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

In the Matter of the Statement of Issues Against: **Muhammad Abolfotoh Kandel** Applicant.	**Case No. 800-2021-074899**

DECISION

The attached Proposed Decision is hereby accepted and 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 14, 2022**, although the probation will not commence until the applicant completes any remaining requirements for licensure and the license is issued.

ORDERED: January 14, 2022

MEDICAL BOARD OF CALIFORNIA

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

BEFORE THE
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In the Matter of the Statement of Issues Against:

MUHAMMAD ABOLFOTOH KANDEL,

Applicant.

Case No. 800-2021-074899

OAH No. 2021080466

PROPOSED DECISION

Regina Brown, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter remotely on October 20, 2021.

David Carr, Deputy Attorney General, represented complainant William Prasifka, Executive Director, Medical Board of California.

Applicant Muhammad Abdolfotoh Kandel represented himself at hearing.

The matter was submitted for decision on October 20, 2021.

FACTUAL FINDINGS

Introduction

1. On January 23, 2020, the Medical Board of California (Board) received an application for a physician's and surgeon's certificate from applicant Muhammad Abolfotoh Kandel.

2. The Board denied the application on September 15, 2020. The basis for the denial was related to applicant's alleged unprofessional conduct identified during applicant's postgraduate training. Applicant requested a hearing.

3. Complainant William Prasifka, Executive Director of the Board, filed the statement of issues in his official capacity on July 14, 2021. This hearing followed.

Applicant's Education

4. In 2002, applicant graduated with a medical degree from the Faculty of Medicine, Ain Shams University, in Cairo, Egypt. He completed a surgical internship in 2004 and residency in neurological surgery in 2007 at Ain Shams University Hospitals. He completed a fellowship in neurosurgery at Erfan Hospital, Jedda, Saudi Arabia. He was an assistant lecturer in neurosurgery at Ain Shams University Hospitals from 2009 to 2011.

5. In 2011, applicant obtained a one-year research grant as a Skull Base Research Associate for the Brigham and Women's Hospital at Harvard Medical School. When the grant ended, preeminent neurosurgeon Ossama Al-Mefty, M.D., asked applicant to remain as a researcher, which he did until 2016. Applicant has a strong academic research record as demonstrated by his co-authorship of multiple

publications. Applicant also obtained a Ph.D., in neuroscience, from Harvard. Applicant wanted to become board certified in neurosurgery and applied for a neurosurgery residency in the United States. He had strong letters of recommendation from faculty who worked with him prior to entering his residency training.

6. Applicant passed the United States Medical Licensing Examination (USMLE) Step 1 on September 12, 2015; USMLE Step 2CK on April 28, 2016, USMLE Step 2CS on December 16, 2015, and USMLE Step 3 on January 17, 2017. Applicant is certified by the Educational Commission for Foreign Medical Graduates.

7. There is no evidence that applicant experienced any academic difficulties prior to his U.S. residency training as described below, except for his two failed attempts on the USMLE Step 2 CS examination, which he was able to pass on his third attempt.

Applicant's Residency Training

8. On July 1, 2016, applicant entered the neurological surgery residency program at the University of Louisville, School of Medicine, Department of Neurological Surgery (residency program or UOL), in Louisville, Kentucky. Applicant started as a program year 3 (PGY3) resident with 30 months credit in elective rotations approved by the American Board of Neurological Surgeons based on his prior training.

9. From the beginning of his residency, program supervisors became concerned about applicant's professionalism (which is detailed below).

10. On April 20, 2017, the residency program issued a formal warning letter to applicant regarding concerns with his behavior that was seen as disrespectful by the medical team members, including faculty, nursing staff and fellow residents. The

concerns included the failure to appropriately care for patients and dishonesty in the reporting and documentation of clinical encounters. Applicant sought to have his residency transferred to another neurosurgery program, to no avail.

11. Applicant was referred to the Javelin Remediation Program for intensive training and support in his communication and interpersonal skills.

12. On February 8, 2018, the residency program issued applicant another formal warning letter, notifying applicant that complaints had been received from faculty, nursing staff, fellow residents, and the hospital operator regarding applicant's performance. The concerns involved ongoing failures to appropriately care for patients and dishonesty in the reporting and documentation of clinical encounters; the failure to respond to pages from the hospital operator in a timely manner; passing off pager responsibilities to the nurse practitioners; and not being able to locate applicant's whereabouts when he was required to be on call. A learning plan was instituted to correct these issues.

13. On March 15, 2019, the residency program issued another formal warning letter to applicant for poor performance, including multiple complaints from supervising staff, nurses, and residents. Applicant was informed that the number of complaints and the subject of the complaints were unusual and demonstrated a concerning pattern of failure to progress to a senior resident role. The letter warned that applicant's behaviors were incompatible with a senior level role and threatened his graduation from the program.

14. In June 2019, a complaint was received alleging that during a surgical consultation in the emergency room, applicant made unprofessional and insensitive comments to the family of a patient. The family was distraught because applicant said

that surgery should not be performed after a neurology attending physician had previously told them that surgery would give the patient a "fighting chance." It was also alleged that applicant told the family, "It doesn't matter to me; it's a short walk downstairs and its money in my pocket," and because the patient was morbidly obese, he said, "It's her fault she is like this I don't know if she will fit on the table anyway." It was also alleged that when he was told that the patient (who was of mixed race) was married, applicant responded: "What, she has a husband, you mean the darkie?" referring to her African-American husband. Applicant denied making these statements.

15. On July 2, 2019, the residency program issued a letter to applicant with the determination that there were no medical mistakes involved in the June incident, and that the intense communication among faculty, the family, and nursing staff had been highly complex. The letter noted that applicant received "additional counsel on the severity of racial bias and income, in any part of the medical system."

16. The residency program department heads voted not to renew applicant's contract for academic year 2020-2021 and applicant was assigned to perform research for the remainder of his contract. The department heads noted multiple instances of poor quality documentation of physical exams (e.g., documenting that a bilateral amputee had intact sensation in lower extremities), poor clinical judgment (e.g., deferring an urgent procedure to a resident who would not come on duty for another 30 minutes), and unprofessional behavior (e.g., coercing the paging operator to adjust the process for paging residents in a way that diverted applicant's pages).

17. On December 11, 2019, the residency program informed applicant that his training contract for the 2020-2021 academic year would not be renewed for the following year based on his lack of progress to "senior level" duties and responsibilities.

18. In January 2020, applicant filed a formal grievance to the Academic Grievance Committee detailing allegations against the chair of the neurosurgery department Joseph Neimat, M.D.; Thomas Altstadt, M.D., an attending faculty member who applicant believed was responsible for many of his difficulties in the residency program, and Zaid Aljboori, a fellow resident. Applicant alleged unprofessionalism, continued and regular harassment, verbal and mental abuse, bullying, fear, and a pattern of intimidation/retaliation. He also alleged that he was forced to fraudulently adjust or report residency hours. He alleged that during his 360 degree evaluation, the department coerced fellow residents and faculty to give him negative evaluations. He also alleged that the chief resident singled him out by creating abusive call schedules. He further alleged that the department brought in foreign fully trained neurosurgeons as unofficial fellows which caused competition for surgical cases reducing his ability to obtain sufficient cases for the Accreditation Council for Graduate Medical Education (ACGME) requirements. In April 2020, applicant's grievance was denied by the Academic Grievance Committee and Dean, who found that there was insufficient evidence to support his allegations.

19. In a letter supporting his application to the Board, dated January 22, 2020, Haring J W Nauta, M.D., Ph.D., Professor and Residency Program Director, wrote that applicant had performed adequately as a junior level resident in neurosurgery for the three years at UOL. Dr. Nauta wrote that applicant's general medical and neurosurgery specialty knowledge was considered adequate. However, applicant's progress and rate of improvement was not considered adequate to allow his continuation in the training program as an upper level or chief resident. Applicant was encouraged to find alternate training at another center.

20. On March 8, 2020, several nurses who worked with applicant during his residency signed a letter of support. They described applicant as professional, confident, knowledgeable, efficient, and compassionate when dealing with patients and their families. They wrote that applicant was responsive to his pager, and that he treated nurses and ancillary staff with respect.

21. On June 30, 2020, applicant left the residency program. Applicant was never placed on academic probation or suspended from the residency program.

Applicant's Evidence of Rehabilitation

22. On his application for licensure, applicant disclosed that his residency training program contract was not renewed. In his written explanation, applicant acknowledged that he had a "rough start" to transition to the American system as a foreigner in Kentucky, and that he was unable to overcome "first impressions" among his peers. However, applicant did not accept responsibility for his failure to progress in the residency program.

23. In his written explanation and at hearing, applicant attributed his troubles primarily to Dr. Altstadt whom he described as powerful and having abused his power by dominating the residency program and preventing applicant from progressing to the position of Chief resident. According to applicant, Dr. Altstadt repeatedly complained about applicant's communication issues and perceived him as an "international slow resident." Applicant believes that Dr. Alstadt and others wanted him to start his residency "from scratch." According to applicant, Dr. Alstadt influenced staff to file complaints about him. At hearing, applicant testified that Dr. Alstadt had spat and cursed him in the operating room within the first two months of his

residency; however, this allegation was not mentioned in his formal grievance or the discrimination complaint that he filed against the residency program.

24. Applicant hopes to begin a one-year fellowship at Loma Linda University in the Department of Neurosurgery. According to applicant, a past chairman from UOL has offered him this opportunity at Loma Linda University. However, applicant was told he may not be hired if he is given a probationary license. Additionally, applicant is concerned that if his application in California is denied, this may prompt discipline on his Kentucky license and his fellowship license in Florida.

25. Amr O. El-Naggar, M.D., Clinical Professor of Neurosurgery at UOL, and a principal physician at the Lake Cumberland Neurosurgical Clinic in Somerset, Kentucky, wrote a letter and testified at hearing. Dr. El-Naggar has observed applicant perform cranial surgeries and care for Dr. El-Naggar's pre and post-operative patients. In July 2019, Dr. El-Naggar requested that applicant complete a six-month external rotation at Lake Cumberland Regional Hospital to gain a better understanding of why applicant was struggling as a resident. Dr. El-Naggar found no issues with applicant or his interactions with staff and nurses. Dr. El-Naggar regards applicant as an excellent resident and did not notice any deficiencies. Dr. El-Naggar believes the residency program was not a good fit for applicant. However, Dr. El-Naggar also believes that applicant needs two additional years of clinical residency.

Dr. El-Naggar hired applicant as a fellow from July 2020 to July 2021, and observed applicant perform over 500 surgical procedures. According to Dr. El-Naggar, applicant mastered new procedures and had no issues with professionalism or dishonesty, and did not exhibit medical or surgical incompetence.

26. Dr. Nauta wrote a letter and testified at hearing in support of applicant. According to Dr. Nauta, when applicant entered the residency program, they had hoped he could perform at an upper level resident level because of his prior experience in Egypt and that he would be able to smoothly transition to the American system. Dr. Nauta acknowledged that there were "early missteps" because both sides had unfulfilled expectations. Dr. Nauta believes that part of applicant's inability to smoothly transition was that he had worked as a researcher at Harvard and did not provide direct patient care. Applicant had a "lot of catching up" to do with learning the electronic medical recordkeeping system and learning behaviors toward others in a less hierarchical manner. Applicant was demanding respect and his peers and subordinates were looking for applicant to earn their respect. This conflict started early on and continued.

According to Dr. Nauta, applicant performed well as a junior resident with no major actionable complaints. However, applicant was expected to demonstrate his ability to independently function in order to supervise other residents, and Dr. Nauta questioned his ability to do so. Dr. Nauta does not believe that applicant has team leadership skills because others questioned his judgment. There were concerns about applicant's eagerness to please certain faculty members and he was not always forthcoming with negative information. Nevertheless, Dr. Nauta believes that applicant could thrive under a supervised residency program at another center where he could make a fresh start.

27. Daryoush Tavanaiepour, M.D., is a professor and current Chair of the Department of Neurosurgery at the University of Florida, Jacksonville, and testified at hearing. He has worked with applicant for four months. Dr. Tavanaiepour believes that under appropriate supervision, applicant has the potential to become a neurosurgeon.

He described applicant as compassionate, ethical, and one who exhibits a true dedication to his field. Dr. Tavanaiepour has no reservations with allowing applicant to complete a residency training program with a restricted license and would trust him with the care of his family members.

28. Magdy M. El-Kalliny, M.D., also with the Lake Cumberland Neurosurgical Clinic, wrote a letter dated September 27, 2021. Dr. El-Kalliny wrote that he spent one year in close direct contact with applicant in his position as a fellow. Dr. El-Kalliny found no fault with applicant. He described applicant as an excellent physician with skills above the degree of competency expected from a similar resident. Dr. El-Kalliny wrote that applicant was humble and kind with other staff, developed friendly relationships, and he was caring and earned the trust of his patients. Dr. El-Kalliny was aware of applicant's difficulties during his residency, and suspected that the complaints stemmed from cultural barriers which applicant has improved over the years. Dr. El-Kalliny recommends applicant for full medical licensure in California.

29. Norberto Andaluz, M.D., Professor of Neurological Surgery and Director of the Division of Skull Base Surgery at UOL, wrote a letter dated February 4, 2020, which reviewed applicant's background and training. Dr. Andaluz confirmed that after working with applicant for one year, he found that applicant conducted himself appropriately when dealing with patients and in surgery. Dr. Andaluz wrote that applicant has the drive and capability to complete his neurosurgical training and wishes that applicant finds a position to accomplish that quest.

30. Currently, applicant has a fellowship performing minimally invasive and complex spine procedures at the University of Florida, Jacksonville. He has been offered a position of instructor of neurosurgery.

31. Applicant retains his dream to graduate from a residency program in neurosurgery and seeks an unrestricted license.

32. Applicant obtained an unrestricted Kentucky medical license in April 2020.

Expert Testimony from Mark Servis, M.D.

33. Complainant presented expert testimony by Mark Servis, M.D., who has been a licensed California physician since 1989. He is also licensed in New York. Dr. Servis was the Director of Residency Training, Department of Psychiatry, at the University of California, Davis, from 1989 to 2012, and 2014 to 2016. He has served as the Vice Chair for Education with the Department of Psychiatry since 1999. He has served as the Vice Dean for Medical Education at UC Davis since 2011, with administrative oversight over all graduate medical education programs. He has been a professor of clinical psychiatry since 2004.

34. Dr. Servis reviewed applicant's application and documents received from the residency program. Dr. Servis wrote a report of his opinions and testified at hearing. Dr. Servis evaluated applicant's ability to practice safely and independently based on the documents that he reviewed.

35. Dr. Servis found that applicant's difficulties in the neurosurgery residency training were protracted and consistent, despite multiple attempts at remediation and correction. Dr. Servis found that the nature of applicant's performance problems remained consistent across his training and could be summarized as follows:

a. Failure to appropriately care for patients by not assuming full responsibility, deferring clinical decision-making and order-writing to others,

and not being accountable for clinical care duties with patients - including repeatedly not responding to pages and communications and not being reachable or knowing his whereabouts while on service.

b. Concerns about dishonesty in reporting and documenting clinical encounters.

c. Unprofessionalism with peers and nursing staff and failure to function as a collaborative and respectful member of the clinical team, particularly with nursing staff.

d. Intimidation of other residents and staff making them feel unsafe, and

e. One documented incident of possible racial bias with the family of an African American patient.

36. Dr. Servis found that applicant's performance led to remediation plans that included mental health assessment and services, English language, and personal coaching to address interpersonal communication deficits, along with required passing thresholds for the American Board of Neurological Surgery written primary examination and the ACGME milestones. Consistent with the interpersonal communication and personal coaching interventions, the program was concerned that some of applicant's difficulties could be attributed to cultural, communication and English language miscommunication or lack of cultural understanding.

37. Dr. Servis found that applicant appeared to enthusiastically participate in these remediation efforts, and he was able to improve his performance on the American Board of Neurological Surgery written primary examination to achieve the required passing score, significantly improving his score each year from 2017 to 2019.

His progress in the other areas of deficiency was uneven at best, and while he did improve at times based on his own self-report, there continued to be consistently reported problems in the remaining deficit areas from faculty, co-residents, and staff.

38. Dr. Servis found that applicant appeared to grow increasingly frustrated with his identified failures and lack of progress in the program, and was particularly concerned about the very limited opportunities to perform surgeries compared to his peers, leading to a complaint to the chair in 2019. Applicant also asked to bring some of these concerns up to the ACGME site visitor during an accreditation site visit to the program in December 2019.

39. Dr. Servis opined that all of applicant's performance deficiencies were well documented in over 100 pages of communications from faculty and nursing staff to the residency program leadership, including several email messages with very specific examples and multiple clinical vignettes.

40. Dr. Servis opined that the information provided by applicant and the residency training program were at odds. Dr. Servis found that applicant accepted responsibility for some of his failures in his email explanations to the program leadership when responding to the identified problems and formal letters of warning while he was a resident. However, with the consistency of the negative reports from so many different sources in the residency program, Dr. Servis believed that the identified deficits were real problems and represented actual performance deficits in applicant's performance as a clinician. Dr. Servis believed it is possible that many of these deficits were attributable to or worsened by poor interpersonal communication skills and a lack of cultural sensitivity on the part of applicant in dealing with others. If so, these deficits should improve with time and enculturation in the United States, but this is happening slowly if at all.

41. Dr. Servis found applicant's dishonesty and unprofessionalism problems as more serious, as they could represent a more serious danger to patient safety. Dr. Servis noted that neurosurgery residency programs are known to be the most demanding of all graduate medical education programs, and that overall stress and sleep deficits, as noted by applicant, may have contributed to professionalism lapses on his part. It is also possible that some of the cultural and language difficulties could have been misperceived as unprofessional behaviors.

42. Dr. Servis also noted that applicant continued in the residency program without dismissal or suspension for 48 months, although six of those months were research months. This record suggests that while the residency program was obviously concerned and aware of his performance deficits, that they did not restrict or limit his clinical duties with patients at any time, except for a possible limitation on his time in the operating room in surgery. A letter of explanation from his residency program director to the Board describes applicant's work as adequate during his time in the program, and does not warn against his continuing in training in neurosurgery in another program.

43. Dr. Servis testified about applicant's deferred clinical decision making, not responding to pages, not being reachable while on clinical service; the residency program's concerns regarding applicant's inaccurate reporting around clinical encounters, and his failure to be collaborative or respectful towards peers and nursing staff. Dr. Servis acknowledged that applicant performed well in certain settings. Dr. Servis reiterated that his conclusions were based on the numerous sources who filed multiple complaints against applicant with consistent and similar themes persistently across the three years. Despite remediation, applicant did not rise to a level that the residency program leadership believed that he could progress.

44. Neurosurgery is the most difficult and challenging program and is highly competitive. Dr. Servis concluded that applicant's "overall performance in a rigorous neurosurgery residency remains concerning, particularly the concerns about unprofessional behavior and dishonesty, and that it would be best to see him fully remediate these identified deficits with continued and completed graduate medical education training before he practiced independently."

45. The evidence did not establish that applicant's conduct rose to the level of incompetence.

LEGAL CONCLUSIONS

1. Applicant has the burden of proving by a preponderance of the evidence that he should be granted a license. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1959) 52 Cal.2d 259, 264-265; Evid. Code, §§ 115, 500.)

Cause for Denial

2. Pursuant to Business and Professions Code section 2221, subdivision (a), the Board may deny a certificate to an applicant who has engaged in unprofessional conduct that would subject a licensee to disciplinary action. Unprofessional conduct, as defined in Business and Professions Code section 2234, also includes incompetence (subd. (d)), and the commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions or duties of a physician and surgeon (subd. (e)). Complainant alleges that applicant's license should be denied because he demonstrated unprofessional conduct, incompetence, and was dishonest during his residency training.

3. From the commencement of his residency, concerns about applicant's unprofessional conduct were raised by the residency program. Unfortunately, applicant was unable to improve to the level that allowed him to progress and complete the program. Applicant was informed that he would not be asked to return and during the last six months of his residency he performed research only. In addition, Dr. Servis reviewed applicant's residency records and opined his concerns about applicant's unprofessionalism and dishonesty, which both indicate an unfitness to practice medicine. Cause was therefore established to deny the application for a physician's and surgeon's certificate pursuant to Business and Professions Code section 2221, subdivision (a), for unprofessional conduct under section and 2234, and dishonesty, as set forth in Factual Findings 8 through 21 and 33 through 44.

4. Incompetence has been defined as a "general lack of present ability to perform a given duty as distinguished from inability to perform such duty as a result of mere neglect or omission." (*Pollak v. Kinder* (1978) 85 Cal.App.3d 833, 837-838.) Cause to deny applicant's application for licensure pursuant to Business and Professions Code section 2234, subdivision (d), for incompetence and was not established. (Factual Finding 45.)

Analysis

5. An administrative law judge of the Medical Quality Hearing Panel is mandated, wherever possible, to take action that is calculated to aid in the rehabilitation of a licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence. (Bus. & Prof. Code, § 2229, subd. (b).)

6. To implement this mandate, the Board has adopted the *Manual of Model Disciplinary Orders and Disciplinary Guidelines*, 12th Edition, 2016 (Guidelines). (Cal. Code Regs., tit. 16, § 1361, subd. (a).) For a licensee found guilty of unprofessional conduct, the Guidelines recommend a maximum penalty of revocation and a minimum penalty of stayed revocation with five years of probation. It follows that, for an applicant found guilty of unprofessional conduct, the Board is not mandated to deny the application outright and probation may be appropriate.

7. The Board, in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation: (1) practice limited to a supervised, structured environment where the licensee's activities shall be supervised by another physician and surgeon; (2) total or partial restrictions on drug prescribing privileges for controlled substances; (3) continuing medical or psychiatric treatment; (4) ongoing participation in a specified rehabilitation program; (5) enrollment and successful completion of a clinical training program; (6) abstention from the use of alcohol or drugs; (7) restrictions against engaging in certain types of medical practice; (8) compliance with all provisions of the Medical Practice Act; and (9) payment of the cost of probation monitoring. (Bus. & Prof. Code, § 2221, subd. (a).) Moreover, the Board, in its sole discretion, may issue a probationary postgraduate training license to an applicant subject to similar terms and conditions. (Bus. & Prof. Code, §§ 2064. 5, 2064.7.)

8. The purpose of a disciplinary action is not to punish, but to protect the public. (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1416.) Complainant seeks the denial of an unrestricted license to applicant. However, complainant suggests that if applicant is found to have the requisite judgment, knowledge, and

maturity, then it may be appropriate to grant him a tailored probationary license for applicant to complete a structured neurological surgery residency program.

9. Applicant has been awarded a medical degree and passed all three required steps of the USMLE. Concerns regarding applicant's ability to practice in the residency program were established, but it was not established that applicant was incompetent. Applicant has demonstrated a lack of insight into his deficiencies, and has at times blamed others. It is possible, according to Dr. Servis, that some of the cultural and language difficulties could have been misperceived as unprofessional and dishonest behaviors. Although such difficulties do not excuse applicant's unprofessional conduct, further education and other probationary conditions may cure any deficiencies.

10. It is important to note that all of the witnesses who testified in support of applicant did not support applicant's unrestricted licensure at this stage. Dr. Servis also supported applicant's continued training for full remediation of the identified deficits with continued and completed graduate medical education training before he practices independently. In order to achieve a balance between rehabilitation and public protection, a probationary license that requires successful completion of a post-graduate clinical residency training program will be ordered. The clinical training program physicians will evaluate applicant's ability, and practice and probation monitors will ensure that applicant is safe to practice while providing him with the opportunity to further his career. Further education in medical recordkeeping and professional ethics are necessary measures to remove applicant's deficiencies in those areas.

ORDER

The application of applicant Muhammad Abolfotoh Kandel for a full and unrestricted Physician's and Surgeon's Certificate is denied. A probationary license shall be issued to applicant and said license shall immediately be revoked; however, the revocation shall be stayed and applicant shall be placed on probation for a period of five years on the following terms and conditions:

1. Practice Limitations

Until applicant presents proof of satisfactory completion of the postgraduate training required under Business and Professions Code section 2096 on a form approved by the Board, the probationary license shall be a probationary postgraduate training license under Business and Professions Code sections 2064. 5 and 2064.7. Applicant may engage in the practice of medicine only in connection with his duties as a resident physician in a board-approved program, including its affiliated sites, or under those conditions as are approved in writing and maintained in applicant's file by the director of his program. The failure to successfully complete a board-approved postgraduate training program under Business and Professions Code section 2096 shall be a violation of probation.

Upon the successful completion of a board-approved postgraduate training program and until the probation term ordered herein expires or is terminated, applicant's practice shall be limited to a supervised, structured environment where applicant's activities shall be supervised by another physician and surgeon.

2. Medical Recordkeeping Course

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

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

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

3. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, applicant shall enroll in a professionalism program that meets the requirements of California Code of Regulations (CCR), title 16, section 1358.1. Applicant shall participate in and

successfully complete that program. Applicant shall provide any information and documents that the program may deem pertinent. Applicant shall successfully complete the classroom component of the program not later than six months after applicant's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at applicant's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

4. Notification

Within seven days of the effective date of this Decision and throughout the term of probation, applicant shall provide a true copy of this Decision and the Statement of Issues to the program director of any postgraduate training program and to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to him, at any other facility where he engages in the practice of medicine, including all physician and locum tenens registries or other

similar agencies, and to the Chief Executive Officer at every insurance carrier that extends malpractice insurance coverage to him. Applicant shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall apply to any changes in hospitals, other facilities, or insurance carrier.

5. Supervision of Physician Assistants

During probation, applicant is prohibited from supervising physician assistants.

6. Obey All Laws

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

7. Quarterly Declarations

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

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

8. General Probation Requirements

Compliance with Probation Unit. Applicant shall comply with the Board's probation unit.

Address Changes. Applicant shall, at all times, keep the Board informed of his business and residence addresses, email address (if available), and telephone number.

Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

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

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

Travel or Residence Outside California. Applicant shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days. In the event applicant should leave the State of California to reside or to practice applicant shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

9. Interview with the Board or Its Designee

Applicant shall be available in person for interviews either at applicant's place of business or at the probation unit office, with the Board or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

10. Non-practice While on Probation

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

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

In the event applicant's period of non-practice while on probation exceeds 18 calendar months, applicant shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

Periods of non-practice for an applicant residing outside of California, will relieve applicant of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions

of probation: Obey All Laws; General Probation Requirements; and Quarterly Declarations.

11. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If applicant violates probation in any respect, the Board, after giving applicant notice and the opportunity to be heard, may revoke probation and deny the Application for a surgeon's and physician's certificate. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against applicant during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

12. License Surrender

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

13. Probation Monitoring Costs

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

14. Completion of Probation

Applicant shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, applicant shall be granted an unrestricted certificate.

DATE:11/19/2021

Regina Brown
REGINA BROWN
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Statement of Issues Against: **MUHAMMAD ABOLFOTOH KANDEL** Applicant.	Case No. 800-2021-074899 **STATEMENT OF ISSUES**

PARTIES

1. William Prasifka (Complainant) brings this Statement of Issues solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about January 23, 2020, the Medical Board of California, Department of Consumer Affairs received an application for a Physician's and Surgeon's License from Muhammad Abolfotoh Kandel (Applicant). On or about February 4, 2020, Muhammad Abolfotoh Kandel certified under penalty of perjury that all statements, answers, and representations in the application were true. The Board denied the application on September 15, 2020. On or about September 16, 2020, the Board received Applicant's request for a hearing on the denial of his application.

JURISDICTION

3. This Statement of Issues is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2221 of the Code states:

> (a) The board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of their license. The board in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:
>
> (1) Practice limited to a supervised, structured environment where the licensee's activities shall be supervised by another physician and surgeon.
>
> (2) Total or partial restrictions on drug prescribing privileges for controlled substances.
>
> (3) Continuing medical or psychiatric treatment.
>
> (4) Ongoing participation in a specified rehabilitation program.
>
> (5) Enrollment and successful completion of a clinical training program.
>
> (6) Abstention from the use of alcohol or drugs.
>
> (7) Restrictions against engaging in certain types of medical practice.
>
> (8) Compliance with all provisions of this chapter.
>
> (9) Payment of the cost of probation monitoring.
>
> (b) The board may modify or terminate the terms and conditions imposed on the probationary certificate upon receipt of a petition from the licensee. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board.
>
> (c) The board shall deny a physician's and surgeon's certificate to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.
>
> (d) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate for a minimum of three years from the effective date of the denial of his or her application, except that the board may, in its discretion and for good cause demonstrated, permit reapplication after not less than one year has elapsed from the effective date of the denial.
>
> (e) The board shall disclose a probationary physician's and surgeon's certificate

issued pursuant to this section and the operative statement of issues to an inquiring member of the public and shall post the certificate and statement on the board's internet website for 10 years from issuance.

5. Section 2234 of the Code, states:

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

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

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

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

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

(d) Incompetence.

(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.

(f) Any action or conduct that would have warranted the denial of a certificate.

(g) The failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct and Dishonesty)

6. Respondent's application is subject to denial under section 2221(a) and sections 2234, 2234 (d), and 2234(e) of the Code. The circumstances are as follows:

a. Applicant participated in a neurosurgery residency program at the Department of Neurological Surgery at the University of Louisville, School of Medicine (Program) from July 1, 2016 until June 30, 2020. The Program reported multiple issues during Applicant's training.

b. On or about April 20, 2017, the Program issued a formal warning letter to Applicant, documenting concerns with his behavior that was seen as disrespectful by the medical team members, including faculty, nursing staff and fellow residents. The concerns included failure to appropriately care for patients and concerns of dishonesty in the reporting and documentation of clinical encounters. As a result, Applicant was referred to the Javelin Remediation Program for intensive training and support.

c. On or about February 8, 2018, the Program issued Applicant another formal warning letter, notifying Applicant that complaints had been received from faculty, nursing staff, fellow residents, and the hospital operator regarding Applicant's performance. The concerns reported ongoing failures to appropriately care for patients and concerns of dishonesty in the reporting and documentation of clinical encounters; failure to respond to pages from the hospital operator in a timely manner; passing off pager responsibilities to the nurse practitioners; and not being able to locate Applicant's whereabouts when required to be on call.

d. On or about March 15, 2019, the Program issued another formal warning letter to Applicant for poor performance, including multiple complaints from supervising staff, nurses, and residents. The Program informed Applicant that the number of complaints and the subject of the complaints were more than typical and demonstrated a concerning pattern of failure to progress to a senior resident role in the Program. The letter warned that Applicant's behaviors were incompatible with a senior level role and future graduation from the Program.

f. On or about December 11, 2019, the Program informed Applicant that his training contract for the 2020-2021 academic year would not be renewed.

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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. Denying the application of Muhammad Abolfotoh Kandel for a Physician's and Surgeon's Certificate;

2. If issued a probationary license, ordering Muhammad Abolfotoh Kandel to pay the Board the costs of probation monitoring; and,

3. If placed on probation, revoking, suspending, or denying approval of the Muhammad Abolfotoh Kandel's authority to supervise physician assistants and advanced practice nurses; and,

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

DATED: JUL 14 2021

WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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