

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

In the Matter of the Accusation Against:

Gabriel Leigh Gallagher, M.D.

Physician's and Surgeon's
Certificate No. A 120671

Respondent.

MBC Case No.: 800-2020-063955

**ORDER CORRECTING NUNC PRO TUNC
CLERICAL ERROR IN "RESPONDENT NAME" PORTION OF DECISION**

On its own motion, the Medical Board of California (hereafter "Board") finds that there is a clerical error in the "Respondent Name" on page 2, second paragraph in the portion of the Decision in the above-titled matter and that such clerical error should be corrected so that the name reflects properly and conforms to the Board's issued certificate.

IT IS HEREBY ORDERED that the Decision in the above titled matter be and hereby is amended and corrected nunc pro tunc as of the date of entry of the Order to reflect the Respondent name as *Gabriel Leigh Gallagher*.

Date: **FEB 24 2025**



Reji Varghese
Executive Director

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

**In the Matter of the Accusation
Against:**

Gabriel Leigh Gallagher, M.D.

**Physician's and Surgeon's
Certificate No. A 120671**

Respondent.

Case No. 800-2020-063955

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 21, 2025.

IT IS SO ORDERED January 27, 2025.

MEDICAL BOARD OF CALIFORNIA

**Michelle A. Bholat, MD
Michelle Anne Bholat, M.D., Chair
Panel A**

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

In the Matter of the Accusation Against:

GABRIEL LEIGH GALLAGHER, M.D.

Physician's and Surgeon's Certificate No. A 120671,

Respondent.

Agency Case No. 800-2020-063955

OAH No. 2024070308

CORRECTED PROPOSED DECISION

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings (OAH), State of California, heard this matter on September 30, 2024, through October 2, 2024, by videoconference.

Deputy Attorney General Dang Vu represented complainant Reji Varghese, acting in his official capacity as the Executive Director of the Medical Board of California (Board). Attorney Derek F. O'Reilly-Jones of Bonne, Bridges, Mueller, O'Keefe & Nichols represented respondent Gabrielle Leigh Gallagher who was present throughout the hearing.

Documentary evidence and testimony were received. The record closed and the matter was submitted for decision on October 2, 2024.

The ALJ issued a Proposed Decision on November 5, 2024. On November 6, 2024, a representative of the Board filed with OAH an application for a change to the Proposed Decision substituting the term "publicly reproved" to "publicly reprimanded" in the Order. The application was not served on the Attorney General's counsel or respondent's counsel as required by Code of California Regulations, title 1 (Regulation), section 1048, subdivision (a)(1). Nevertheless, the ALJ confirmed the clerical change was necessary to comport with Business and Professions Code section 2227's enumerated list of measures available to discipline licensees and permitted as an exercise of the ALJ's authority pursuant to Regulation section 1048, subdivision (c). For consistency and adherence to applicable law, the ALJ made the correction throughout the Proposed Decision, not just in the Order.

SUMMARY

Complainant seeks to discipline respondent's physician and surgeon's certificate for sustaining a "substantially related" criminal conviction, failure to timely report his criminal conviction, and general unprofessional conduct. Complainant also seeks recoupment of prosecution and investigation costs incurred by the Board. Based on respondent's criminal conviction for misdemeanor assault and failure to timely report the conviction, complainant established the three grounds for discipline alleged. In light of respondent's substantial mitigation and rehabilitation evidence, however, public reprimand and a reduced cost award is appropriate and consistent with protection of the public.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 28, 2012, the Board issued to respondent Physician's and Surgeon's Certificate Number A 120671. The certificate was in full force and effect at all times relevant to the charges addressed here and will expire on October 31, 2025, unless renewed.

2. On May 17, 2024, complainant signed an Accusation, the operative pleading for this matter, charging respondent with three causes to discipline his license: conviction of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon; failure to report a criminal conviction to the Board; and general unprofessional conduct.

Respondent's Criminal Conviction

3. On February 11, 2024, a criminal complaint was filed charging respondent with violating Penal Code sections 273.5, subdivision (a) (inflicting corporal injury on a spouse) and 245, subdivision (a)(4) (assault), both felonies. On March 8, 2023, the criminal court amended the complaint to add by interlineation a charge of violating Penal Code section 242 (assault), a misdemeanor.

4. On March 22, 2023, the court convicted respondent of the misdemeanor charge of assault upon his plea of nolo contendere and dismissed the two felony charges. Respondent was sentenced to summary probation for 12 months on terms and conditions including performing 40 hours of community service, payment of fines, fees totaling \$720, and victim restitution in an amount not established by the record. Respondent successfully completed the criminal probationary period and, on

September 20, 2024, the court expunged the criminal conviction pursuant to Penal Code section 1203.4. (Exh. Y, p. B987.)

5. On April 16, 2023, respondent sent an email to the Board giving notice of his criminal conviction. (Exh. 30, p. A 382.) Further email communications indicate he submitted a Form 802, the Board's required method for reporting criminal convictions, to the Board in July 2023. (*Id.* at p. A384.)

Circumstances Underlying Respondent's Criminal Conviction

6. Respondent's criminal conviction stemmed from an altercation between respondent and his then-wife IA, while their children, RG and SG, ages five and seven at the time, were with them in their home. (Initials are used to reference IA and the children to protect their privacy). The record contains competing versions of the exact events. What is not in dispute is that on November 9, 2019, a Saturday morning, the couple exchanged words about household chores, the dispute escalated, and respondent retreated to a bedroom. SG slipped into the bedroom with respondent. IA attempted to enter the bedroom as well but respondent resisted. The altercation between respondent and IA ensued.

7. Subsequently, IA called 911. In a recording of her exchange with the dispatcher, IA can be heard stating: "I need to report an incident of domestic violence . . . My husband picked me up by my neck and choked me and slammed my head on the ground . . . This isn't the first time . . . I don't want him arrested, I want this documented." (Exh. 36, .20 -.59) The dispatcher asked when the incident occurred and IA stated that it happened "right now" (*Id.* at 1.10). The dispatcher then asked for additional details. IA stated: "He picked me up by neck, he grabbed my neck and choked me and picked me up, my body by my neck and slammed my head on the

ground twice in front of my children.” (*Id.* at 1.10-1.16) A child’s voice can be heard in the background though the child’s words are unintelligible. IA, apparently speaking to the child, says “Honey, I don’t want Daddy slamming my head on the ground anymore, it hurts” (*Id.* at 1:30-1:35). There are several minutes of the dispatcher asking about respondent’s whereabouts, whether there are weapons in the house, and whether respondent has been drinking. The dispatcher also asks IA to keep him apprised of whatever respondent is doing and saying. IA sobbing, repeatedly states she does not want respondent arrested, she just wants the incident documented so she can “keep the kids and get a divorce.” (*Id.* at 4:49-4:54.) Toward the end of the exchange, the dispatcher asked IA if she was injured and IA responded in the negative. (*Id.* at 6.15-6.20).

8. In response to IA’s 911 call, three Los Angeles County Sheriff’s Department deputies were dispatched to respondent’s home. A narrative section of the Incident Report prepared by one of the deputies, Deputy Afaharian, provides as follows: Deputy Afaharian listened to the recording of IA’s 911 call. He then questioned respondent who denied choking IA. Another deputy, Deputy Rostami, questioned RG and SG. RG had not seen the altercation. SG told Deputy Rostami her father (respondent) “wanted to be alone, but her mother wanted to talk to him . . . shortly after her parents went into their bedroom, [SG] saw [respondent] put his hands on [IA’s] throat [SG] saw [IA] fall to the ground immediately.” (Exh. 7 at p. A64.)

9. Deputy Afaharian’s narrative further provides that a third deputy, Deputy Gallardo, briefly interviewed IA, and noted red marks on her neck. Deputy Gallardo attempted to photograph IA’s neck but she declined, locking herself in a bathroom, and generally refusing to cooperate with the deputies’ investigation. IA told Deputy Gallardo she did not want respondent to go to jail “because he was the sole provider

for the family.” (Exh. 7, p. A64.) In the “Evidence and Property Page” of the Incident Report, a cd “containing four photographs of [IA’s] neck, with red marks consistent with being choked” is listed. (*Id.* at p. A63.) The Incident Report is dated November 9, 2019. A supplemental report, dated November 24, 2019, states:

The purpose of this supplemental report is to provide active/additional information regarding the incident under the above file number.

The time of the incident was approximately 0757 hours, which was not listed on the original face page of the report.

I was not present when Deputy Rostami . . . spoke with [names redacted] . . . Deputy Rostami relayed to me what they said, at a later time.

[IA] refused to allow Deputy Gallardo to photograph her injuries, however she photographed herself. [IA] subsequently emailed the photographs to Deputy Gallardo, who then emailed them to me.

(*Id.* at p. A68.)

10. Photographs the Board’s investigator, Flor Flatley, obtained from the Los Angeles County Sheriff’s Department in response to a Board subpoena (see, Exh. 43) show a woman’s neck, shoulders, and upper chest. A reddened area about two inches wide and just below the subject’s jaw bone is visible in each picture.

11. The Board also presented two audio recordings obtained from the Los Angeles County Sheriff’s Department. In the first, an unidentified adult is heard

speaking with two children who identify themselves as RG and SG. RG can be heard talking about Disneyland "when the virus was not happening . . . and now I can't go to Disneyland or Legoland" (Exh. 39 at 6:06-6:23). In the same recording, the investigator begins to ask SG about the November 9, 2019 incident. SG interrupts, asking "when my mom got hurt? I saw all of it . . . it was November 9 . . . of last year." (*Id.* at 11:35-11:49) "Dad needed space . . . and then he got out of control, he was like Chewbacca and (unintelligible) and he picked her up . . . and then she fell down." (*Id.* at 12:50-13:32.) The interviewer then asks SG if she saw whether IA was injured. SG described IA's neck as "really red" and "red, red, red and floppy." On further inquiry, SG states respondent broke IA's neck. (*Id.* at 13:50-14:28.) IA's voice is heard telling the interviewer to ask more questions and that SG "mimics now." (*Id.* at 14:35-14:38.)

12. In the second recording, the interviewer can be heard stating the date is August 25, 2020, and stating his name quickly but it is unintelligible. A woman who identifies herself as IA answered the interviewer's questions. The interviewer asked IA to walk him through the events of November 9, 2019. IA stated the couple argued about house chores then respondent walked away from her down a hallway to a bedroom. She followed him, and saw him become increasingly agitated, "like the Incredible Hulk." When they reached the bedroom, IA found SG already there and attempted to get SG to leave as respondent went in to the bedroom and tried to close its door on IA. (2:12-2:56) IA then stated respondent suddenly opened the bedroom door "and came launching at me . . . strangling me, feet off the ground, screaming I'm going to kill you . . . just with his right hand . . . I was thinking I was going to die. I blacked outThe next thing I know, I'm on the ground." (*Id.* at 4:05-4:25) IA went on to say that respondent continued to scream he is going to kill you while both children cried and screamed, asking her to please wake up.

13. In addition to gathering evidence about respondent's criminal case, Investigator Flatley looked into whether, pursuant to Business and Professions Code section 802.1 (further statutory references are to the Business and Professions Code unless otherwise designated), respondent timely reported his criminal conviction to the Board. Section 802.1 requires licensees to report to the Board the bringing of an indictment or information charging a felony or a criminal conviction of any felony or misdemeanor "within 30 days of the date of the bringing of the indictment or information or of the conviction" and makes failure to make such timely report punishable by a fine of up to \$5,000. Investigator Flatley determined respondent had reported his criminal conviction but not within 30 days of its occurrence.

Respondent's Evidence

RESPONDENT'S VERSION OF EVENTS LEADING TO HIS CRIMINAL CONVICTION

14. Respondent is an anesthesiologist. He and IA met in college when they were both 19. After college, they attended medical school together and embarked on their respective residency programs. Respondent completed his anesthesiology residency and IA completed a psychiatry residency. IA, however, did not pass her board exams and therefore was not eligible to practice. The couple subsequently had two children. With IA unable to work and the couple having accumulated hundreds of thousands of dollars of medical school debt between them, respondent was the sole financial provider for the family.

15. Respondent maintained the November 9, 2019 incident stemmed from the household tension building because of the financial pressure the family faced, the long hours respondent worked to try to provide for the family, and IA's increasing reliance on large amounts of cannabis edibles she took every morning, leaving

respondent responsible for many of the home and childcare duties in addition to his challenging work schedule. In support of his assertion about IA's reliance on cannabis, respondent introduced a text thread between him and IA's friend, MS, in which MS references IA's excessive use of cannabis gummies and general deterioration:

... I think she is using too much of her gummies. Too much!

I know and I understand you both have been going [through] a lot but she is closing herself in a bubble.

She is taking good care of the kids because she is and very attentive to them to eat or have fun but she is letting herself go.

(Exh. Q, p. B936.)

16. Despite the household stresses, respondent adamantly denied ever choking IA. Respondent maintained he pushed IA "at the level of her clavicle" to get her out of the bedroom to which he was trying to escape to avoid further conflict with her.

17. Respondent acknowledged IA complained the November 2019 incident resulted in a serious injury to her neck. He contended, however, that IA had longstanding neck injuries and pain from an auto accident in which they were both involved in 2006. He introduced a photograph of a badly damaged vehicle to demonstrate the seriousness of the accident (Exh. I, p. B 423), a report from a diagnostic scan of IA's neck taken in 2009 (Exh. J, p. B424) and a photograph of IA

sleeping while wearing a cervical collar at home (Exh. K, p. B425), something respondent maintained IA routinely did to alleviate the chronic pain of this old injury.

18. After the November 2019 incident, respondent moved out of the house. IA did not immediately advocate for prosecutors to pursue criminal charges and, in December 2019, respondent understood the charges would be dropped. In February 2021, however, respondent was criminally charged. Around the same time, IA brought a civil suit against respondent seeking 10 million dollars in damages for the harm she suffered as a result of the November 9, 2019 incident.

19. In addition to the criminal and civil cases against respondent, IA commenced divorce proceedings that quickly turned acrimonious. Expenses from the three suits and related issues, overwhelmed the family's financial resources. Respondent stated he pled nolo contendere to the misdemeanor charge to resolve the criminal matter as quickly and inexpensively as possible. Nonetheless, respondent was forced to file for bankruptcy. IA dropped her civil suit after the bankruptcy filing.

20. RG and SG lived with IA after respondent left the family home. Respondent maintained IA's behavior became increasingly erratic during this time both in her dealings with respondent and with others. Respondent introduced a sworn statement from Naveen Reddy, a coach for SG's softball team regarding an incident that occurred on February 22, 2020 between Coach Reddy and IA. According to Coach Reddy's statement, IA began screaming at him for "benching" SG at a game after SG repeatedly failed to attend practices. When Coach Reddy raised a finger toward her as he tried to respond to her accusations, IA "nudged" (Exh. P, p. B932) her body into his finger, then accused him of assaulting her and threatened to call the police. Later, IA "threatened to not only have me removed as coach but to trash my name on social media – Facebook and Instagram included – essentially it was a threat to destroy my

reputation. She continued with the assault allegations.” (*Id.* at p. B933.) Respondent also introduced a letter from Dr. Curtis Miller, a psychologist who provided couples counseling to respondent and IA. In his letter, Dr. Miller wrote that, after many sessions, he concluded “individual therapy was necessary before couples therapy could have a chance. Particularly, in listening to [IA] it appeared to me she was having episodes of breaks with reality (psychosis). Discussing this with [IA] was difficult.” (Exh. X, p. B986 [parenthetical text in original].)

21. In September 2022, respondent and IA again commenced couples therapy with License Marriage and Family Therapist Daniel Mauro, who saw them together twenty-seven times, including nineteen times in 2024. He has also met with respondent individually four times. In a letter submitted into evidence at the hearing, Dr. Mauro acknowledged respondent’s criminal conviction and the disciplinary charges brought against him. He wrote: “I believe [respondent] has demonstrated normal levels of distress to protracted and overwhelmingly stressful circumstances. I do not believe he is in need of rehabilitation. I do not believe he poses a risk to his patients or the public. My experience of my client is that he is a dedicated professional committed to being a safe and loving presence.” (Exh. E, p. B6.)

22. In August 2023, the Family Court awarded sole custody of the children to respondent with IA receiving six hours of supervised visitation per week. In February 2024, IA committed suicide.

RESPONDENT’S REHABILITATION EFFORTS

23. Respondent enrolled in domestic violence prevention training on November 25, 2019 and completed the 52 sessions on May 20, 2020, attending the trainings on an accelerated basis. The completion certificate from the counseling

center where he attended the program, Absolute Control Transitional Counseling Center, included a notation about respondent stating “[respondent] attended twice a week and was open-minded.” (Exh. S, p. B973.)

24. Also in November 2019, weeks after the November 9, 2019 incident, respondent began attending psychotherapy sessions with a psychologist, Dr. Christopher Nahumck. He continued to attend sessions with Dr. Nahumck until November 2021. In a letter dated July 11, 2020, Dr. Nahumck wrote that respondent had attended 17 sessions by then and the focus of respondent’s treatment was on anger management. Regarding respondent’s progress, Dr. Nahumck wrote:

Typically treatment goals include noting anger triggers, de-escalation techniques, learning to create space between incidence of anger and the response in order to allow for choice, and mindfulness based relaxation. It was quickly determined that [respondent’s] anger was controlled and other factors such as the prolonged forced separation from his children and his concern for their well-being were more pressing clinical issues to be addressed..... [Respondent] is engaged and active in his sessions and continues to make progress towards our treatment goals.

(Exh. T, p. B975.)

25. In October 2021, respondent completed a three-day educational training course on professional boundaries at the University of San Diego PACE Program. According to the evaluation report prepared by the course’s instructors, the training topics included “the neuroscience of affect, gender roles in society, the important

attachment and coping skills and their impact in professional relationships, a thorough review of boundary events/crossings/violations, the importance of transference and countertransference on the patient-physician interaction, and empathy training.” (Exh. U, p. B978.) A notation on the evaluation report states “[respondent] displayed personal and professional responsibility growth and development by actively participating in all aspects of the program.” (*Id.* at p. B978.)

26. Respondent has continued to attend psychotherapy sessions, now with a psychologist named Dr. Pettit, to help him cope with the challenges of single parenthood and with IA’s suicide. Respondent stated Dr. Pettit provided respondent guidance on how to inform RG and SG of their mother’s suicide. He also noted telling this news to his children was the single most stressful experience of his life.

27. During the hearing, respondent was asked what he has learned from therapy and he stated therapy has helped him understand and avoid “communication loops” – misunderstandings and incomplete communications which can drive people in intimate relationships away from each other and toward hostile interactions. He also credits therapy with helping him to recognize and avoid other triggers for dysfunctional dynamics in intimate relationships.

28. Respondent contends that he engages daily in several practices intended to optimize his mental health: meditation, breath work, mindfulness exercises, practicing gratitude, and starting his morning with cold plunges. He stated using these methods has helped him balance the many stressors of the last few years, including the multiple legal actions and his family needs, with his professional responsibilities. To maximize his ability to effectively parent his children, respondent also joined a group, the Art of Fatherhood, whose members read books on parenting and then meet to discuss them and to support each other as parents.

29. Respondent currently lives with his life partner, Stephanie Morgan. Respondent stated he began this relationship about six months after the November 9, 2019 incident and the relationship has continued for the past four and a half years. Ms. Morgan, a registered nurse, testified at the hearing and stated, because she herself suffered an abusive relationship with her former husband, she is very vigilant about any signs of a repeat of that dynamic. She stated respondent has never been abusive and they are able to resolve any disagreements through discussions.

Character Evidence

30. Matthew Allen, a deputy district attorney with the Los Angeles County District Attorney's Office, testified at the hearing. Mr. Allen has served as a co-coach for a children's basketball team SG and Mr. Allen's daughter play on. Respondent and Mr. Allen have known each other for three years and he is aware of respondent's criminal conviction. Mr. Allen has seen respondent interact with both their children and others on the team and has found respondent notably patient with them. Mr. Allen is also a founder of the fathers' group, the Art of Fatherhood, respondent joined. Based on Mr. Allen's observations at the team practices and the fathers' group, he believes respondent to be calm, honest, and trustworthy. Mr. Allen wrote a letter of support for respondent consistent with his testimony. (Exh. F.)

31. Timothy Joseph Gallagher, respondent's father, testified at the hearing. He is a journalist and newspaper editor. Mr. Gallagher is aware of respondent's criminal conviction. He described his son as calm and cool throughout his life. Mr. Gallagher also had frequent interactions with IA when she was with respondent and has noted instances when she was aggressive and violent.

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32. Respondent submitted a character reference letter from Dr. Harry Fisk Bowles, a fellow anesthesiologist and the managing partner of respondent's practice group, Pacific Valley Medical Group. Dr. Fisk's letter speaks highly of respondent's professionalism: "At every level [respondent] has shown insight, initiative and wisdom as a healthcare worker during one of the most challenging times in our history due to the COVID-19 pandemic. I have always been appreciative of Dr. Gallagher's leadership, diligence, efficiency and ability to prioritize the most important factors no matter how complicated or stressful a clinical situation he encounters." Dr. Fisk's letter, however, is in support of respondent retaining custody of his children. It does not acknowledge the instant disciplinary action and evinces no knowledge of the charges brought against respondent's license. David Edsell, a trusts and estates attorney who has known the Gallagher family for 25 years, and Justin Reiter, a banker who has been friends with respondent since they were children, also wrote letters attesting to respondent's integrity, compassion, and commitment to his children. As with Dr. Fisk's letter, these letters did not reflect any knowledge of the Board's disciplinary action against respondent or the criminal conviction underlying it. Because the three character reference letters submitted did not reflect knowledge of respondent's criminal conviction, they were accorded little evidentiary weight.

Analysis

33. Complainant presented evidence intended to demonstrate respondent was violent toward IA to a degree far more egregious than what is encompassed by respondent's criminal conviction for misdemeanor assault. That evidence included: (i) the red marks observed by Officer Gallardo on IA's neck; (ii) the photographs IA sent to Officer Gallardo reflecting red marks on what appears to be IA's neck; (iii) the recording of IA's statement on the 911 call in which she states respondent lifted her by

her neck and repeatedly slammed her head on the ground; (iv) the recording of the children being interviewed, particularly SG's statement essentially corroborating IA's report of the events; and (iv) the recording of IA's interview where she repeated her account of the November 9, 2019 incident and its aftermath.

34. Respondent first argued complainant's evidence was not sufficient by itself to prove the elements of complainant's allegations because the evidence consisted of out-of-court statements introduced into evidence for their truth, i.e., hearsay. Respondent also argued the photographs and the recordings of the interviews were not reliable because they were not authenticated evidence as no witnesses were produced to address by whom and when the photographs were taken and who interviewed the witnesses on the recordings or when the interviews took place.

35. Respondent further argued that, even if complainant's evidence could stand on its own merits, it is not persuasive. Respondent presented evidence of IA's mental instability, including Dr. Curtis's observations, Coach Reddy's observations of IA's erratic behavior, and IA's suicide in support of his position that IA was mentally ill and therefore not credible. He also argued IA's civil suit seeking substantial monetary damages and the ongoing family court proceedings, including a protracted custody dispute, gave her motive to lie about whether respondent committed the egregious acts of violence of which she accused him.

36. Respondent also noted the children's statements are not reliable because they occurred during times they were living almost exclusively with IA and were subject to her influence. Respondent introduced a report dated October 6, 2021, and prepared by Attorney Linda McLarnan-Dugan, the children's court-appointed counsel in Family Court in which she states the children are so heavily influenced by IA's

constant references to the November 9, 2019, incident, that they can no longer differentiate between what they saw and what they have been told about what happened. Attorney McLarnan-Dugan wrote, based on feedback from therapists treating RG and SG, "At this time, I am not sure my clients can differentiate between what they may or may not have witnessed and what [IA] has told them." (Exh. R, p. B945.)

37. As noted above, respondent adamantly denied choking or otherwise injuring IA beyond pushing her out a bedroom door. The versions of events by IA and respondent stand in stark contrast to one another. In IA's version, respondent engaged in exceptional and egregious violence, during which he apparently lost control of himself and any sense of the danger he posed to IA as well as the potential trauma to SG, who was standing near the couple. In respondent's version, respondent, while attempting to exit from an escalating turbulent family crisis, pushed IA away, an action he acknowledges is an assault, consistent with his criminal conviction, but not an act of uncontrolled violence.

38. Under Government Code section 11513, subdivision (d), hearsay evidence is admissible in administrative adjudications such as the instant one but cannot, "in itself support a finding unless it would be admissible over objection in civil actions." For complainant's version of events to prevail, there must be sufficient direct evidence of the egregious violence complainant alleges.

39. Deputy Guillardo's observations of the marks on IA's neck as documented in the Incident Report at Exhibit 14 constitute direct evidence of IA's injury under *Lake v. Reed* (1997) (*Lake*) 16 Cal.4th 448, 461, 464. In *Lake*, the California Supreme Court held a peace officer's direct observations memorialized in the peace

officer's report are admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and are sufficient to support a factual finding.

40. Complainant further introduced IA's recorded statements to the 911 dispatcher (Exhibit 36) and the later recorded statements by RG and SG and by IA (Exhibits 39 and 41, respectively) as direct evidence under Evidence Code sections 1370 and 240. Evidence Code section 1370 states:

(a) Evidence of a statement by a declarant is not made inadmissible by the hearsay rule if all of the following conditions are met:

(1) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.

(2) The declarant is unavailable as a witness pursuant to Section 240.

(3) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of statements made more than five years before the filing of the current action or proceeding shall be inadmissible under this section.

(4) The statement was made under circumstances that would indicate its trustworthiness.

(5) The statement was made in writing, was electronically recorded, or made to a physician, nurse, paramedic, or to a law enforcement official.

(b) For purposes of paragraph (4) of subdivision (a), circumstances relevant to the issue of trustworthiness include, but are not limited to, the following:

(1) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.

(2) Whether the declarant has a bias or motive for fabricating the statement, and the extent of any bias or motive.

(3) Whether the statement is corroborated by evidence other than statements that are admissible only pursuant to this section.

(c) A statement is admissible pursuant to this section only if the proponent of the statement makes known to the adverse party the intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings in order to provide the adverse party with a fair opportunity to prepare to meet the statement.

41. Under Evidence Code section 240, witnesses who have died are among those listed as unavailable.

42. IA's recorded statement during the 911 call meets many but not all the requirements of Evidence Code section 1370 to be considered direct evidence. In particular, IA's statements that she was making the police report to buttress her efforts

to secure custody of the children and divorce respondent raise the type of trustworthy issues Evidence Code section 1370 flags as a basis for not finding such evidence admissible as non-hearsay, namely that they were made by a declarant "in contemplation of pending or anticipated litigation in which the declarant was interested."

43. The recording of the children also cannot fall into the exception created by Evidence Code sections 1370 and 240 as their descriptions of events are not referencing infliction or threat of physical injury upon themselves as required by Evidence Code section 1370, subdivision (a)(1) and nothing on the record established they are unavailable witnesses as the term is defined in Evidence Code section 240.

44. All the recordings, however, can be considered as administrative hearsay that are admissible to supplement or explain other evidence under Government Code section 11517.

45. In conjunction with Detective Guillard's observations of the red marks on IA's neck, the recordings paint a disturbing picture of an extremely violent episode far different from that respondent has put forward. The difficulty in parsing out the cumulative effect of this evidence is not just the legal limitations given the recordings' hearsay status. The difficulty is that, regarding IA's recorded statements, respondent has posited extensive and credible evidence of her compromised mental state. This evidence casts doubt on IA's own credibility. There is no question that respondent and IA entered into some sort of physical altercation during the November 9, 2019 incident; respondent admits as much. But did he lift her off the ground by her neck with one hand? Did he pound her head repeatedly into the ground? IA's description bears some hallmarks of at least, exaggeration and the red marks on the photographs

of IA's neck do not appear consistent with injuries from such an extreme and violent attack.

46. The other source of evidence about the extent and detail of respondent's actions is SG's statements. Here too, there are serious credibility concerns. In the 911 recording, IA can be heard speaking directly to one of the children, apparently SG, in a way likely to have influenced and shaped SG's perceptions and memories. Further, as demonstrated by RG's reference to the pandemic, a development beginning some four months after the November 9, 2019, incident, the children's interview occurred several months after the incident and during a period they lived almost exclusively with IA. Coupled with the minor's counsel's perception that the children could no longer distinguish between their own memories and what IA had told them, there is significant grounds to question the veracity of SG's statements.

47. Deputy Gallardo's observations, on the other hand, are credited and the photographs, despite the incomplete information about how and by whom they were taken, are also credited to establish the fact that IA did suffer some injury at respondent's hand. As noted above, however, the faint red marks are not consistent with what might be expected after the violent encounter IA described.

48. Nonetheless, even under the less extreme version of events propagated by respondent, his actions constitute a violent, criminal, and socially unacceptable response to family tensions. While never acceptable, respondent's conduct is especially concerning given the nature of his professional responsibilities and is inconsistent with the temperament and character expectations of physicians.

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Respondent's Failure to Report Criminal Conviction

49. Regarding respondent's failure to report his criminal conviction on the Board's criminal action reporting form until July 31, 2023, more than 30 days after his March 2023 criminal conviction, respondent stated he was not aware of the requirement and, once alerted (by a colleague) immediately directed his attorney to review a draft form he completed and forward it to the Board forthwith.

Costs

50. Complainant submitted as evidence of the costs of prosecution of this matter declarations of Deputy Attorney General Dang Vu and supporting billing summary sheets. These documents reflect that the Department of Justice, Office of the Attorney General billed the Board: \$31,371.75 in prosecution costs through September 23, 2024. Complainant also submitted a Declaration of Investigative Activity signed by Rashya Henderson, a Board Supervising Special Investigator with supporting documents reflecting the Board incurred \$5,521.50 in investigation costs. The total costs incurred by the Board were \$36,893.25. Given the scope and complexity of the matter, these costs are deemed reasonable.

LEGAL CONCLUSIONS

General Provisions

1. Section 2004 provides:

The [B]oard 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.
- (e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the [B]oard.
- (f) Approving undergraduate and graduate medical education programs.
- (g) Approving clinical clerkship and special programs and hospitals for programs in subdivision (f).
- (h) Issuing licenses and certificates under the [B]oard's jurisdiction.
- (i) Administering the [B]oard's continuing medical education program.

2. Section 2227 provides that a licensee who is found guilty under the Medical Practice Act [commencing with section 2000] may have his or her license revoked, his or her right to practice suspended for a period not to exceed one year, be placed on probation and required to pay the costs of probation monitoring, be

publicly reprimanded by the Board, or have such other action taken in relation to discipline as the Board deems proper.

Burden and Standard of Proof

3. Complainant bears the burden of proof of establishing the alleged causes for discipline. (Evid. Code, § 500.) The standard of proof in an administrative action seeking to discipline 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. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Causes for Discipline

FIRST CAUSE FOR DISCIPLINE – CONVICTION OF A SUBSTANTIALLY RELATED CRIME

4. Section 2236, subdivision (a) provides:

The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct . . . The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. . . .

5. Section 481 requires each board to develop criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

6. California Code of Regulations, title 16 (Reg. or Regulation) section 1360 provides that a crime shall be considered to be substantially related to the qualifications, functions, or duties of a person holding a license "if to a substantial degree 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. Regulation section 1360, subdivision (b), sets out specific criteria for making a substantial relationship determination: (i) the nature and gravity of the crime; (ii) the number of years elapsed since the date of the crime; and (iii) the nature and duties of the profession.

7. As set out in Factual Findings 48, respondent's crime and the underlying facts are, if not grave, serious enough to warrant concern about his capacity to inflict harm on others. And although respondent's misconduct occurred under circumstances personal in nature and without a direct nexus to his professional life, there is, nonetheless, a relationship between the misconduct and respondent's professional competence and fitness. Physicians perhaps more than virtually any other licensed profession are expected to maintain rectitude, control, and temperate reactions under even the most stressful situations. Patients' lives depend on physicians abiding by these principles, and it is reasonable for the Board to expect their licensees to live up to these principles through all aspects of their lives. The time that has passed since the underlying incident occurred, nearly five years, makes the substantial relationship connection more tenuous but does not entirely eradicate it.

8. Respondent's conviction for misdemeanor assault therefore is a conviction of a crime that is substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct and as such, cause exists to discipline his certificate pursuant to section 2236, subdivision (a).

SECOND CAUSE FOR DISCIPLINE – FAILURE TO REPORT CRIMINAL CONVICTION TO THE BOARD

9. Section 802.1, subdivision (a) provides that physicians and surgeons, among others, shall report to the Board an information or indictment charging a felony against him or her or incurring any kind of criminal conviction including misdemeanors on a criminal action reporting form within 30 days.

10. On April 16, 2023, respondent sent an email to the Board giving notice of his criminal conviction. (See, Factual Finding 5.) As set out in Factual Finding 49, however, respondent admitted he completed and submitted the required reporting form more than 30 days after the date of his criminal conviction. Cause therefore exists to discipline respondent's certificate under section 802.1 for failure to report his criminal conviction using the appropriate form and within the 30-day time limit.

THIRD CAUSE FOR DISCIPLINE – GENERAL UNPROFESSIONAL CONDUCT

11. Respondent is subject to disciplinary action under section 2234, subdivision (a), for engaging in conduct unbecoming of a member in good standing of the medical profession. Unprofessional conduct is not limited to that directly involved in a licensee's professional duties. While not all misconduct outside professional duties can be the subject of license discipline, that which indicates a potential unfitness to practice medicine is appropriately addressed through disciplinary proceedings. (See, *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574-575.) As with the "substantial relationship" analysis, the nexus between respondent's misconduct and the need for physicians to maintain temperate, measured and lawful responses under even the most stressful circumstances is paramount. Deviations from this expectation,

as in respondent's actions in his altercation with IA, establish cause for discipline under the general unprofessional conduct grounds alleged by complainant.

Disposition

12. When exercising its disciplinary authority, the Board is required to give the highest priority to protecting the public as well as to measures to correct the licensee's "demonstrated deficiencies in competency." (§ 2229, subds. (a) & (c).) In addition, the Board "shall, wherever possible, take action that is calculated to aid in the rehabilitation of the license." (*Id.* at subd. (b).) In this sense, the discretion to punish licensees is not unfettered but must be structured to fit within the legislative strictures of the applicable legal provisions. In particular, courts interpreting these provisions have found there is no legal basis for using the Board's disciplinary authority to punish licensees. (See, *Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 448; see also, *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768 [citations omitted].)

13. Regulation section 1361, subdivision (a) provides "In reaching a decision on a disciplinary action . . . the [Board] shall consider the disciplinary guidelines entitled "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (12th Edition, 2016) (Guidelines) which provides in part:

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 . . . will follow the guidelines, including those imposing suspensions. Any proposed decision . . . that departs from

the disciplinary guidelines shall identify the departures and the facts supporting the departure.

14. Under the Guidelines, the minimum penalty for violations of sections 2234 and 2236 is stayed revocation and five years' probation with appropriate terms and conditions. The maximum penalty for these violations is license revocation. The penalty for [failure to report] is a civil penalty of up to \$5,000.

15. Here, respondent satisfied many of the criteria listed in the Guidelines militating toward deviating from the standard recommendations therein. Specifically, before the Board commenced the instant action, respondent demonstrated early acceptance of responsibility by participating in domestic violence prevention training, undergoing psychotherapy, completing the PACE professional boundaries course, and adopting several life changes to address any propensity to resort to violence. Further, the incident giving rise to the discipline occurred nearly five years ago, a substantial amount of time. Nothing in the record indicates since then, there have been any additional similar incidents despite ongoing litigation and other sources of stressors continuing in respondent's life. Finally, as noted in Factual Findings 38 to 47, there were evidentiary issues limiting the availability of reliable evidence to establish respondent's misconduct constituted more egregious violence than that encompassed by his misdemeanor assault conviction.

16. These factors and others, including respondent's continued efforts to better himself as a father, now as his children's sole biological parent, and continued ongoing medical practice without further incident support a finding that anything more than a public reprimand under these circumstances would constitute impermissible punitive action. Complainant's counsel argued the Board needs a five-year probationary period to "watch over" respondent's ongoing rehabilitative efforts

but this argument is not persuasive given that this very amount of time has already passed without further incident.

17. Regarding the late reporting, a maximum fine of \$5,000 also seems excessive and unduly punitive particularly because, as set out in Factual Finding 5, respondent did report his criminal conviction timely though not on the prescribed form. Adding an additional punishment under these circumstances will not further any rehabilitative or public safety goals. As such, no fine is warranted.

Costs

18. Pursuant to Business and Professions Code section 125.3, complainant is entitled to recover reasonable costs of investigation and enforcement of this matter in the amount of \$36,893.25, as set out in Factual Finding 50. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 20 Cal.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the cost award statutes do not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Ibid.*) The Board, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and whether the licensee has raised a colorable defense. The Board must also consider the licensee's ability to make payment.

19. Here, respondent used the hearing process to reduce the severity of the discipline, demonstrated a strong belief in the merits of his position through his

extensive, detailed testimony and production of corroborating evidence, and raised colorable defenses, particularly in providing evidence countering the serious allegations of violence against him. Moreover, he credibly testified years of litigation have rendered him bankrupt, signifying financial difficulties likely to affect his ability to pay the full cost award. Under these circumstances, the cost award to the Board is reduced to \$20,000.

ORDER

1. Respondent Gabriel Leigh Gallagher, M.D. holder of Physician's and Surgeon's Certificate Number A 120671 is hereby publicly reprimanded pursuant to Business and Professions Code section 495 and 2227, subdivision (a) (4).

2. Respondent will pay to the Board \$20,000 within 60 days of the effective date of this decision.

DATE: **11/18/2024**

Deena R. Ghaly

Deena R. Ghaly (Nov 18, 2024 16:19 PST)

DEENA R. GHALY

Administrative Law Judge

Office of Administrative Hearings

ⁱ Numbers following recorded exhibits represent time stamps on exhibits for the cited section of the recording.