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

In the Matter of the Accusation Against: Humayon Yousuf Khan, M.D. Physician's and Surgeon's Certificate No. G 74748 Respondent.	Case No.: 800-2020-065115

DECISION

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

This Decision shall become effective at 5:00 p.m. on September 9, 2022.

IT IS SO ORDERED: August 11, 2022.

MEDICAL BOARD OF CALIFORNIA

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

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

In the Matter of the Accusation Against: **HUMAYON YOUSUF KHAN, M.D.** **111 West 17th Street** **Santa Ana, CA 92706-2718** **Physician's and Surgeon's Certificate No. G 74748** Respondent.	Case No. 800-2020-065115 OAH No. 2021070013 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Martin W. Hagan, Deputy Attorney General.

2. Respondent Humayon Yousuf Khan, M.D. (Respondent) is represented in this proceeding by attorney Peter R. Osinoff, Esq., whose address is: 355 South Grand Avenue, Suite 1750, Los Angeles, CA 90071-1562.

3. On or about July 23, 1992, the Board issued Physician's and Surgeon's Certificate No. G 74748 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2020-065115, and will expire on March 31, 2024, unless renewed.

JURISDICTION

4. Accusation No. 800-2020-065115 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 29, 2021. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2020-065115 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2020-065115. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2020-065115, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

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9. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2020-065115, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. G 74748 to disciplinary action.

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

CONTINGENCY

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

12. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2020-065115 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 74748 issued to Respondent Humayon Yousuf Khan, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions:

1. **EDUCATION COURSE**. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

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

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

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

3. **PROFESSIONALISM PROGRAM (ETHICS COURSE)**. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

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4. **CLINICAL COMPETENCE ASSESSMENT PROGRAM**. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume the practice of medicine

until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the Respondent did not successfully complete the clinical competence assessment program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

5. **MONITORING - PRACTICE**. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent

shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine, and whether Respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

6. **NOTIFICATION**. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15

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

7. **SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES**. During probation, Respondent is prohibited from supervising physician assistants. Respondent shall not be prohibited from supervising his advanced practice nurse.

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

9. **INVESTIGATION/ENFORCEMENT COST RECOVERY**. Respondent is hereby ordered to reimburse the Board its enforcement costs incurred in 2022 in the amount of $2,640 (two thousand six hundred forty dollars). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation. Any and all requests for a payment plan shall be submitted in writing by respondent to the Board. The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay enforcement costs. The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay investigation and enforcement costs.

10. **QUARTERLY DECLARATIONS**. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

11. **GENERAL PROBATION REQUIREMENTS**.

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

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

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

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

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

12. **INTERVIEW WITH THE BOARD OR ITS DESIGNEE**. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

13. **NON-PRACTICE WHILE ON PROBATION**. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine 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 Respondent resides in California and is considered to be in non-practice, Respondent 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 Respondent 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.

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In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards' 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.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

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

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; and Quarterly Declarations.

14. **COMPLETION OF PROBATION**. Respondent shall comply with all financial obligations (e.g., cost recovery, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

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

16. **LICENSE SURRENDER**. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent

shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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

18. **FUTURE ADMISSIONS CLAUSE**. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2020-065115 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter R. Osinoff, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 1/26/22

HUMAYON YOUSUF KHAN, M.D.
Respondent

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I have read and fully discussed with Respondent Humayon Yousuf Khan, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 1/26/2022

PETER R. OSINOFF, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: 01-27-2022

Respectfully submitted,

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

MARTIN W. HAGAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2020-065115

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **HUMAYON YOUSUF KHAN, M.D.** **111 West 17th Street** **Santa Ana, CA 92706-2718** **Physician's and Surgeon's Certificate No. G 74748,** Respondent.	Case No. 800-2020-065115 **A C C U S A T I O N**

PARTIES

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

2. On or about July 23, 1992, the Medical Board issued Physician's and Surgeon's Certificate Number G 74748 to Humayon Yousuf Khan, 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 March 31, 2022, 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 provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

STATUTORY PROVISIONS

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

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6. Section 2266 of the Code states:

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

7. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient A,[1] as more particularly alleged hereinafter:

9. On or about September 12, 2016, at 9:30 a.m., Patient A, a then-28-year-old female experiencing labor pains was admitted to the hospital. At the time of her admission, Patient A was dilated at 5 centimeters (cm), the gestational age of her child was 38.6 (38 weeks/6 days) with a fetal heart rate (FHR) tracing classified as category 1.[2] At 1:33 p.m., Patient A was dilated at 6 cm. Patient A requested an epidural at 2:00 p.m., which was placed by anesthesia at 2:45 p.m. Respondent examined Patient A at 3:40 p.m., who was then dilated at 7 cm, and performed an artificial rupture of membranes (AROM) with clear fluid noted.

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[1] The patient herein is identified as Patient A in order to maintain patient confidentiality.

[2] FHR monitoring can be used to determine, among other things, whether a fetus is well oxygenated. A category 1 tracing includes all of the following: baseline rate of 110-160 beats per minute, moderate FHR variability, no late or variable decelerations, present or absent early decelerations, and present or absent accelerations. Category 1 FHR tracings are normal. *Intrapartum Fetal Heart Rate Monitoring: Nomenclature, Interpretation, and General Management Principles.* ACOG Practice Bulletin No. 106. American College of Obstetricians and Gynecologists. Obstet Gynecol 2009; 114:192-202.

10. FHR tracing was documented as category 2 at or about 4:30 p.m.[3] Patient A was dilated at 9 cm with category 2 tracings at 5:24 p.m. At 7:14 p.m., Patient A was completely dilated at 10 cm (the beginning of her second stage of labor) with zero station corrected from a plus two station.[4] Respondent was informed of the patient's status at 7:25 p.m. and was "requested to come in for delivery" with Respondent indicating the patient should start pushing. According to the L&D Flowsheet, Patient A was pushing with contractions at 8:07 p.m., there was descent with pushing, and the "presenting part" of the baby was visible.

11. Respondent was documented as being at bedside at 8:22 p.m., where he reviewed the FHR tracing and made the decision to proceed with a vacuum assisted delivery. The FHR tracing for 8:27 to 8:37 p.m. indicated a category 2 tracing, minimal variability with moderate decelerations. During the period of approximately 8:39 to 8:43 p.m., Respondent attempted three applications of a Kiwi vacuum to assist with delivery with a pop-off each time (for a total of three pop-offs). In regard to the vacuum assisted delivery, Respondent failed to adequately document the position of the baby, the indication for attempting the vacuum assisted delivery and/or any patient consent regarding the risks and/or benefits of vacuum assisted delivery.[5] After the three failed attempts at a vacuum assisted delivery, Respondent did not call for a Cesarean section (C-section) but, instead, indicated he wanted the patient "to labor down" with a peanut ball for about an hour before she attempted to push again.[6] Respondent left the hospital at approximately 9:00

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[3] Unless otherwise noted all times are for September 12, 2016.

[4] The second stage of labor begins when the cervix is completely dilated (open). The term "station" refers to where the baby's head is in relation to the mother's ischial spines, the narrowest part of the pelvis. A zero station refers to when the baby's head is fully "engaged" and the largest part of the head is aligned with the ischial spines preparing to enter the birth canal. Positive numbers are used when the baby has descended beyond the ischial spines. During birth, a baby is typically at a +4 to +5 station.

[5] Respondent stated during his interview with a Board investigator that he recognized the baby was in the occiput posterior position (a fetal malposition) after the vacuum assisted delivery attempts and he may have tried to have a manual rotation of the occiput but there was no such documentation in the medical records.

[6] "Operative vaginal delivery should be abandoned if it is difficult to apply the instrument, descent does not easily proceed with traction, or the fetus has not been delivered within a reasonable time. Some experts suggest abandoning the procedure if the delivery has not occurred within 15 to 20 minutes or after three pulls...The operator should not be fixated on

p.m. to join his wife for dinner. When Respondent left the hospital, the FHR tracing was category 3 with fetal tachycardia (baseline rate recorded as 190), minimal variability and late decelerations.[7]

12. Dr. L.C., the on-shift hospital laborist, reviewed the FHR tracing at 9:03 p.m. and requested the Chief Nurse "call [Respondent] to alert him of the FHR" at 9:11 p.m.[8] According to the L&D Flowsheet, after being advised of the FHR, Respondent informed staff he had provided a report to a Dr. B.K. and the primary registered nurse. Respondent further advised staff he would "come in as soon as needed." Respondent recommended turning the patient side to side periodically and applying oxygen. Dr. B.K. reviewed the FHR tracing at 9:33 p.m., which continued to show fetal tachycardia (baseline rate recorded as 185 bpm) with minimal variability, with no further action being taken by him.

13. Respondent called at 9:51 p.m. to advise staff he had finished eating, was heading into the hospital (which he advised was six miles away), and instructed that Patient A could start pushing. The FHR tracings from 10:06 p.m. to 10:30 p.m. were category 3, indicating fetal tachycardia with minimal to absent variability with deep decelerations.. According to the L&D

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achieving a vaginal delivery. It is essential that the operator be willing to abandon a planned or attempted delivery and have the ability to perform a cesarean birth if evaluation or reevaluation of the clinical status shows that an instrumental delivery is contradicted (e.g., the fetal head is not engaged, the position is uncertain, the procedure is not succeeding)." UpToDate, *Operative Vaginal Delivery* citing to Edozien, L.C., *Towards Safe Practice in Instrumental Vaginal Delivery*, Best Pract Res Clin Obstet Gynaecol (2007) Aug;21(4):639-655. "To avoid fetal injury, the obstetric care provider should not be overly committed to achieving a vaginal delivery and should be willing to abandon the procedure if it is not progressing well. Delay may increase the risk of neonatal or maternal morbidity. The ability to perform an emergency cesarean section should always be at hand." Unzila, A. Ali, MD, et al., *Vacuum-Assisted Vaginal Delivery, Reviews in Obstetrics & Gynecology*, Vol. 2, No. 1 (2009).

[7] Category 3 FHR tracings are abnormal and have been associated with an increased risk of neonatal encephalopathy, cerebral palsy, and neonatal acidosis. If unresolved, category 3 tracings most often require prompt delivery. *Management of Intrapartum Fetal Heart Tracings* No. 116. American College of Obstetricians and Gynecologists. Obstet Gynecol 2010; 116:1232-1240; see also, *Intrapartum Fetal Heart Rate Monitoring: Nomenclature, Interpretation, and General Management Principles.* Practice Bulletin No. 106. American College of Obstetricians and Gynecologists. Obstet Gynecol 2009; 114:192-202.

[8] According to Dr. L.C., Respondent never spoke to her about Patient A, he did not sign the patient out to her, and he did not hand the patient off to her. Dr. L.C. was unaware at the time that Respondent had left the patient to go home to have dinner with his wife.

Flowsheet, Respondent was "in house" at 10:36 p.m. and bedside at 10:37 p.m. Respondent called for a C-section at 10:39 p.m. based on the patient's "failure to progress."[9]

14. Respondent began the C-Section at 11:26 p.m., with Dr. B.K. assisting. Patient A's baby was born at 11:30 p.m. (after more than four hours of stage 2 labor). The Operative Report states the indication for C-section was failure to progress with no mention of the FHR tracings and inadequate documentation of the three failed attempts at a vacuum assisted delivery. The Operative Report also indicates "[b]aby delivered cephalic presentation" with the C-Section Procedure Note documenting the presentation as vertex-OP (Occiput Posterior) [head down with the back of the baby's head toward the mother's back]. The Operative Report further indicates "Cord blood samples taken," however, Respondent subsequently indicated in his subject interview with a Board investigator that cord blood samples were not taken and there is no other indication that cord gasses were, in fact, taken at the time of delivery.

15. A "Postpartum Communication" in the hospital records indicates a birth weight of 3350 grams (7 pounds, 6 ounces) with Apgar scores of 8 at one minute and 9 at five minutes, with transfer to the NICU (neonatal intensive care unit), with documentation of "Infant Complications [of] Extended Fetal Tachycardia, Multiple Variable Decels [Decelerations]." There were concerns over "swelling on infant head" with a call to pediatrics to evaluate the baby. Evaluation of the baby by pediatrics noted what appeared to be a squishy head with concern of internal swelling and/or bleeding.

16. On or about September 13, 2016, the baby was transferred to a Children's Hospital of Orange County (CHOC) for further evaluation "[d]ue to fluid wave under scalp and significant fluid collection..." Evaluation at CHOC revealed a large subgaleal hematoma.[10] Because of the

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[9] A Miscellaneous Note drafted by Respondent at 10:48 p.m. indicated, "Pushing for 3 hrs, impressive bloody show. I have tried Kiwi vacuum with no success. Pt. then placed in dorsal supine position. Labor down with peanut ball x 1 hr. Start pushing again. No progress in descind [sic]. Proceed with c/sec. Risk and benefits explained."

[10] A subgaleal hematoma (SGH), also known as a subgaleal hemorrhage, is a serious complication that occurs when blood accumulates outside of the baby's skull (extracranially). The accumulation occurs in the space between the periosteum of the skull (the membrane that covers the skull) and the scalp aponeurosis (the fibrous tissue that covers over the top of that membrane). Subgaleal hematoma is often associated with vacuum extraction when the physician

severe bleeding, the baby developed coagulopathy (a condition in which the blood's ability to clot is impaired) that was treated with blood products of red blood cells and fresh frozen plasma. A CT scan confirmed the large subgaleal bleed. The baby also had seizures and apneic events which required intubation soon after transfer. An MRI revealed the baby's brain was diffusely abnormal throughout both cerebral hemispheres. The findings were highly suspicious for global hypoxic ischemic injury (brain damage caused by insufficient oxygenated blood flow during or near the time of birth). According to the available medical records, additional problems included, but were not limited to, spastic quadriparesis secondary to cerebral palsy, hypoxic ischemic encephalopathy, acquired microcephaly and poor feeding.

17. Respondent committed gross negligence in his care and treatment of Patient A which included, but was not limited to, the following:

(a) Respondent failed to perform an immediate Cesarean section following the failed vacuum delivery attempts;

(b) Respondent exhibited a lack of knowledge and failed to act expeditiously and decisively in response to a non-reassuring FHR tracing; and

(c) Respondent exercised poor judgment in leaving the hospital after the failed vacuum delivery attempts and failed to effectively communicate with in-house colleagues regarding Patient A's status.

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place the suction cup on the wrong part of the baby's head, applies too much pressure or force, keeps the cup suctioned for an extended period of time, or makes too many attempts at using the vacuum extractor with pop-offs, which can cause bleeding with the subgaleal space between the scalp and skull. Davis, D.J., *Neonatal Subgaleal Hemorrhage: Diagnosis and Management*, Canadian Medical Association Journal (2010), 164(10), 1452-1453. "Vacuum-assisted vaginal deliveries can cause significant fetal morbidity, including scalp lacerations, cephalo hematomas, subgaleal hematomas, intracranial hemorrhage, facial nerve palsies, hyperbilirubinemia, and retinal hemorrhage." Ensile, A. Ali, MD, et al., *Vacuum-Assisted Vaginal Delivery, Reviews in Obstetrics & Gynecology*, Vol. 2, No. 1 (2009).

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

18. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that Respondent committed repeated negligent acts in his care and treatment of Patient A, as more particularly alleged herein.

19. Respondent committed repeated negligent acts in his care and treatment of Patient A, which included, but was not limited to, the following:

(a) Paragraphs 8 through 17, above, are hereby incorporated by reference and realleged as if fully set forth herein;

(b) Respondent failed to perform an immediate Cesarean section following the failed vacuum delivery attempts;

(c) Respondent exhibited a lack of knowledge and failed to act expeditiously and decisively in response to non-reassuring FHR tracing;

(d) Respondent exercised poor judgment in leaving the hospital after the failed vacuum delivery attempts and failed to effectively communicate with in-house colleagues regarding Patient A's status;

(e) Respondent failed to obtain cord gasses at the time of birth; and

(f) Respondent failed to maintain adequate and accurate medical records which included, but was not limited to, failing to adequately document the indication for the vacuum assisted delivery attempts; failing to adequately document the position of the baby at the time of the vacuum assisted delivery attempts; failing to adequately document an informed consent discussion regarding vacuum assisted delivery; and failing to adequately document the non-reassuring fetal status, abnormal heart rate tracing and/or the category 2 and 3 tracings prior to delivery and the number of failed vacuum assisted delivery attempts in the medical record documentation regarding the C-section.

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THIRD CAUSE FOR DISCIPLINE

(Incompetence)

20. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (d), of the Code, in that he exhibited incompetence and/or a lack of knowledge in his care and treatment of Patient A and her baby, as more particularly alleged in paragraphs 8 through 19, above, which are incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

21. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that he failed to maintain adequate and accurate records in his care and treatment of Patient A, as more particularly alleged in paragraphs 8 through 20, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

22. Respondent is further subject to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 8 through 21, above, which are 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 Number G 74748, issued to Respondent Humayon Yousuf Khan, M.D.;

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

3. Ordering Humayon Yousuf Khan, 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: APR 29 2021

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

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