IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

COURT OF APPEAL – SECOND DIST.
FILED
Dec 30, 2021
DANIEL P. POTTER, Clerk
R. Cervantes Deputy Clerk

TUSHAR RAMNIK DOSHI, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; MEDICAL BOARD OF CALIFORNIA, Real Party in Interest.	B315588 (Super. Ct. No. 20STCP00113) (Mitchell L. Beckloff, Judge) ORDER

THE COURT:

We have read and considered (1) the petition for writ of mandate filed on October 8, 2021, (2) the preliminary opposition filed by the Medical Board of California (Board) on November 4, 2021, and (3) the reply filed by petitioner on November 15, 2021.

The petition is denied.

This court's temporary stay order of October 14, 2021, is hereby vacated.

Edmon Egerton Knill

EDMON, P. J. EGERTON, J. KNILL, J.*

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

COURT OF APPEAL – SECOND DIST.
FILED
Oct 14, 2021
DANIEL P. POTTER, Clerk
Maria Perez Deputy Clerk

TUSHAR RAMNIK DOSHI, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; MEDICAL BOARD OF CALIFORNIA, Real Party in Interest.	B315588 (Super. Ct. No. 20STCP00113) (Mitchell L. Beckloff, Judge) TEMPORARY STAY ORDER and ORDER

THE COURT:

We have read and considered the petition for writ of mandate filed on October 8, 2021.

To maintain the status quo during the pendency of this writ proceeding, the decision and order of the Medical Board of California (Board) dated December 23, 2019, is hereby stayed pending further order of this court.

The Board is directed to serve and file a preliminary response to the petition on or before November 4, 2021. Among other things, the response should address the following questions:

1. Is there anything in Business and Professions Code section 2236 or in any other section that is part of the Medical Practice Act (the Act; Bus. & Prof. Code, § 2000 et seq.) that discusses when the Board may initiate disciplinary proceedings against a licensee based on the

licensee's conviction of a crime? [1] If so, what does the statutory language provide with respect to the timing of such disciplinary action?

2. If the Board maintains that section 2236 or any other section that is part of the Act specify when the Board may initiate a disciplinary action against a licensee based on the licensee's conviction of a crime, does such section permit the Board to initiate a disciplinary action before "the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or . . . an order granting probation is made suspending the imposition of sentence" (§§ 7.5, subd. (a), 490, subd. (c))? If so, how, if at all, can such section be reconciled with the timing requirements included in section 7.5., subdivision (a), and section 490, subdivision (c)?

3. Assuming the Board is precluded from initiating disciplinary action earlier than the time limits specified in section 7.5., subdivision (a), and section 490, subdivision (c), was the disciplinary action against petitioner authorized (to the extent the action was based on petitioner's guilty plea)?

4. Does the Board maintain that the proposed decision of the administrative law judge (which the Board adopted as its decision) purported to revoke petitioner's license for a reason other than the fact petitioner was convicted of a crime? If so, how can such a position be reconciled with the fact that the administrative law judge determined petitioner's license must be suspended for 10 years pursuant to section 2273?

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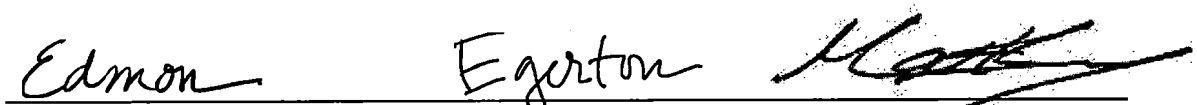
1 Statutory references are to the Business and Professions Code.

Petitioner may serve and file a reply within 10 days after the response is filed.



EDMON, P. J. EGERTON, J. MATTHEWS, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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

In the Matter of the Accusation Against:	)	
TUSHAR RAMNIK DOSHI, M.D.	)	**Case No. 800-2016-023507**
Physician's and Surgeon's Certificate No. A53572	)	
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 January 22, 2020.

IT IS SO ORDERED December 23, 2019.

MEDICAL BOARD OF CALIFORNIA

Ronald H. Lewis, 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:

TUSHAR RAMNIK DOSHI, M.D., Respondent

Physician's and Surgeon's Certificate No. A 53572

Case No. 800-2016-023507

OAH No. 2019051163

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 23, 2019, in Santa Ana, California.

LeAnna E. Shields, Deputy Attorney General, Department of Justice, Office of the Attorney General, State of California, represented complainant, Kimberly Kirchmeyer, Executive Director of the Medical Board of California (board).

Peter R. Osinoff, Attorney at Law, Bonne, Bridges, Mueller, O'Keefe & Nichols, represented respondent, Tushar Ramnik Doshi, M.D., who was present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 23, 2019.

SUMMARY

Complainant alleged three causes for discipline of respondent's license: (1) conviction of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon, (2) dishonest or corrupt acts, and (3) violation of the Medical Practice Act. The sole basis for all three causes for discipline is respondent's plea of guilty to four separate counts of violating Penal Code section 550, subdivision (a)(6), insurance fraud, in a pending criminal matter in the Superior Court of California, County of Riverside. Respondent argued that because he has not yet been sentenced in the criminal matter, the board lacks jurisdiction to proceed with the Accusation because, as required by Business and Professions Code sections 7.5 and 490, the plea of guilty does not constitute a conviction. Based on the evidence presented, respondent's plea of guilty constitutes a conviction within the meaning of Business and Professions Code sections 7.5, 490 and 2236. As a result of his guilty plea to four counts of violating Penal Code section 550, subdivision (a)(6), respondent's license must be revoked for a period of 10 years pursuant to Business and Professions Code section 2273.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 5, 1994, the board issued Physician's and Surgeon's Certificate No. A 53572 to respondent, Tushar Ramnik Doshi, M.D. The license will expire on July 31, 2020, unless it is renewed or revoked.

2. On March 27, 2019, complainant filed accusation No. 800-2016-023507 against respondent. The accusation alleged three causes for discipline of respondent's license: (1) conviction of crimes substantially related to the qualifications, functions, or duties of a physician and surgeon; (2) dishonest or corrupt acts; and (3) violations of the Medical Practice Act. The alleged basis for all three causes for discipline was respondent's May 6, 2016, change of plea form admitting guilt as to four separate counts of violating Penal Code section 550, subdivision (a)(6), insurance fraud, in criminal Case no. RIF1670154 pending in the Superior Court of California, County of Riverside.

3. Respondent timely filed a notice of defense, and this hearing followed.

Respondent's Guilty Plea

4. On May 6, 2016, a criminal complaint was filed in Case no. RIF1670154 in the Superior Court of California, County of Riverside, charging respondent with 18 counts of violating Penal Code section 550, subdivision (a)(6), insurance fraud, all felonies. The criminal complaint also alleged an enhancement pursuant to Penal Code section 12022.6, subdivision (a)(4), as to one count for a value exceeding $3,200,000; enhancement pursuant to Penal Code section 12022.6, subdivision (a)(3), as to four counts for a value exceeding $1,300,000; enhancement pursuant to Penal Code section 12022.6, subdivision (a)(2), as to 10 counts for a value exceeding $200,000; enhancement pursuant to Penal Code section 12022.6, subdivision (a)(1), as to three counts for a value exceeding$65,000; and enhancement pursuant to Penal Code section 186.11, subdivision (a)(2), as to one count for a value exceeding $500,000.

5. On May 9, 2016, respondent signed a change of plea form admitting guilt as to four separate counts of violating Penal Code section 550, subdivision (a)(6),

insurance fraud. Respondent also admitted alleged enhancements as to one count pursuant to Penal Code section 12022.6, subdivision (a)(2), value exceeding $200,000, and pursuant to Penal Code section 186.11, subdivision (a)(2), value exceeding $500,000. The change of plea form signed by respondent on May 6, 2019, also included various advisements of rights and statements of respondent, including under Section C, paragraph 5, which was initialed by respondent to indicate he agreed to the following term which had the word "do" circled:

> As part of this plea, I (circle one) do/do not waive any right to appeal that I may have.

The change of plea form also included under Section C, paragraph 6, which was initialed by respondent to indicate he agreed to the following term:

> Factual basis: I agree that I did the things that are stated in the charges that I am admitting.

6. On May 19, 2016, respondent's plea of guilty, as well as his waiver of any right to appeal, reflected on his May 9, 2016, change of plea form was accepted and entered by the Superior Court of California, County of Riverside, in Case No. RIF1670154. Respondent's time for appeal has elapsed because respondent explicitly waived "any right to appeal that [he] may have" in his change of plea form, which as noted was accepted and entered by the court. Sentencing for respondent's conviction was continued and trailed until respondent completed his cooperation with the District Attorney regarding other criminal defendants in separately filed criminal cases. To date, respondent has not yet been sentenced in his criminal case.

Respondent's Testimony

7. Respondent is 63 years old and currently works on a part-time basis in his one private practice, as well as on a part-time basis as an urgent care physician at Ironstone Medical Clinic, Inc. From 2005 to 2017 respondent worked as an orthopedic surgeon for worker's compensation patients for Ironstone Medical Clinic, Inc., for HealthPointe, and for Bell Community Medical Group at various locations. In 2017 respondent lost his ability to treat workers' compensation patients because of his guilty plea. He was also removed as a provider from HMO panels and no longer treats HMO patients. As a result of his guilty plea, respondent is no longer employed by HealthPointe or Bell Community Medical Group. Respondent is the sole financial provider for his family, which consists of his wife, college student son, and elderly mother.

Respondent has practiced orthopedic surgery since he obtained his medical degree in 1981 from the University of Bombay in India. He completed his orthopedic surgery residence in 1984. Thereafter, he obtained his Master of Science in Orthopedic Surgery degree in the United Kingdom in 1986. He continued to work as an orthopedic surgeon in the U.K. until he came to the United States in 1993 to do a fellowship in joint reconstructive surgery, which he completed in 1995. Respondent joined a private practice in El Centro, California from 1995 to 1998. Thereafter, he continued his private practice in orthopedic surgery from 1998 to 2000 in El Centro, California. He worked from 2000 to 2005 as an associate in an orthopedic practice group in Palm Springs, California. Later, respondent worked as a consultant in orthopedic surgery with many different medical groups until 2017.

8. Respondent testified at this hearing, and also testified under oath for a grand jury on May 10, 2016. His grand jury testimony was received into evidence. At

times during his testimony at this hearing, respondent invoked his Fifth Amendment rights and refused to answer some questions. During his testimony at this hearing, respondent stated he recalled his grand jury testimony on May 10, 2016, and he was under oath during that testimony. He stated he gave that testimony after the court entered his guilty plea. Respondent testified that when he entered into his plea agreement for his guilty plea, he was not aware that Business and Professions Code section 2273 may be invoked against him for the revocation of his license. However, during his grand jury testimony, respondent admitted that he knew that he stood to lose his medical license over his guilty plea. During his grand jury testimony, respondent also stated that part of the reason why he pled guilty to those charges was because he knew he had signed off on patient reports that contained information he knew was wrong, but he signed them anyway. That information required patients to undergo a variety of medical treatments that were not indicated and were for the purpose of allowing additional billings to insurance companies.

9. During this hearing, respondent admitted that he understood the criminal charges brought against him in the criminal case. On the same day that the criminal complaint was filed, respondent voluntarily executed a change of plea form on May 9, 2016. Respondent admitted to handwriting his initials next to each and every line on that document and admitted that he understood the plea he was entering when he signed the document. Respondent also admitted to being in court on May 9, 2016, when his change of plea to guilty was accepted and entered by the court. Respondent understood he would not be sentenced until his cooperation with the district attorney for the pending matters against other defendants was complete.

10. At the suggestion of his attorney, respondent enrolled in and completed "PBI Medical Ethics and Professionalism Course" on June 21 and 22, 2019. Respondent

provided a copy of the certification of his participation in that course, which was received into evidence. Respondent stated that he has a follow-up class for this course every six weeks with the final follow-up class to occur at one year after June 2019. He has already completed several of the follow-up classes. Additionally, respondent provided several continuing medical education course certificates of completion, which were received into evidence. In addition to those documents, respondent provided five character reference letters in his support. Four of those letters were written by respondent's supervisors at various medical practices, and the fifth letter was written by an anesthesiologist with whom he had previously worked for many of his orthopedic surgeries. All of the letters praised respondent's medical knowledge, work ethic, and standard of care provided to his patients.

Testimony of Michael Bazel, M.D.

11. Dr. Michael Bazel has been a licensed physician in California since 1994 and is board certified in Emergency Medicine. Dr. Bazel is currently the Medical Director of Bell Community Medical Group, which has two locations. Dr. Bazel has owned and operated Bell Community Medical Group since at least 2005 or earlier. Dr. Bazel testified at this hearing and a summary of his testimony is below. Dr. Bazel testified that respondent worked for Bell Community Medical Group from 2005 to 2017 at both locations. During that time respondent would see approximately 70 patients per month for orthopedic surgery consultations at both locations of Bell Community Medical Group. Respondent came to the medical group only about twice per month for his work there. Dr. Bazel testified that respondent had a reputation for honesty and integrity and his surgeries were successful. Dr. Bazel had no complaints from patients or from staff regarding respondent. He further described respondent as very pleasant with good knowledge in the field of orthopedic surgery. Dr. Bazel has

known respondent for 12 years and first learned about the criminal charges brought against respondent in 2017 from respondent. Dr. Bazel stated he has not reviewed the accusation brought against respondent, but is generally aware that it is based on respondent's guilty plea in the criminal case. Dr. Bazel testified that he was puzzled as to why respondent entered his guilty plea because "it does not represent his personality." Dr. Bazel believes that respondent did not do the things he plead guilty to, but rather "he was lied to by whomever he was working with" because this is not in respondent's personality.

12. Dr. Bazel stated that respondent stopped working at the Bell Community Medical Group in 2017 because respondent could no longer see worker's compensation patients. Dr. Bazel attempted to get respondent on HMO contracts so that he could see HMO patients, but the HMOs refused to allow that because of respondent's guilty plea. Dr. Bazel wrote a letter in support of respondent, which was one of the five character reference letters received into evidence. His letter reflected his testimony given at the hearing.

Respondent's Argument

13. Respondent argues that the accusation charges respondent with unprofessional conduct based upon a conviction, as defined by Business and Professions Code section 2236, which includes a plea of guilty as constituting a conviction. However, Business and Professions Code sections 7.5 and 490 provide when the board may proceed with discipline based on a conviction. Respondent argues that those sections provide that the board cannot take action until "the time for appeal has elapsed, or the judgment of conviction is affirmed on appeal, or when an order granting probation is made, suspending imposition of sentence." Respondent

argues that the board may not take any action in this matter because "no judgment of conviction has yet occurred."

Complainant's Argument

14. Complainant argues that respondent's guilty plea is deemed a conviction pursuant to Business and Professions Code section 2236, subdivision (d), which uses the same definition of conviction as Business and Professions Code sections 7.5 and 490, but is a more specific statute that does not adopt the additional language that the board cannot take action until the time for appeal has elapsed, or the judgment of conviction is affirmed on appeal, or when an order granting probation is made, suspending imposition of sentence. Accordingly, because section 2236 does not adopt that additional language, the board may seek discipline based on the plea of guilty with no need for judgment of conviction.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that the charges in the accusation and petition to revoke probation are true.

2. With respect to the accusation portion of the pleadings, the standard of proof required is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The obligation to establish charges by clear and convincing evidence is a heavy burden. It requires a finding of high probability; it is evidence so clear as to leave no substantial doubt, or sufficiently

strong evidence to command the unhesitating assent of every reasonable mind. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

Applicable Statutes

3. Business and Professions Code section 7.5 provides:

> (a) A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480.
>
> Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.
>
> (b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

4. Business and Professions Code section 490 provides:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006)

142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

5. Business and Professions Code section 2227 provides:

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

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

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

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

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

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

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

6. Business and Professions Code section 2234 provides in relevant 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.
>
> [¶] . . . [¶]
>
> (e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon. . . .

7. Business and Professions Code section 2236 provides:

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

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts

alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

8. Business and Professions Code section 2273, subdivision (b), provides:

A licensee shall have his or her license revoked for a period of 10 years upon a second conviction for violating any of the following provisions or upon being convicted of more than one count of violating any of the following provisions in a single case: Section 650 of this code, Section 750 or

1871.4 of the Insurance Code, or Section 549 or 550 of the Penal Code. After the expiration of this 10-year period, an application for license reinstatement may be made pursuant to Section 2307.

9. California Code of Regulations, title 16, section 1360, provides:

For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.

Evaluation and Analysis

10. Respondent's argument that the board may not yet take action to discipline respondent's license because there is not yet a judgment of conviction from

his criminal case ignores the plain meaning of both Business and Professions Code sections 7.5 and 490. Specifically, both of those sections provide:

> A conviction within the meaning of this code [or section] means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code

Notably, both sections explicitly state that a plea of guilty constitutes a conviction, and that a board is permitted to take action based on the conviction when "the time for appeal has elapsed." In this case the time for appeal has elapsed because respondent explicitly waived "any right to appeal that [he] may have" in his change of plea form, which was accepted and entered by the court. There is no additional requirement that there be a judgment of conviction if "the time for appeal has elapsed." The plain language of both of those statutes requires either "the time for appeal has elapsed" "or" "the judgment of conviction has been affirmed on appeal" but there is no requirement for both of those conditions. Those statutes also allow for action to be taken if "an order granting probation is made suspending the imposition of sentence," but each of these phrases in the statute are separated by the word "or" meaning the board may proceed to take action if only one of those conditions is present. Accordingly, respondent's reliance on both Business and Professions Code

sections 7.5 and 490 as a basis to assert that the board lacks authority to take action against respondent's license based only on his guilty plea without a judgment of conviction is wrong. By the plain terms of Business and Professions Code sections 7.5, 490, and 2236 respondent's plea of guilty constitutes a conviction, and his express waiver of any right to appeal means his "time for appeal has elapsed." Respondent argued that because he has not yet been sentenced, he may at some point change his guilty plea. However, that argument is misplaced; the plain language of his change of plea form waives his right to appeal. Given that the court has already accepted and entered his guilty plea, the evidence establishes that respondent entered a plea of guilty for four counts of violation of Penal Code section 550, subdivision (a)(6), insurance fraud, with enhancements to one count pursuant to Penal Code sections 12022.6 and 186.11, and that he waived all his rights to appeal.

These convictions are substantially related to the qualifications, functions or duties of a physician and evidences present or potential unfitness of respondent to practice as a physician. There is no other profession in which one passes so completely within the power and control of another as does the practice of medicine. The physician-patient relationship is built on trust. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 578-579.) Insurance fraud is a very serious violation of trust of a patient and his or her physician. Sending patients for unnecessary medical treatment to increase the amount of insurance billings causes harm to the patient, insurance companies, and the general public, as well as constitutes a serious violation of the trust between a physician and patient.

11. Additionally, respondent's guilty plea establishes his admission to committing acts of insurance fraud, which constitute dishonest and corrupt acts. "A plea of guilty in a criminal prosecution is 'a conclusive admission of [his] guilt and of

every element entering into the offense charged' [citation] and 'constitutes no less than a confession of every factor comprising the charges contained in the pleading.' [Citation.] . . . . 'The effect is the same as if the defendant had been tried before a jury and had been found guilty upon evidence covering all material facts.'" (*Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 189.)

12. Respondent's dishonest and corrupt acts of committing insurance fraud as established by his guilty plea, as well as his conviction as discussed above both constitute violations of the Medical Practice Act, which is an independent basis for discipline of his license.

Cause Exists to Revoke

13. Cause exists under Business and Professions Code section 2227, 2236, and California Code of Regulations, title 16, section 1360, to impose discipline. Complainant established by clear and convincing evidence that respondent was convicted on May 9, 2016, of four counts of violating Penal Code section 550, subdivision (a)(6), with enhancements, and he waived all his rights to appeal. Respondent's conviction is substantially related to the qualifications, functions or duties of a physician and surgeon.

14. Cause exists under Business and Professions Code section 2227 and 2236, subdivision (e) to impose discipline. Complainant established by clear and convincing evidence that respondent committed dishonest and corrupt acts as demonstrated by his guilty plea to violating four counts of Penal Code section 550, subdivision (a)(6), for insurance fraud.

15. Cause exists under Business and Professions Code section 2227 and 2236, subdivision (a) to impose discipline. Complainant established by clear and

convincing evidence that respondent violated the provisions of the Medical Practice Act by committing insurance fraud, which is a dishonest and corrupt act, and by his convictions as set forth above.

Degree of Discipline

16. Business and Professions Code section 2273 dictates that if a licensee has been convicted of more than one count of violating section 550 of the Penal Code, then the licensee "shall have" his or her license revoked for a period of 10 years after which he or she may apply for reinstatement of the license. This statutory provision provides no discretion to impose a lesser penalty than revocation for a period of 10 years. As discussed above, respondent has been convicted of four counts of violating Penal Code section 550, and as a result his license must be revoked for a period of 10 years.

ORDER

Respondent Tushar Ramnik Doshi, M.D.'s Physician's and Surgeon's Certificate, No. A 53572 is revoked for a period of 10 years from the effective date of this decision.

DATE: November 19, 2019

DocuSigned by:
Debra Nye-Perkins
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DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Dec. 27 2019
BY _____ ANALYST

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

In the Matter of the Accusation Against: **TUSHAR RAMNIK DOSHI, M.D.** P.O. Box 7547 Newport Beach, CA 92658-7547 Physician's and Surgeon's Certificate No. A 53572, Respondent.	Case No. 800-2016-023507 **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).

2. On or about October 5, 1994, the Medical Board issued Physician's and Surgeon's Certificate No. A 53572 to Tushar Ramnik Doshi, 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, 2020, unless renewed.

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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 (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

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

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

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

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

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

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

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

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5. 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.

"...

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"..."

6. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

"(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if

the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred."

7. Section 2273 of the Code states, in pertinent part:

"...

"(b) A licensee shall have his or her license revoked for a period of 10 years upon a second conviction for violating any of the following provisions or upon being convicted of more than one count of violating any of the following provisions in a single case: Section 650 of this code, Section 750 or 1871.4 of the Insurance Code, or Section 549 or 550 of the Penal Code. After the expiration of this 10-year period, an application for license reinstatement may be made pursuant to Section 2307."

8. California Code of Regulations, title 16, section 1360, states:

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

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FIRST CAUSE FOR DISCIPLINE

(Conviction of Crimes Substantially Related to the Qualifications, Functions, or Duties of a Physician and Surgeon)

9. Respondent has subjected his Physician's and Surgeon's Certificate No. A 53572 to disciplinary action under sections 2227 and 2234, as defined by 2236 and 2273, of the Code, and section 1360 of title 16 of the California Code of Regulations, in that he was convicted of crimes substantially related to the qualifications, functions, or duties of a physician and surgeon, as more particularly alleged herein.

10. On or about May 9, 2016, in the case entitled *The People of the State of California v. Tushar Ramnik Doshi,* Case No. RIF1670154, a criminal complaint was filed in the Superior Court of California, County of Riverside, charging Respondent with eighteen (18) counts of violating Penal Code section 550, subdivision (a), subsection (6) (Insurance Fraud), all felonies.

11. The criminal complaint also alleged an enhancement pursuant to Penal Code section 12022.6, subdivision (a), subsection (4) (value exceeding $3,200,000) as to one (1) count; enhancements pursuant to Penal Code section 12022.6, subdivision (a), subsection (3) (value exceeding $1,300,000) as to four (4) counts; enhancements pursuant to Penal Code section 12022.6, subdivision (a), subsection (2) (value exceeding $200,000) as to ten (10) counts; enhancements pursuant to Penal Code section 12022.6, subdivision (a), subsection (1) (value exceeding $65,000) as to three (3) counts; and an enhancement pursuant to Penal Code section 186.11 subdivision (a), subsection (2) (value exceeding $500,000) as to one count.

12. On or about May 9, 2016, Respondent signed a change of plea form admitting guilt as to four (4) separate counts of violating Penal Code section 550, subdivision (a), subsection (6) (Insurance Fraud). Respondent also admitted one alleged enhancement as to one (1) count pursuant to Penal Code section 12022.6, subdivision (a), subsection (2) (value exceeding $200,000) and Penal Code section 186.11, subdivision (a), subsection (2) (value exceeding $500,000).

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13. On or about May 19, 2016, Respondent's plea of guilty was entered as to the four (4) separate counts of violating Penal Code section 550, subdivision (a), subsection (6) and the alleged enhancements.

SECOND CAUSE FOR DISCIPLINE

(Dishonest or Corrupt Acts)

14. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 53572 to disciplinary action under sections 2227 and 2234, as defined by 2234, subdivision (e), of the Code, in that he committed dishonest and corrupt acts, as more particularly alleged in paragraphs 9 through 13, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Medical Practice Act)

15. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 53572 to disciplinary action under sections 2227 and 2234, as defined by 2234, subdivision (a), of the Code, in that he committed violations of provisions of the Medical Practice Act, as more particularly alleged in paragraphs 9 through 14, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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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 No. A 53572, issued to Respondent Tushar Ramnik Doshi, M.D.;

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

3. Ordering Respondent Tushar Ramnik Doshi, 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: March 27, 2019

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

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