California and also worked as a physician on a Native American reservation. She said she has been committed to working as a physician in underserved communities. In addition to being a physician, respondent graduated from Stanford Law School. She presently resides in Florida.

7. Respondent is founder of America's Frontline Doctors, a non-profit entity. In the speech she prepared to give at the Capitol, respondent stated her organization is dedicated to providing truth in the support of health and human rights, dedicated to providing accurate data in this time of massive medical deception, and the actions of her organization have saved thousands of lives.

8. With regard to the events of January 6, 2021, and her role in it, respondent testified she was at the Capitol on this date to speak on medicine and health policy relating to COVID-19. She was not there to protest the election. She was invited to speak, along with other persons, at an area the Capitol Police dedicated for speeches and protests. The Capitol Police had issued a permit entitled "Permit Relating to Demonstration Activities on United States Capitol Grounds" that permitted respondent and others to speak at the Senate East Front, Grassy Area from 8:00 a.m. to 6:00 p.m.

9. Respondent said she arrived at the Grassy Area around 8:00 a.m. with her security guard and significant other, John Strand. He accompanies her to speaking events. She said the area quickly got crowded.

10. At about 2:00 p.m. people who looked like stagehands told her that speeches were cancelled. She testified she still wanted and needed to give her speech. The "Grassy Area" she said is not a great distance from the Capitol, and they walked over there with a group of about 20 people. She looked for places to give her speech; she saw police officers, none of whom seemed bothered by her presence. Respondent testified she asked a Capitol Officer if she could give her speech. She said this officer "shrugged." She explained she decided to give her speech on the Capitol steps because she was very upset about what she had seen in terms of COVID.

11. Respondent gave her speech, which lasted only about a minute and one-half, as the crowd was growing by the second. As she was trying to give her speech, the crowd pushed her, and she was pushed against a wall.

Respondent testified she saw no barricades and was not told she could not be in the Capitol. She said the crowd was peaceful and not violent until the police set off a flash bang and the crowd got agitated. She saw an officer, who she later discovered was Joshua David Pollitt, fall to the ground about 10 to 15 feet from where she was standing. Officer Pollitt was at the door of the Capitol (the Memorial Door), where he and other officers had set up a security perimeter.³

12. Respondent said Officer Pollitt was able to get up and walk on his own, and he did not require medical attention. Contrary to what she acknowledged in the Statement of Charges, she testified at this hearing that Officer Pollitt was not assaulted, but instead fainted. To support her claim, respondent cited an email from

³ Officer Pollitt testified at Mr. Strand's trial. Respondent submitted his testimony as part of her evidence, which was admitted.

the Capitol police, which she said confirmed this.⁴ Respondent stated she tried to have the paragraph in the Statement of Offense regarding the officer being assaulted in front of her removed from the federal pleading, but she was not successful.

13. When the Capitol doors were opened, respondent said she was “physically propelled” inside the Capitol. She said she had no choice but to go inside the Capitol. Once inside, she said it was “less busy.” She tried to get out but was not able to do so. She then decided to give her speech in Statutory Hall. She spoke for about five minutes. There were a few scattered applause and thanks in response.

Respondent’s prepared speech, which she made part of the record, was not a speech on medicine or health policy. After introducing herself as a certified emergency physician and Stanford University educated attorney, she told the crowd in the Capitol “**We must do something** [emphasis in her speech]” and asked the audience “Why are **you** [emphasis in her speech] here?” She wanted the crowd to do something because they deserved “honesty and transparency” considering that the election occurred “without a transparent and honest result.”

14. Respondent testified that only one officer asked her to leave, not multitudes as she acknowledged in the Statement of Offense. This one officer told her to move on twice. She was surprised because he interrupted her speech. In her Board interview, respondent said she told the officer who asked her to move on that she is a medical doctor and has to speak on the lies, “because, you know, that is just a

⁴ As discussed below this email does not confirm respondent’s claim. In fact, in the email, Officer Pollitt reported he was maced.

compulsion I was having. I have to speak." Respondent denied she said she was a doctor at the hearing.

Respondent said she tried to exit, but the officer who asked her to move on did not tell her anything about which exit to use. She said it was very hard to get out. It took her 20 to 25 minutes to leave, during which time she was trying to find the exit.

15. On cross examination, concerning respondent's testimony that the crowd was peaceful and not violent, and she was propelled by this crowd, respondent was shown a video of a large group of rioters walking up the Capitol steps shouting and yelling as they approached the Capitol doors. One person is heard loudly shouting "Go!" as they approached the closed doors. Respondent and Mr. Strand are seen walking freely up the Capitol steps with this crowd; the crowd was not pushing respondent and Mr. Strand up the steps. The video further shows respondent and Mr. Strand near the front of the rioters as the group of rioters pushed the closed doors open to enter the Capitol. A second video, a time lapse video, shows at about 2:00 p.m. the rioters amassed across the street from the East Entrance of the Capitol with Capitol Police officers at the top of the stairs in front of large, closed doors to show the Capitol was not open to the public. The large crowd of rioters then surged as a group up the Capitol steps.

16. Before respondent went up the Capitol steps, respondent admitted that her social media director told her speeches in the permitted area were cancelled. Nonetheless, respondent testified she went to the Capitol steps because she had to give her speech. She explained she never turns down the opportunity to speak to large audiences.

17. On cross-examination, respondent admitted that instead of "moving along" as she initially claimed, respondent gave a second speech. Respondent gave this second speech because she said she had nothing else to do, and she frequently gives speeches as a public figure on medical topics. She gave her first speech without a megaphone. Then someone in the crowd gave her megaphone, and she gave this second speech with the megaphone. Respondent admitted giving the speech was an error in judgment.

18. Respondent also acknowledged on cross-examination that Officer Pollitt testified at Mr. Strand's trial that he was maced before he fainted. The email from the Capitol Police that respondent offered in evidence confirms Officer Pollitt reported that two individuals, one wearing a military helmet and gas mask, sprayed him with OC Spray [also known as pepper spray] and he blacked out. Respondent stressed she did not see Officer Pollitt assaulted. Officer Pollitt also reported in this same email that the crowd pushed him and other officers up the steps against the Capitol doors and several individuals in the crowd tried to grab his baton.

19. Respondent testified she takes responsibility for her conduct. Respondent said she will not be involved in anything like what she was involved in on January 6. She regrets what happened on January 6 and being present there. She said she has had an exemplary career as a physician and does not believe her conviction is related to her fitness to practice medicine. Respondent stressed what she did on January 6 was not part of any pattern; it was a singular event.

Respondent also made it clear she believes she did nothing wrong and was unjustly arrested, charged, convicted, and sentenced. She stressed she was inside the Capitol to give a speech. She stated she regards the 2020 presidential election as completely fraudulent and just wanted to be heard on that topic. Respondent feels the

federal judge who sentenced her was biased against her because they were classmates at Stanford Law School, and she turned him down for a date. She accused the federal prosecutor of misrepresenting facts at her sentencing regarding Officer Pollitt. She also accused the federal prosecutor of withholding exculpatory evidence from her. She believes both the federal prosecutor and the Board are politically persecuting her for her views on treatments for COVID-19 and vaccines.

20. As proof of the Board's bias, she cited the letter Ms. Lawson, who was the Board president until recently, sent to the judge at respondent's sentencing. As discussed above, Ms. Alexander, who investigated respondent's conviction, denied that Ms. Lawson had any involvement in the investigation or that Ms. Lawson communicated with her. Respondent did not offer evidence to refute this.

Testimony of Respondent's Character Witnesses

21. Respondent called four character witnesses. Their testimony is summarized as follows:

David Kalmanson, M.D., worked with respondent at Centinela Hospital in Los Angeles for five years. He described respondent as the very best doctor with whom he worked. He described her as a physician with a high sense of responsibility and caring not only about patients but how the emergency room was working. She got along well with staff. He is not aware of respondent's conviction or the factual basis of it.

Wayne Dodakian, D.O., worked with respondent at Centinela for five years, from 2014 to 2019. He consulted with her regarding hundreds of patients. He said respondent is a good physician, she put patients first, and she exercised good judgment. He read the accusation. He commented he doesn't see the connection between the conviction and respondent's ability to practice medicine.

Belinda Martindale-Wichter, PA, worked with respondent for a couple of years at San Joaquin Hospital in Bakersfield. She treated patients with respondent, and believes she was a really good ER doctor, who made sound decisions, had a good bedside manner, and cared for the well-being of patients. Ms. Martindale-Wichter said she is aware respondent was convicted of a misdemeanor related to January 6.

Alan Heilpern, M.D. worked with respondent at St. John's Medical Center in Los Angeles for three to four years. He hired respondent to work at St. John's and was her director. Dr. Heilpern described respondent as highly competent, compassionate, always professional, and the type of doctor he would want to take care of him. He said he never heard a complaint against her. With regards to her conviction, Dr. Heilpern said he believes she was in the wrong place at the wrong time, and her conduct has nothing to do with her ability to practice emergency medicine, although he did not read the accusation.

The Parties' Arguments

22. The parties made the following closing arguments in summary:⁵

Complainant argued that the evidence shows that respondent committed a substantially related crime when she entered and remained in the Capitol during the riot, and discipline is warranted under both causes for discipline, including unprofessional conduct as a separate and distinct cause from the substantially related conviction.

⁵ The parties also submitted hearing briefs, which have been duly considered.

Complainant stressed this conclusion is consistent with Business and Professions Code section 2236 and California Code of Regulations, title 16, section 1360, which do not limit the analysis of substantial relationship to a finite list of crimes, and do not require that the conduct be related to patient care. Unfitness may be shown if the crime evidences a lack of sound personal and professional harm and or failure to follow the law as a matter of assessing potential harm to patients. In this respect, complainant cited *Griffiths v. Superior Court*, (2002) 96 Cal.App.4th 757.

Fundamentally, according to complainant, respondent exhibited behaviors that demonstrate an unfitness to practice medicine. She showed a lack of sound judgment when despite being told the speaking event was cancelled, she tried to give her speech in two different areas of the Capitol. Capitol police told her to leave, and she remained to give her speech. At any point she could have left but chose to remain there. She should have known as a licensed physician that her conduct was illegal. Although she did not act violently, she was around violent actors.

Complainant argued further that respondent, in her argument, mischaracterizes the crime as misdemeanor trespass and tries to minimize or dismiss it.

With regard to evidence of rehabilitation, complainant does not believe respondent accepts responsibility for her conduct; she believes she is the victim of political persecution, and everyone involved in her prosecution was corrupt. Contrary to her testimony, respondent was not propelled by the crowd, as she stated, but went to the Capitol willingly and was not there as a passive observer. Complainant cited the federal judge's comments at her sentencing. The federal judge stated that even though she did not act violently, she facilitated the ability of those who engaged in violence. Respondent was not simply a casual bystander but part of an angry and aggressive mob of people intent on getting past law enforcement to enter the Capitol,

and Capitol police were obviously trying to keep the mob out. Respondent knew, or should have known, it was a very dangerous and violent situation.

In terms of the degree of discipline to impose, complainant stated that publicly reprimanding respondent is insufficient because respondent requires monitoring. Complainant asked that a five-year period of probation be imposed with terms and conditions that include 180 hours of non-medical community service, an ethics course, and full payment of the enforcement and investigative costs, with standard terms and conditions.

23. Respondent argued that discipline is not warranted. She stressed that her crime is not substantially related to respondent's fitness to practice medicine and, also, does not constitute unprofessional conduct consistent with *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, and other cases. She said the conduct she was convicted of was misdemeanor trespass for 20 minutes of conduct on January 6, close to three years ago, and was unrelated to patient care. Respondent stressed that she did not behave intentionally. She did not want to be inside the Capitol, but as long as she was there, she gave her speech. Respondent asserted she was stuck in the crowd, analogizing it to being stuck in a crowd in a store on Black Friday. She said she did not see the barricades. She said Officer Pollitt was not injured but fainted.

Respondent distinguished the facts of her case from the facts in the *Griffiths* decision, which involved a physician's use and abuse of alcohol.

Respondent further stressed she has provided excellent patient care for 20 years, and she should not be subject to discipline for about 30 minutes of behavior.

EVALUATION OF RESPONDENT'S TESTIMONY AND EVIDENCE

24. Respondent's testimony is found only partly credible. Regarding her testimony that the crowd propelled her into the Capitol, the video contradicts her claim. It shows she walked freely with Mr. Strand up the Capitol steps. Once inside the Capitol, respondent chose to remain there to give her speech and then gave a second speech. Her testimony that she "had nothing to do" other than give her speech because she could not find the exit is not believable. She wanted to give the speech to the crowd to get her viewpoints heard in the Capitol. Respondent said in her Board interview that once she was inside the Capitol, and was asked by a Capitol officer to move on, she told this officer she is a medical doctor and she has to speak on the lies, "because, you know, that is just a compulsion I was having. I have to speak." Respondent's denial at the hearing that she said she was a doctor is found not credible.

Also contrary to her testimony, the crowd was not peaceful. The crowd confronted a security line of Capitol Police officers at the top of the Capitol steps. Any reasonable person seeing these Capitol Police officers at the top of the Capitol steps would, or should, have known their presence represented a line not to cross. Given the events that were occurring on January 6, the fact that the Capitol was a restricted area was unmistakable. That Officer Pollitt was maced, and he blacked out or fainted, after being pushed with other officers against the Capitol doors, shows the violent nature of the crowd confronting these officers as they breached the security line to enter the Capitol, even if respondent did not see Officer Pollitt get maced. That the officers had to use a flash bang against this crowd highlights the angry and aggressive nature of this crowd. In short, respondent's contention that the entry into the Capitol by the crowd was non-violent is wholly contradicted.

Yet, despite the angry and aggressive crowd, respondent continued into the Capitol to give her speech because, as mentioned, she insisted she had to give it. In fact, she did not have to give her speech. She chose to give it, not once but twice.

Notwithstanding, respondent testified credibly that she is committed to caring for patients in the emergency room setting and taking care of patients in underserved communities. The physicians and physician assistant who spoke on her behalf confirmed this. She also testified credibly that she regrets what happened on January 6 and being there, and her presence there was an error in judgement. Although respondent subjectively believes her prosecution and the Board's actions are politically motivated, this does not impeach her acceptance that she should not have entered the Capitol on that date. In other words, one can be remorseful for her actions yet still believe she was unfairly punished.

Costs of Enforcement

25. Complainant seeks recovery of enforcement and investigation costs in the total amount of \$54,254.75, pursuant to Business and Professions Code section 125.3. Costs are calculated as investigative costs of \$2,106 and enforcement costs of \$52,148.75.

In support of the request for recovery of investigative costs, Rashya Henderson, Supervising Special Investigator at the Department of Investigation, Department of Consumer Affairs, signed a declaration dated January 9, 2023, certifying the costs associated with the investigation that included a detailed summary of the investigation work performed by two investigators. These costs total \$2,106, which includes \$520 for the 2021/2022 fiscal year. However, the time spent for investigative costs for the fiscal year 2021/2022 is not detailed by date. Thus, it cannot be determined what

investigative work during the 2021/2022 fiscal year was done before January 1, 2022, when Business and Professions Code section 125.3 was amended to allow the Board to recover investigative and enforcement codes. Therefore, the \$520 identified as investigative costs for the 2021/2022 is disallowed in its entirety.

26. In support of the request for recovery of enforcement costs, the Deputy Attorney General who prosecuted the case signed an initial declaration dated October 13, 2022, and a supplemental declaration on November 13, 2023, requesting a total of \$52,148.75 relating to the legal work performed in this matter. Attached to the declarations are two documents entitled "Master Time Activity by Professional Type." These documents identify the tasks performed, under several case numbers, the dates legal services were provided, who provided the services, the time spent on each task, and the hourly rate for the Supervising Deputies Attorney General, Deputies Attorney General, and paralegals from October 28, 2021, through November 12, 2023, for the total prosecution costs in the amount of \$33,892.50 in legal work identified in the initial declaration, and \$18,256.25 for legal work identified in the supplemental declaration.

However, the time spent for legal work, as attached to the initial declaration, totaling \$256.25, done before January 1, 2022, is disallowed. As noted, complainant can only seek recovery of costs of enforcement after January 1, 2022, pursuant to Business and Professions Code section 125.3 as amended.

27. California Code of Regulations, title 1, section 1042, subdivision (b), requires that this declaration must include "specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs."

28. The declarations with the attachments identify the tasks performed and comply with the specificity requirements of section 1042, subdivision (b). Costs are found to be reasonable except for \$520 for investigative costs and \$256.25 for enforcement costs for work performed before January 1, 2022. These sums are deducted from the \$54,254.75 complainant seeks in total investigative and enforcement costs. Accordingly, the total reasonable costs of enforcement of this matter are \$53,478.50. Respondent did not present any evidence regarding her ability to pay costs.

LEGAL CONCLUSIONS

Purpose of Physician Discipline and Statutory Authority

1. The purpose of the Medical Practice Act (Chapter I, Division 2, of the Business and Professions Code) is to assure the high quality of medical practice; in other words, to keep unqualified and undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical, supra*, at p. 574.) The purpose of administrative discipline is not to punish, but to protect the public by eliminating those practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

2. The Board is authorized, after a hearing before an administrative law judge, to impose discipline including revocation and suspension of a physician's license and place the physician on probation with terms and conditions. (Bus. & Prof., § 2227, subd. (a)(1)-(3).) The Board is also authorized to publicly reprimand a physician

with the requirement that the licensee complete educational courses approved by the Board. (Bus. & Prof., § 2227, subd. (a)(4).)

3. Pursuant to Section 2234, subdivision (a), the Board may take disciplinary action against a licensee for unprofessional conduct. (Bus. & Prof., § 2234, subd. (a).) Pursuant to Section 2236, the Board may take disciplinary action against a licensee, who has been convicted of "any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of [the Medical Practice Act]." (Bus. & Prof., § 2227, subd. (a).)

Burden and Standard of Proof

4. Complainant bears the burden of proof of establishing that the charges in the accusation are true.

The standard of proof in an administrative action seeking to suspend or revoke a physician's certificate is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Disposition Regarding Causes for Discipline

CAUSE EXISTS TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE

5. Complainant proved by clear and convincing evidence that respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon pursuant to Business and Professions Code sections 2227, 2234 subdivision (a), and 2236, due to her June 21, 2022, conviction for entering and

remaining in a restricted area in violation of Title 18, United States Code, section 1752(a)(1), a misdemeanor offense.

6. The criteria to determine substantial relationship are detailed in California Code of Regulations, title 16, section 1360, subdivision (b). Under this provision, a crime is deemed substantially related if it evidences present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Factors to be considered are the nature and severity of the crime, the number of years elapsed since the date of the crime, and the nature and duties of the professions. Under Business and Professions Code section 2236, subdivision (a), the record of conviction is conclusive evidence only of the fact that the conviction occurred.

7. To determine this substantial relationship under Business and Professions Code section 2236, subdivision (c), the Board may inquire into the circumstances surrounding the commission of the crime. However, effective July 1, 2020, pursuant to AB 2138, the Legislature amended Business and Professions Code section 493, and removed the language allowing the Board to inquire into the circumstances surrounding the commission of the crime. An aim of the amendment was to reduce the licensing and employment barriers for people who are rehabilitated. (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.)

8. Regardless of this change, to assess substantial relationship, Section 493 requires an agency to consider the "nature and severity of the offense". Section 493, subdivision (b)(1), states:

Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the

business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

(B) The number of years elapsed since the date of the offense.

(C) The nature and duties of the profession.

9. The amendment to Section 493 is not understood to mean an agency must only consider the elements of a crime to determine if it is substantially related. An evaluation of "the nature and severity of the offense" would need to encompass a review of the court's record of conviction, which includes the plea agreement and stipulations, and the judgment of conviction itself. If the amendment were read differently, it would render that statutory requirement meaningless. The aim of statutory interpretation is to give meaning to every word and phrase in the statute to accomplish a result consistent with the legislative purpose. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 775, citing *California Teachers Association v. Governing Board of Rialto Unified School District* (1997) 14 Cal.4th 627, 634.)

10. With this understanding, the nature and gravity of respondent's offense is evaluated based on the facts respondent stipulated to as the basis for her plea to the misdemeanor violation of 18 U.S.C. § 1752(a)(1) that are contained in the Statement of Offense as part of her plea. Only these facts are considered in determining whether respondent's offense is substantially related to her fitness, or potential fitness, to practice medicine.

11. These facts establish that respondent committed a crime substantially related to the qualification, functions, or duties of a physician. As found above, respondent made several bad judgments concerning her decision to participate in the riot on January 6, 2021. A conviction can be substantially related even where the conduct involved conduct unrelated to patient or medical care but involves conduct that reflects on a physician's judgment and potential fitness to practice medicine. (*Griffiths, supra*, at pp. 771-772.) Respondent decided to go up the Capitol steps from the permitted "Grassy Area," and she continued up these steps with an angry and aggressive mob. She was not, as she claimed, pushed up the Capitol steps or through the Capitol doors by the mob. Respondent was aware as she proceeded up the Capitol steps and passed the Capitol doors of the violent, angry and aggressive nature of this crowd, as found above. This crowd forced their way past Capitol Police Officers and through the Capitol doors. Once inside, respondent chose to remain in the Capitol to give a speech, twice, to this crowd of rioters.

12. Complainant proved by clear and convincing evidence that respondent engaged in unprofessional conduct due to her conviction, as found immediately above, related to the qualifications, functions, or duties of a physician and surgeon pursuant to Business and Professions Code sections 2227, and 2234, subdivision (a). It is not found that respondent's conduct constituted unprofessional conduct, as alleged in the Second Cause of Discipline, separate and apart from the fact of her conviction as found under the First Cause for Discipline.

The Board's Disciplinary Guidelines and Evaluation Regarding the Degree of Discipline

13. With cause for discipline having been found, the determination now must be made regarding the degree of discipline and the terms and conditions to impose.

The Board has promulgated guidelines that must be considered in this matter to fashion any discipline with appropriate terms and conditions, the Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition 2016).

Those Board's Guidelines provide the following directive regarding the applicability and use of the guidelines:

The Board expects that, absent mitigating or other appropriate circumstances such as early acceptance of responsibility, demonstrated willingness to undertake Board-ordered rehabilitation, the age of the case, and evidentiary problems, Administrative Law Judges hearing cases on behalf of the Board and proposed settlements submitted to the Board will follow the guidelines, including those imposing suspensions. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure.

14. Pursuant to California Code of Regulations, title 16, section 1360.1:

When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:

- (a) The nature and severity of the act(s) or offense(s).
- (b) The total criminal record.
- (c) The time that has elapsed since commission of the act(s) or offense(s).
- (d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
- (e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

15. Under the Board's guidelines, the recommended penalty range for a substantially related misdemeanor conviction is a minimum of five years' probation with certain terms and conditions to a maximum of revocation with certain terms and conditions.

Disposition

16. Based on the totality of the evidence, it is determined that requiring respondent to be placed on a period of probation would serve no public purpose and would amount to impermissible punishment. (*Fahmy v. Medical Board*, 38 Cal.App.4th at p. 817.) Publicly reprimanding respondent with the conditions that she successfully complete Board-approved professionalism and ethics courses will ensure sufficient public protection.

This determination represents a departure from the Board's recommended guidelines of five years' probation with terms and conditions for these reasons: Respondent has been licensed since 1990 without discipline. During most of this time, she has been a dedicated emergency medicine physician, who enjoys the support of the colleagues who testified in this hearing. Her conviction represents 30 minutes of very poor judgment by participating in the riot at the Capitol on January 6, 2021. With this noted, as discussed above, she was not a violent actor, and was focused on giving a speech to the crowd. Respondent accepted responsibility for her actions, even if she believes that her punishment was politically motivated. Proving rehabilitation does not require respondent "to acquiesce in a pragmatic admission of guilt . . . [or] to perform an artificial act of contrition." (*Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 745.) Her views seem to be in good faith, irrespective of their merits. Nonetheless, it is noted that soon after the January 6, 2021, respondent expressed her regret for going inside the Capitol in an interview she gave to the *Washington Post* on January 12, 2021, as detailed in the Statement of Offense.

A public reprimand is not a "free pass." It constitutes the Board's formal criticism and censure of respondent, who engaged in the conduct outlined above. It warns her that engaging in the same or similar conduct in the future will likely result in more serious consequences.

The Reasonable Costs of Investigation and Prosecution

17. Business and Professions Code section 125.3 authorizes the Board to recover the reasonable costs of its investigation and enforcement of this case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court decided that in order to determine whether the actual costs of investigation and prosecution sought by a regulatory board under a statute

substantially identical to Business and Professions Code 125.3 are "reasonable," the agency must decide: (a) Whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct.


Considering the *Zuckerman* factors, costs are reduced by half for these reasons: Respondent presented a colorable defense to the charges against her and successfully obtained a disposition less than a period of probation complainant seeks.

Accordingly, the reasonable costs of investigation and prosecution of this matter in the amount of \$53,478.50 are reduced by half to \$26,739.25.

ORDER

Simone Melissa Gold, M.D., is hereby publicly reprimanded for her substantially related conviction for violating 18 U.S.C. § 1752(a)(1). This Decision shall serve as Dr. Gold's Public Reprimand in this matter, and it is conditioned upon Dr. Gold completing Board-approved courses in professionalism and ethics within 90 days of the effective date of the decision and paying the costs associated with the investigation and prosecution of this matter in the amount of \$26,739.25 within 90 days or as arranged with the Board.

DATE: December 11, 2023


Abraham M. Levy (Dec 11, 2023 17:08 PST)

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings