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

In the Matter of the First Amended Accusation Against: Foad Elahi, M.D. Physician's and Surgeon's Certificate No. A 106279 Respondent.	Case No.: 800-2020-069481

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 JUL 3 1 2024.

IT IS SO ORDERED: JUL 0 1 2024.

MEDICAL BOARD OF CALIFORNIA

Michelle Bholat, M.D., Interim Chair
Panel A

ROB BONTA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **FOAD ELAHI, M.D.** **1144 Norman Drive, Suite 104** **Manteca, CA 95336-5959** **Physician's and Surgeon's Certificate No. A 106279** Respondent.	Case No. 800-2020-069481 OAH No. 2023080346 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Reji Varghese (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Ryan J. Yates, Deputy Attorney General.

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2. Respondent Foad Elahi, M.D. (Respondent) is represented in this proceeding by attorney Nicole D. Hendrickson, whose address is: 655 University Avenue, Suite 119 Sacramento, CA 95825

3. On or about December 13, 2008, the Board issued Physician's and Surgeon's Certificate No. A 106279 to Foad Elahi, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2020-069481, and will expire on July 31 2026, unless renewed.

JURISDICTION

4. First Amended Accusation No. 800-2020-069481 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent. The First Amended Accusation was deemed controverted pursuant to Government Code Section 11507 in light of the fact that Respondent timely filed his Notice of Defense contesting the original Accusation No. 800-2020-069481.

5. A copy of First Amended Accusation No. 800-2020-069481 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2020-069481. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in First Amended Accusation No. 800-2020-069481, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent agrees that, at a hearing, Complainant could establish a prima facie case or factual basis for the charges and allegations in First Amended Accusation No. 800-2020-069481, a true and correct copy of which is attached hereto as Exhibit A, that he has thereby subjected his Physician's and Surgeon's Certificate, No. A 106279 to disciplinary action, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

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

DISCIPLINARY ORDER

1. PUBLIC REPRIMAND. IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 106279 issued to Respondent FOAD ELAHI, M.D. shall be and is hereby Publicly Reprimanded pursuant to Business and Professions Code section sections 2234 subdivision (c), 2227, and 2266. This Public Reprimand, which is issued in connection with Respondent's care and treatment and medical record-keeping of Patient A, as set forth in First Amended Accusation No. 800-2020-069481, is as follows: in 2020, after seeing Patient A for post-surgical evaluation, you failed to follow up with the patient's treating physicians, and failed to adequately document your care and treatment of Patient A.

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

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

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than

15 calendar days after the effective date of the Decision, whichever is later.

3. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, including, but not limited to, expert review, amended accusations, legal reviews, investigation(s), and subpoena enforcement, as applicable, in the amount of $20,538.75 (twenty thousand, five hundred and, thirty-eight dollars and seventy-five cents). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

Payment must be made in full within 30 calendar days of the effective date of the Order, or by a payment plan approved by the Medical Board of California. Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board.

The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay investigation and enforcement costs, including expert review costs.

4. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in First Amended Accusation No. 800-2020-069481 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Nicole D. Hendrickson. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. 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: 4/23/2024

FOAD ELAHI, M.D.
Respondent

I have read and fully discussed with Respondent Foad Elahi, 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: 4/23/2024

Nicole Hendrickson

NICOLE D. HENDRICKSON
Attorney for Respondent

ENDORSEMENT

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

DATED: 4/23/24

Respectfully submitted,

ROB BONTA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

Ryan Yates

RYAN J. YATES
Deputy Attorney General
Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **Foad Elahi, M.D.** **1144 Norman Drive, Suite 104** **Manteca, CA 95336-5959** **Physician's and Surgeon's Certificate No. A 106279,** Respondent.	Case No. 800-2020-069481 **FIRST AMENDED ACCUSATION**

PARTIES

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

2. On or about December 13, 2008, the Medical Board issued Physician's and Surgeon's Certificate Number A 106279 to Foad Elahi, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2026, unless renewed.

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JURISDICTION

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

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"..."

5. Section 2227 of the Code provides in pertinent part that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

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

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

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

"(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.

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

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

"(d) Incompetence.

"..."

7. Section 2266 of the Code states, in pertinent part:

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

COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, 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.

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

9. Respondent's license is subject to disciplinary action under section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts during the care and treatment of Patient A. On July 20, 2021, the Board received an adverse event report from St. Joseph's Outpatient Surgery Center (St. Joseph's) in Stockton, California, where Respondent has privileges as a neurologist. The facts and circumstances regarding this violation are as follows:

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Patient A[1]

10. Respondent first saw Patient A on August 28, 2018. Patient A was a 34-year-old female with a past medical history of Diabetes Mellitus type 2, Failed Back Surgery Syndrome, knee pain, and sacroiliac pain. As part of his care and treatment of Patient A, Respondent recommended spinal cord stimulation as treatment for her chronic pain.

11. On or about July 1, 2020, Respondent performed an explant of Patient A's spinal cord stimulator, which had been surgically placed approximately a year earlier, and was non-functional. Due to Patient A's Diabetes Mellitus—prior to clearing Patient A for surgery, Respondent should either have ordered labs or testing or obtained Patient A's primary care physician's clearance. Respondent failed to either do that and/or document an evaluation of the patient's control of her Diabetes Mellitus prior to clearing her for elective surgery.

12. Following the removal of the device, Patient A began experiencing seizure-like activity and was transferred to St. Joseph's emergency department. Patient A was then treated for Status Epilepticus with sedation and reintubation for airway safety. Following the surgery, Respondent incorrectly documented in his surgery note that the patient was discharged in stable condition. Patient A was admitted to the Intensive Care Unit overnight and extubated the next day, followed by a computerized tomography (CT) scan of her head and neck, and blood work. All tests revealed that Patient A was at or about normal limits. On or about the next day, Patient A left against medical advice. During this period, an Emergency Department Physician attempted to reach Respondent several times, with no documented response.

13. On or about July 8, 2020, Patient A was seen by Respondent for evaluation of her surgery site and suture removal. At or about this time, Respondent failed to follow-up with the doctors who were treating Patient A, following her surgical complications.

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[1] The patients are referred to by letters in order to preserve their privacy. Their identity will be disclosed in the discovery provided to Respondent.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

14. Respondent's license is subject to disciplinary action under section 2266, of the Code, in that he failed to maintain adequate and accurate medical records relating to his care and treatment of Patient A, as more fully described in paragraphs 9 through 13, above, and those paragraphs are incorporated by reference as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

15. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, of the Code, in that he has engaged in conduct that breaches the rules or ethical code of the medical profession, or conduct which is unbecoming of a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 9 through 14 above, which are hereby realleged and incorporated by reference as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

16. To determine the degree of discipline, if any, to be imposed on Respondent Foad Elahi, M.D., Complainant alleges that a Statement of Charges was filed by the Iowa Board of Medicine in October of 2016, alleging that his behavior toward his colleague—which occurred between March 2014 and October 2014—constituted unprofessional conduct. Petitioner resolved this matter in April 2017, by agreeing to pay a civil penalty and to take a professional boundaries course. Based on the aforementioned misconduct, in a disciplinary action titled "In the Matter of First Amended Accusation Against Foad Elahi," Case No. 800-2020-065096, the Medical Board of California, issued a Decision, effective February 22, 2018, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of seven (7) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

17. In February 2020, Respondent filed a Petition with the Board, asking for early termination of probation. On or about December 6, 2021, the Board granted Respondent's Petition for early termination of probation, effective January 5, 2022. A copy of that decision is attached as Exhibit B and is incorporated by reference.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 106279, issued to Respondent Foad Elahi, M.D.;

2. Revoking, suspending, or denying approval of Respondent Foad Elahi, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Foad Elahi, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

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

DATED: APR 18 2024

REJI VARGHESE
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

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

In the Matter of the Accusation Against:	)	
FOAD ELAHI, M.D.	)	Case No. 8002017030144
Physician's and Surgeon's Certificate No. A106279	)	OAH No. 2017090411
Respondent	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on February 22, 2018.

IT IS SO ORDERED: January 23, 2018.

MEDICAL BOARD OF CALIFORNIA

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

MEDICAL BOARD OF CALIFORNIA
I hereby certify that this document is a true and correct copy of the original on file in this office.
Signature
for Custodian of Records
Title
1-26-2022
Date

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

In the Matter of the Accusation Against: FOAD ELAHI, M.D., Physician's and Surgeon's Certificate No. A 106279 Respondent.	Case No. 800-2017-030144 OAH No. 2017090411

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on December 7, 2017, in Oakland, California.

Deputy Attorney General Carolyne Evans represented complainant Kimberly Kirchmeyer, Executive Director, Medical Board of California, Department of Consumer Affairs.

Jeffrey Kravitz, Attorney at Law, represented respondent Foad Elahi, M.D., who was present throughout the hearing.

The record closed and the matter was submitted for decision on December 7, 2017.

FACTUAL FINDINGS

1. On December 13, 2008, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 106279 to Foad Elahi, M.D. (respondent). The license has been active at all times relevant here and is scheduled to expire if not renewed on July 31, 2018.

2. On August 14, 2017, complainant Kimberly Kirchmeyer, acting in her official capacity as Executive Director of the Board, issued an accusation against respondent. The accusation alleges that respondent's California license is subject to discipline because of action taken by the Iowa Board of Medicine (Iowa Board).

Respondent's Background

3. Respondent was raised and attended medical school in Iran, graduating in 1990 from the University of Shahid Beheshti Medical Sciences. He completed a residency in general surgery from 1989 to 1990, and a residency in neurosurgery from 1990 to 1995, at the same university. He served as an assistant professor of neurosurgery at The Mostapha Hospital in Tehran from 1995 to 1997, and later as a consulting neurosurgeon at the facility. From 1998 to 2000, respondent worked as a consultant neurosurgeon in Dubai, before returning to Iran to work until 2004.

4. From 2004 to 2005, respondent was a research fellow in skull base surgery at the North Shore University Hospital in New York. He attended a cerebrovascular neurosurgical fellowship from 2005 to 2006 at the University of Washington. From 2006 to 2007, respondent attended a general surgery residency at Albert Einstein University in New York. From 2007 to 2010, respondent completed a residency at New York Medical College in physical medicine and rehabilitation, and served as the chief resident from 2009 to 2010. Respondent attended a pain medicine fellowship in the Department of Anesthesiology at the John Stroger Hospital in Chicago from 2010 to 2011.

5. From July 1, 2011, until December 31, 2014, respondent served as an associate, then an assistant professor at the University of Iowa Hospitals and Clinics.

6. Respondent currently has a solo practice in Manteca, California. He specializes in interventional pain management, using nerve blocks, epidural injections, radiofrequency nerve ablation and nerve stimulators to treat chronic pain patients. Respondent estimates that no more than 10 percent of his patients take opioid medication. His goal is to treat chronic pain through interventional methods and to wean patients from opioid medications. From June 2015 to the present, respondent has been a staff member at Doctors Hospital in Manteca, California. He was the medical director at Healthsouth Rehabilitation Hospital of Modesto until recently.

Action by the Iowa Board

7. On October 28, 2016, the Iowa Board filed charges against respondent alleging that he engaged in sexual harassment and/or unethical or unprofessional conduct when he engaged in unwanted conduct of a sexual nature toward a female coworker between March and October 2014. The conduct included making unwanted sexual comments and unwanted hugging, touching, kissing and fondling of the coworker.

8. On April 14, 2017, the Iowa Board entered into a settlement agreement with respondent (Iowa Agreement). The Iowa Agreement cited respondent for violating appropriate professional boundaries in his interactions with the female coworker. Respondent was warned that engaging in such conduct in the future could result in further disciplinary action against his license. Respondent was assessed a civil penalty of $2,500 and ordered to complete a Board-approved professional boundaries program within 90 days.

Respondent's Evidence

9. Respondent acknowledges that he acted inappropriately toward a female coworker. He made inappropriate jokes, hugged her, and kissed her on the cheek. Respondent does not recall fondling her.

10. In June 2016, respondent underwent a full psychological evaluation at the Professional Renewal Center in Lawrence, Kansas. The report, which found him fit to practice, was sent directly to the Iowa Board. Following the Board's review of respondent's psychiatric evaluation, it entered into the Iowa Agreement with him.

11. On April 6, 7 and 8, 2017, respondent attended the professional boundaries program offered by the University of California, San Diego School of Medicine Physician Assessment and Clinical Education Program (PACE). Respondent received 39.50 credits for attending the course, which satisfied the requirement in the Iowa Agreement.

The PACE Professional Boundaries Program Course Director reports that respondent successfully completed the course and displayed personal and professional responsibility growth and development by actively participating in all aspects of the program. He met all objectives satisfactorily. The Course Director recommended that respondent: 1) implement and adhere to the Boundary Maintenance and Personal Prevention Plan developed in consultation with faculty; 2) continue to use the course text as a resource for ongoing support; 3) fully participate in the PACE follow-up assessments to assist in maintaining progress; and 4) seek out and utilize support from colleagues and peers to identify and nullify personal risk factors and triggers.

Respondent found the presenters to be very knowledgeable. He now fully understands that jokes, hugging and kissing are not acceptable in the workplace, and that even subtle behavior can be misinterpreted. Respondent benefited from the course, it especially helped him understand cultural differences. He now interacts very differently with staff members. Respondent has not participated in follow-up assessments to date.

12. The woman who filed the complaint against respondent at the University of Iowa was the secretary for the department. Respondent deeply regrets offending her and accepts full responsibility for his misconduct. He has learned from this experience and from the professional boundaries course.

13. Respondent has paid the civil penalty assessed by the Iowa Board.

14. Respondent has not been disciplined or investigated for misconduct before or after this incident. His performance evaluations from the University of Iowa from 2011 to 2013 were excellent. On May 14, 2013, respondent was offered a faculty appointment as a clinical assistant professor beginning July, 2013, through June 30, 2014.

15. In November 2014, respondent was nominated for the Faculty Service Award at the University of Iowa. His nomination was supported by numerous physicians.

16. Respondent received many patient thank-you notes and letters of appreciation from colleagues and residents while at the University of Iowa. He ranked very highly on the patient and resident satisfaction surveys.

17. Howard C. Miller, D.P.M., is a member of the credentials committee at Doctors Hospital in Manteca. He wrote a letter dated November 22, 2017, for the Board's consideration. Dr. Miller is aware of the discipline imposed by the Iowa Board. Dr. Miller reports that he has had the opportunity to interact with respondent on numerous occasions in the operating room and outside. He has not observed respondent to demonstrate any inappropriate behavior, or to exhibit behavior that could be considered outside of his professional boundaries. Respondent has asked Dr. Miller to serve as his mentor for support with implementing the PACE professional boundaries protection plan.

18. Respondent uses a chaperone with all female patients and will continue to do so.

19. Respondent is married and has a three-year-old child. His wife's family resides in the Central Valley. They attend church and respondent is a member of the Chamber of Commerce in Ripon, California.

LEGAL CONCLUSIONS

1. The burden of proof in this matter is on the Board and the standard of proof is clear and convincing evidence. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. Pursuant to Business and Professions Code sections 2305 and 141, the Board is authorized to impose discipline on a licensee who has been disciplined in another state, without a broad inquiry into the underlying facts. (*Marek v. Board of Podiatric Medicine* (1993) 16 Cal.App.4th 1089.)

3. Business and Professions Code section 2305 provides:

> The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

Sexual harassment of a coworker would have been grounds for discipline in California. (Bus. & Prof. Code, § 2234.) Cause for discipline in California exists pursuant to Business and Professions Code section 2305. (Factual Findings 7 and 8.)

4. Whether discipline should be imposed in California may also be evaluated pursuant to Business and Professions Code section 141, subdivision (a), which provides:

> For any licensee holding a license issued by a board under the jurisdiction of a department, a disciplinary action by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

Sexual harassment in the workplace is substantially related to the practice of medicine and constitutes unprofessional conduct. Cause for discipline also exists pursuant to Business and Professions Code section 141. (Factual Findings 7 and 8.)

Disciplinary Considerations

5. The purpose of the Medical Practice Act[1] is to assure the high quality of medical practice; in other words to keep unqualified persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.)

6. The Board has adopted guidelines to assist in the evaluation of physician discipline. (Manual of Model Disciplinary Orders and Disciplinary Guidelines, 12th Edition.) The guidelines state that, in out-of-state discipline cases, the minimum level of discipline should be the same as that for a similar violation in California; the maximum is revocation. The recommended level of discipline for unprofessional conduct ranges from a stayed revocation with five years of probation to revocation. In cases involving sexual misconduct with a patient, a seven-year probation is recommended.

Because he has fully complied with the Iowa Board's discipline, respondent suggests that a public reprimand is sufficient to protect the public; however, he is willing to comply with probation. Complainant recommends revocation, or in the alternative, revocation, stayed during a seven-year probationary period, with terms including a 60-day suspension, a psychiatric evaluation, a third party chaperone and a practice monitor.

[1] Business and Professions Code sections 2000 through 2521.

Respondent has had a very successful career, including his work at the University of Iowa, until his misconduct toward a coworker was discovered. There is no evidence of misconduct involving patient care and this appears to be an isolated incident. However, respondent's sexual harassment of an employee of the university is a very serious issue. The seriousness of respondent's misconduct warrants safeguards beyond that of a public reprimand.

The purpose of physician discipline is to protect the public and to aid in the rehabilitation of licensees. (Bus. & Prof. Code, § 2229.) Respondent recently underwent a psychiatric evaluation which was submitted to the Iowa Board prior to reaching a resolution of the underlying allegations. There is no evidence that respondent has attended psychotherapy to understand why his misconduct occurred, which may aid respondent in preventing a reoccurrence. Respondent has completed the PACE professional boundaries course and reports that he has learned from the course and will ensure that appropriate boundaries are maintained with staff and patients. However, he has not continued with the follow-up assessments offered by the course, which he needs to do. Respondent's rehabilitation will be aided by the support of a colleague, Dr. Miller, who has agreed to act as his mentor in supporting the implementation of respondent's boundary protection plan.

Considering the totality of the circumstances, respondent has established that he is rehabilitated to the extent that the public will be protected by revocation, stayed, during a seven-year probationary period with appropriate conditions. The evidence does not support the need for a practice monitor or another psychiatric evaluation. However, conditions of probation shall include the PACE professional boundaries course, follow-up assessments by the PACE course, psychotherapy and the use of a chaperone with female patients. Respondent's probation monitor may accept his April 2017 professional boundaries course as satisfying that probationary condition, as long as respondent complies with recommended follow-up assessments.

ORDER

Physician's and Surgeon's Certificate No. A 106279 issued to respondent Foad Elahi, M.D. is revoked. However, revocation is stayed and respondent is placed on probation for seven years upon the following terms and conditions:

1. Education Course

   Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at respondent's expense and shall be in

addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

2. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

3. Professional Boundaries Program

Within 60 calendar days from the effective date of this Decision, respondent shall enroll in a professional boundaries program approved in advance by the Board or its designee. Respondent, at the program's discretion, shall undergo and complete the program's assessment of respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The program shall evaluate respondent at the end of the training and the program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire program not later than six months after respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on respondent's performance in and evaluations from the assessment, education, and training, the program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that respondent can practice medicine safely. Respondent shall comply with program recommendations. At the completion of the program, respondent shall submit to a final evaluation. The program shall provide the results of the evaluation to the Board or its designee. The professional boundaries program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

The program has the authority to determine whether or not respondent successfully completed the program.

The professional boundaries course that respondent completed at PACE in April 2017 may be accepted towards the fulfillment of this condition.

Respondent shall participate in follow-up assessments as recommended by the program for as long as directed to do so by his probation monitor.

4. Psychotherapy

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, respondent is

found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

5. Third Party Chaperone

During probation, respondent shall have a third party chaperone present while consulting, examining or treating female patients. Respondent shall, within 30 calendar days of the effective date of the Decision, submit to the Board or its designee for prior approval name(s) of persons who will act as the third party chaperone.

If respondent fails to obtain approval of a third party chaperone within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall cease the practice of medicine until a chaperone is approved to provide monitoring responsibility.

Each third party chaperone shall sign (in ink or electronically) and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party chaperone.

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient initials, address and telephone number; 2) medical record number; and 3) date of service. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

Respondent is prohibited from terminating employment of a Board-approved third party chaperone solely because that person provided information as required to the Board or its designee.

If the third party chaperone resigns or is no longer available, respondent shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name of the person(s) who will act as the third party chaperone. If respondent fails to obtain approval of a replacement chaperone within 30 calendar days of the resignation or unavailability of the chaperone, respondent shall receive a notification from

the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement chaperone is approved and assumes monitoring responsibility.

Respondent shall provide written notification to respondent's patients that a third party chaperone shall be present during all consultations, examination, or treatment with female patients. Respondent shall maintain in the patient's file a copy of the written notification, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the notification for the entire term of probation.

6. Notification

Within seven days of the effective date of this Decision, respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

7. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

8. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

9. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

10. General Probation Requirements

Compliance with Probation Unit:
Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes:
Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice:
Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal:
Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California:
Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

11. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

12. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and

within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two years.

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

Periods of non-practice will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

13. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

14. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be

extended until the matter is final.

15. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his/her certificate. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATED: December 26, 2017

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

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Aug. 14 20 17
BY _____ ANALYST

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

In the Matter of the Accusation Against: **Foad Elahi, M.D.** **1144 Norman Drive, Suite 104** **Manteca, CA 95336-5925** **Physician's and Surgeon's Certificate No. A106279,** Respondent.	Case No. 800-2017-030144 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about December 13, 2008, the Medical Board issued Physician's and Surgeon's Certificate Number A106279 to Foad Elahi, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2018, unless renewed.

///

JURISDICTION

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

4. Section 2227 of the Code provides, in part, that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2305 of the Code states:

The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

6. Section 141 of the Code states:

"(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

"(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country."

///

CAUSE FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Another State)

7. On or about April 14, 2017, the Iowa Board of Medicine and Respondent entered into a settlement agreement (Iowa Agreement). The Iowa Agreement provides that Respondent engaged in unprofessional conduct in that he violated appropriate professional boundaries in his interactions with a female coworker. Specifically, Respondent engaged in unwanted conduct of a sexual nature toward a coworker that included unwanted sexual comments and hugging, touching, fondling, and kissing. As a result of Respondent's unprofessional conduct, the Iowa Board required that Respondent complete a professional boundaries program and pay a civil penalty in the amount of two thousand five hundred dollars ($2500.00).

8. Respondent's conduct as set forth in paragraph 7 above, and as described within the Iowa Agreement, attached as Exhibit A constitutes unprofessional conduct and cause for discipline pursuant to sections 2305 and/or 141 of the Code.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A106279, issued to Foad Elahi, M.D.;

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

3. Ordering Foad Elahi, 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: AUGUST 14, 2017

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

Exhibit B

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

In the Matter of the Petition for Early Termination of Probation of:	
Foad Elahi, M.D.	Case No. 800-2020-065096
Physician's and Surgeon's Certificate No. A 106279	
Respondent.	

DECISION AND ORDER AFTER NON-ADOPTION

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 January 5, 2022.

IT IS SO ORDERED December 6, 2021.

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 Petition for

Early Termination of Probation of:

FOAD ELAHI, M.D.,

Physician's and Surgeon's Certificate No. A 106279

Petitioner.

Agency Case No. 800-2020-065096

OAH No. 2021020293

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on April 15, 2021, by videoconference.

Attorney Jonathan C. Turner represented petitioner Foad Elahi, M.D., who was present for the hearing.

Deputy Attorney General Brenda P. Reyes represented the Department of Justice, Office of the Attorney General.

The matter was submitted for decision on April 15, 2021.

FACTUAL FINDINGS

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 106279 to petitioner Foad Elahi, M.D., on December 13, 2008. At the time of the hearing, this certificate was active, and was scheduled to expire July 31, 2022. Petitioner was on probation, as described below in Finding 11.

2. In February 2020, petitioner signed his petition asking the Board for early termination of his probation.

Professional History

3. Petitioner received his medical training in Iran. He practiced there as a neurosurgeon beginning in 1995.

4. In 2004, petitioner received an international fellowship grant from the Congress of Neurological Surgeons, which permitted him to undertake fellowships in skull base surgery and cerebrovascular surgery in New York and Washington. Petitioner then completed residencies in general surgery and in physical medicine and rehabilitation, qualifying him for medical licensure in the United States.

5. Petitioner obtained a California medical license because some of his extended family live in California, but his first post-residency position was as a pain management fellow in Illinois. He then took a position beginning in July 2011 at the University of Iowa Hospitals and Clinics, where he practiced until December 2014.

6. Petitioner opened a private solo pain management practice in Manteca in January 2015. He obtained hospital privileges at Doctors Hospital in Manteca in June 2015. At the time of the hearing, petitioner continued to see outpatients in his private

practice, and to perform surgeries at Doctors Hospital and at an outpatient surgery center.

Disciplinary History

7. Between March 2014 and October 2014, while working in Iowa, petitioner subjected a female administrative staff member in his department to unwelcome sexual conduct. He hugged and kissed her without her consent, and made remarks and jokes to her with sexual meanings.

8. Petitioner denied that he knew in 2014 that his colleague objected to his behavior, and denied any connection between his behavior toward his colleague and his move to California. He testified that he did not learn that his colleague had taken offense until late 2015, when the Iowa Board of Medicine opened an investigation into his actions.

9. The Iowa Board of Medicine filed a statement of charges against petitioner in October 2016, alleging that his behavior toward his colleague between March and October 2014 constituted unprofessional conduct. Petitioner resolved this Iowa disciplinary matter in April 2017, by agreeing to pay a civil penalty and to take a professional boundaries course.

10. Acting in her official capacity, former Board Executive Director Kimberly Kirchmeyer filed an accusation against petitioner on August 14, 2017. The accusation alleged that the events and Iowa disciplinary action described in Findings 7 and 9 constituted cause for discipline against petitioner in California.

11. Following a hearing, the Board entered an order effective February 22, 2018, placing petitioner on probation for seven years. The Board's decision noted that

petitioner had taken the professional boundaries course described in Finding 9, but had not completed any of the program's follow-up assessments. As conditions of his California probation, the Board's order required petitioner to complete those follow-up assessments; to take a professional ethics course; to participate in regular psychotherapy; and to use a chaperon(e) when interacting with female patients.

12. As of March 2021, Board records showed petitioner to be in full compliance with all conditions of his California probation.

Rehabilitation

13. Petitioner believes his misconduct in Iowa resulted from a combination of immaturity and cultural incompetence. From the courses he has taken regarding professional boundaries and professional ethics, and from his ongoing psychotherapy, he believes he has improved his insight, his self-control, and his ability to understand how other people may perceive his behavior. He also recognizes now that although he should strive for friendly workplace relationships he also must maintain respect and distance rather than seeking emotional or physical intimacy with colleagues or patients.

14. Petitioner has arranged for chaperon(e)s in accordance with his Board probation requirements, both in his office and when he performs surgery. He notifies his women patients that a chaperon(e) will be present during their interactions, and maintains records showing who played this role for each patient visit.

References

15. Alissa Avalos is a medical assistant in petitioner's office. She has worked for petitioner for about three and one-half years, and often serves as petitioner's chaperone with women patients both at his office and in outpatient surgeries. Avalos describes petitioner as friendly and caring toward patients, but always professional and appropriate. She has never received a complaint about petitioner's behavior from a patient or another colleague.

16. Cassandra Glass-Coxum is a receptionist in petitioner's medical office. She also has worked for petitioner for about three and one-half years. Glass-Coxum occasionally serves as petitioner's chaperone in the office. She is aware that the Board requires petitioner to use a chaperone with female patients, and also that the misconduct that resulted in this requirement involved a co-worker rather than a patient. Glass-Coxum describes petitioner's behavior toward patients and colleagues alike as "way above board." He is professional and courteous, and maintains polite physical distance from co-workers. Like Avalos, Glass-Coxum has never received a complaint about petitioner's behavior from a patient or another colleague.

17. Howard C. Miller, D.P.M., has served as petitioner's chaperon throughout petitioner's probation when petitioner performs surgery at Doctors Hospital. He has observed petitioner's interactions with women patients and hospital colleagues and has seen only professional, appropriate behavior.

18. Arthur Hearn is a sales manager for a manufacturer of spinal cord stimulating devices. He has known petitioner for about five years, and has observed petitioner in the operating room when petitioner is implanting one of Hearn's employer's devices. He also has sometimes accompanied petitioner in office visits with

patients who have the devices. In Hearn's observation, petitioner treats all patients well and fairly, and Hearn has never seen petitioner behave in an inappropriate manner with patients.

19. Petitioner's psychotherapist, Cynthia Vincent, Ph.D., provided two letters describing their ongoing treatment relationship. Dr. Vincent states that petitioner and she have "discussed interpersonal relationships with patients and staff," and have "addressed social expectations and cultural differences, as well as gender differences that may be culturally influenced." She believes that petitioner "can safely treat patients without direct supervision."

20. Four medical colleagues also provided letters describing petitioner.

a. Stanley L. Mathew, M.D., has known petitioner since petitioner immigrated to the United States in 2004. They trained together, and Dr. Mathew also is a pain management specialist. He believes that petitioner "has always showed the highest level of compassion and medical care for his patients," and has "learned significantly about professional boundaries" as a result of his Iowa and California disciplinary proceedings.

b. Abdul W. Khan, M.D., knows petitioner from Doctors Hospital, and because their offices are in the same medical building. Dr. Khan is a primary care provider who sometimes refers patients to petitioner for pain interventions. He believes that petitioner "has demonstrated excellent boundaries professionally and personally," and "has an excellent command of his specialty."

c. Morteza Farr, D.O., is a spinal surgeon who shares an office suite, and some patients, with petitioner. Dr. Farr confirms that petitioner follows the Board's

chaperon(e) requirement, and describes petitioner has having "changed dramatically" on probation.

d. Natalie Lee, M.D., is the medical director at the outpatient surgery center where petitioner sometimes performs surgery. She considers him to have outstanding medical skills, and to be "very respectful."

Additional Evidence

21. Petitioner is one of very few interventional pain management specialists in his geographic area. At times, the requirement that he see female patients only with a chaperon(e) has interfered with his ability to render timely care in urgent or emergency situations, because a Board-approved chaperon(e) has not been available to accompany him to see the patient. As an example, petitioner described an occasion when he had implanted a device to dispense opioid pain medication to a patient, and the patient needed to have the device adjusted to reduce the dose. Petitioner had to order Narcan (a drug that counteracts the effects of opioid pain medication) for a few days until he could arrange to see the patient with a chaperon(e) and adjust the device to provide a smaller dose of medication to the patient.

22. Petitioner would like to obtain hospital privileges at other area hospitals, in part to enable him more readily to address his patients' emergencies. He has been unable to obtain such privileges while on probation, however. In addition, petitioner attempted in late 2019 or early 2020 to obtain a bank loan to purchase fluoroscopy equipment for his office, which would have enabled him to offer some services to patients without their having to go to Doctors Hospital. He did not qualify for the loan because his medical license is on probation.

LEGAL CONCLUSIONS

1. The matters stated in Findings 2 and 11 establish petitioner's eligibility to apply for early termination of probation. (Bus. & Prof. Code, § 2307, subd. (b)(2).) Petitioner bears the burden of proving, using clear and convincing evidence, that his probation should end.

2. In evaluating the petition, the Board may "consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability." (Bus. & Prof. Code, § 2307, subd. (e).)

3. As stated in Findings 2 and 11, petitioner has served less than half the probation period the Board imposed on him. Nevertheless, the events that led to his probation occurred (as stated in Finding 7) seven years ago. The matters stated in Findings 11 through 14 show that petitioner has complied in full with his probation conditions, and the matters stated in Findings 15 through 20 show that he has used his disciplinary experiences in Iowa and California to rehabilitate and improve his professionalism. In light of the matters stated in Findings 21 and 22, California's public welfare does not require that the Board continue to monitor petitioner on probation.

ORDER

The petition by Foad Elahi, M.D., for early termination of probation is granted. Probation is terminated, and Physician's and Surgeon's Certificate No. A 106279 is fully restored.

DATE:05/12/2021

Juliet E. Cox

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings