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

In the Matter of the Second Amended Accusation Against: Aref Bhuiya, M.D. Physician's and Surgeon's Certificate No. A 67793 Respondent.	Case No.: 800-2018-041958

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 January 26, 2023.

IT IS SO ORDERED: December 27, 2022.

MEDICAL BOARD OF CALIFORNIA

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

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Second Amended Accusation Against: **AREF BHUIYA, M.D.** **5655 Lindero Canyon Road, Suite 202** **Westlake Village, CA 91362** **Physician's and Surgeon's Certificate No. A 67793,** Respondent.	Case No. 800-2018-041958 OAH No. 2021070250 **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 Latrice R. Hemphill, Deputy Attorney General.

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2. Respondent Aref Bhuiya, M.D. (Respondent) is represented in this proceeding by attorney Peter G. Bertling, Esq., whose address is: 21 East Canon Perdido St., Suite 204B, Santa Barbara, CA 93101.

3. On or about March 19, 1999, the Board issued Physician's and Surgeon's Certificate No. A 67793 to Aref Bhuiya, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Second Amended Accusation No. 800-2018-041958, and will expire on October 31, 2024, unless renewed.

JURISDICTION

4. Second Amended Accusation No. 800-2018-041958 was filed before the Board, and is currently pending against Respondent. The Second Amended Accusation and all other statutorily required documents were properly served on Respondent on May 16, 2022. Respondent timely filed his Notice of Defense contesting the Second Amended Accusation.

5. A copy of Second Amended Accusation No. 800-2018-041958 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Second Amended Accusation No. 800-2018-041958. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Second Amended Accusation No. 800-2018-041958, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations in Second Amended Accusation No. 800-2018-041958, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. A 67793 to disciplinary action.

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

CONTINGENCY

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

13. 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 Second Amended Accusation No. 800-2018-041958 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.

14. 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.

15. 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. A 67793 issued to Respondent AREF BHUIYA, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for fifty-nine (59) months on the following terms and conditions:

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

A medical record keeping course taken after the acts that gave rise to the charges in the 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.

2. 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.

3. 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 and Second Amended Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Second Amended Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Second Amended Accusation, 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 until successful completion of the clinical competency program, Respondent 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 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. 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.

4. 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.

5. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

6. 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.

7. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, in the amount of $12,248.00 (twelve thousand two hundred forty-eight dollars and zero cents). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

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

The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility to repay investigation and enforcement costs.

8. 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.

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9. 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.

10. 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.

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11. 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.

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; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

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12. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. This term does not include cost recovery, which is due within 30 calendar days of the effective date of the Order, or by a payment plan approved by the Medical Board and timely satisfied. Upon successful completion of probation, Respondent's certificate shall be fully restored.

13. 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.

14. 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.

15. 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.

16. 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 Second Amended Accusation No. 800-2018-041958 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 G. Bertling, 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: 11 / 10 / 2022

AREF BHUIYA, M.D.
Respondent

I have read and fully discussed with Respondent Aref Bhuiya, 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: 11 / 10 / 2022

PETER G. BERTLING, ESQ.
Attorney for Respondent

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ENDORSEMENT

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

DATED: 11/13/2022

Respectfully submitted,

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

LATRICE R. HEMPHILL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Second Amended Accusation No. 800-2018-041958

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

In the Matter of the Second Amended Accusation Against: **AREF BHUIYA, M.D.** **5655 Lindero Canyon Road, Suite 202** **Westlake Village, CA 91362-4044** **Physician's and Surgeon's Certificate No. A 67793,** Respondent.	Case No. 800-2018-041958 OAH No. 2021070250 **SECOND AMENDED ACCUSATION**

PARTIES

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

2. On or about March 19, 1999, the Board issued Physician's and Surgeon's Certificate Number A 67793 to Aref Bhuiya, 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 October 31, 2022, unless renewed.

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JURISDICTION

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

4. Section 2227 of the Code states:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.
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> (b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

5. Section 2216 of the Code states:

> On or after July 1, 1996, no physician and surgeon shall perform procedures in an outpatient setting using anesthesia, except local anesthesia or peripheral nerve blocks, or both, complying with the community standard of practice, in doses that, when administered, have the probability of placing a patient at risk for loss of the patient's life-preserving protective reflexes, unless the setting is specified in Section 1248.1. Outpatient settings where anxiolytics and analgesics are administered are excluded when administered, in compliance with the community standard of practice, in doses that do not have the probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes.
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> The definition of outpatient settings contained in subdivision (c) of Section 1248 [of the Health and Safety Code] shall apply to this section.

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6. 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.

7. 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.

COST RECOVERY

8. Section 125.3 of the Code states:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

(k) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licensee. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435.

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DEFINITIONS

9. Abdominoplasty is a surgical procedure that flattens the abdomen by removing extra fat and skin and tightening muscles in the abdominal wall. This procedure is commonly known as a "tummy tuck."

10. Liposuction is a surgical procedure that uses a suction technique to remove fat from specific areas of the body and also contours areas of the body.

11. Debridement is the removal of dead or infected skin tissue to help a wound heal.

12. Vicryl Suture is a synthetic absorbable suture.

13. Platelet-Rich Plasma Treatment/Therapy (PRP) is a process that uses injections of a concentration of a patient's own platelets to accelerate the healing of an injured area.

14. Ceftriaxone is an antibiotic that is used to treat a wide variety of bacterial infections. This medication is often used in an injection.

15. Neurotoxin is a toxin that is destructive to the nerve tissue and alters the structure or function of the nervous system.

FACTUAL ALLEGATIONS

16. In December 2016, Respondent worked as a sole medical provider in his two medical offices, located at 5655 Lindero Canyon Road, Suite 202, Westlake Village, California 91362 and 1037 Truman Street, San Fernando, California 91340.

17. Patient A[1] is a forty-five (45) year-old woman who initially sought Respondent's services in July 2016 for neurotoxin and filler treatments. Patient A later received laser hair removal services from Respondent in November 2016.

18. On or about December 1, 2016, Patient A presented to Respondent for a consultation for an abdominoplasty and liposuction. At this time, Patient A made a $500.00 deposit on the procedure, which was scheduled for December 10, 2016. Patient A had pre-operative labs drawn and was given prescriptions for Percocet, Soma, Augmentin, and Zofran.

19. On or about December 10, 2016, Patient A presented to Respondent's Westlake Village office. Patient A signed a consent form for the abdominoplasty surgery, which included a

[1] The patient is identified as "Patient A" in this Accusation to protect her privacy.

list of potential complications. Pre-operative photographs were also taken of Patient A. Further, Patient A received post-operative and additional instructions pertaining to the surgery. Patient A did not sign a consent form for the liposuction procedure.

20. According to Respondent's records, Patient A was given cefazolin and Zofran intramuscularly and 50 mg of Demerol intravenously, preoperatively. At the start of the procedure, she was given tumescent local anesthesia using Klein's formula. The surgery started around 1:45 p.m. and was completed around 8:00 p.m. Patient A was discharged from Respondent's office at approximately 10:00 p.m.

21. Respondent's records indicate that "all of the skin below the umbilical area was excised" during the surgery.

22. According to Respondent's medical assistant, Patient A's vitals were first taken around 11:00 a.m. and the surgical procedure began between 11:00 a.m. to noon. The medical assistant also recalled that the procedure ended late and Patient A was discharged around midnight.

23. On December 12, 2016, Patient A had a telephone call with Respondent. Patient A complained that she did not have a belly button. Respondent advised Patient A that during her prior mini tummy tuck procedure the surgeon must have floated her belly button by ligating her belly button stock. Respondent told Patient A that he would try to create a new belly button for her in the future.

24. On or about December 14, 2016, Patient A met with Respondent for her first post-operative appointment. Respondent took some post-operative photographs of Patient A.

25. Within a week of surgery, Patient A complained that she felt tightness on her abdomen and she noticed that her stitches started to come apart. Respondent renewed Patient A's prescription for antibiotics and added additional antibiotics to the regimen.

26. On or about December 28, 2016, Patient A returned to Respondent to have eschar debrided from the center of the incision. After the eschar was removed, Respondent closed the wound with 3-0 Vicryl sutures.

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27. Patient A returned to Respondent for a wound check on December 30, 2016. Respondent noted an opening of the incision at the mid-abdominal area. Respondent instructed Patient A not to engage in any strenuous activity or bend stomach area too quickly. Patient A was told to rest so the incision area could heal. Patient A was to return the next day for re-suturing of the mid-abdominal area. She was to continue taking Bactrim and Clindamycin.

28. On or about December 31, 2016, Patient A returned to Respondent for another procedure. She was put under intravenous Versed and local anesthesia and the previous suture was removed and the site was sutured again with 3-0 Vicryl. Patient A was again instructed to "baby" her abdomen.

29. On or about January 11, 2017, Patient A's incision was noted to be separating again. Patient A returned to Respondent and the previous suture was removed and another procedure was conducted under intravenous Versed and local anesthesia to close the incision. A day later, Respondent renewed Patient A's prescription for antibiotics.

30. Patient A made follow-up visits to Respondent on or about January 20, 2017; January 30, 2017; February 5, 2017; March 14, 2017; March 21, 2017; and March 28, 2017. At each of these visits, it was found that the incision was again separating and Patient A underwent procedures where Vicryl sutures were used to approximate the wound edges and close the incision.

31. On or about April 1, 2017, Patient A contacted Respondent and reported another wound separation. Respondent told Patient A to let the wound heal "on its own."

32. On or about April 4, 2017, Respondent examined Patient A and reiterated that she needed to let the wound heal by itself. Subsequently, on April 20, 2017, Respondent performed another procedure, using Vicryl sutures to close Patient A's incision.

33. Patient A returned to see Respondent on or about April 24, 2017. Respondent recommended that Patient A keep the area clean and dry and renewed her prescription for antibiotics.

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34. On or about May 3, 2017, Patient A agreed to use platelet rich plasma (PRP) treatments. On May 4, 2017, Patient A underwent phlebotomy for a blood specimen and PRP was derived from the blood sample. The PRP was then injected into the wound site.

35. Patient A had follow-up visits with Respondent on May 5, 2017; May 18, 2017; June 1, 2017; and June 15, 2017, where healing progress was documented in Respondent's records.

36. Following this progress, a plan was formulated to revise the "dog ears" at the abdominoplasty incision ends and to create a belly button. The surgery was scheduled for July 15, 2017.

37. On or about July 15, 2017, Respondent performed the aforementioned surgery, in an attempt to create a new belly button for Patient A.

38. Patient A states that she had a "golf ball" sized mass underneath the incision site, the morning following the procedure. Although he was in contact with Patient A, Respondent's notes do not reflect any complaints from Patient A until July 20, 2017, when she complained of itchiness at the incision site. On or about July 26, 2017, Patient A reported two days of pain at the belly button area. Respondent advised Patient A to come in for evaluation. On inspection, the site had swelling, erythema, and was tender to touch. She was told to apply wet to dry dressings and continued on antibiotics.

39. On or about July 29, 2017, Patient A reported purulent drainage from the belly button area to Respondent. Respondent consulted with infectious disease specialist, Sujay Dutta, M.D., who recommended that cultures of the drainage be obtained and that the patient's antibiotics be changed.

40. On or about July 31, 2017, Respondent again consulted with Dr. Dutta and referred Patient A to the specialist.

41. Dr. Dutta started Patient A on a series of antibiotics, including a ceftriaxone regimen and amoxicillin. On or about August 17, 2017, Dr. Dutta performed a debridement procedure on Patient A's belly button. He continued her on antibiotics.

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42. Patient A returned to see Dr. Dutta on or about September 15, 2017. She reported that she had been in Europe and had not taken her antibiotics. On evaluation, Dr. Dutta observed that Patient A's belly button had again dehisced. Dr. Dutta continued Patient A on antibiotics.

43. Patient A was discharged from Dr. Dutta's care on or about October 6, 2017.

44. Patient A was last seen by Respondent on December 6, 2017, for an unrelated laser hair removal procedure.

FIRST CAUSE FOR DISCIPLINE

(Incompetence)

45. Respondent is subject to disciplinary action under Code section 2234, subdivision (d), in that he demonstrated incompetence and a lack of knowledge in the care and treatment of Patient A, as more particularly alleged in paragraphs 16 through 44, above, which are hereby incorporated by reference and alleged as if fully set forth herein. The circumstances are as follows:

46. Respondent is not board-certified in any surgical specialty and does not have any formal training in an accredited or non-accredited surgery residency. Respondent received his training in internal medicine.

47. Respondent performed an unduly lengthy cosmetic procedure on Patient A.

48. Respondent waited at least seven months after the abdominoplasty before referring Patient A to an Infectious Disease specialist, despite persistent infections and repeated debridement procedures on her wound.

49. Respondent performed repeated wound closure events under adverse circumstances and prescribed unnecessary antibiotic therapy for Patient A.

50. Respondent's acts and/or omissions as set forth in paragraphs 45 through 48, above, whether proven individually, jointly, or in any combination thereof, constitute incompetence pursuant to section 2234, subdivision (d), of the Code. Therefore, cause for discipline exists.

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SECOND CAUSE FOR DISCIPLINE

(Negligence/Repeated Negligent Acts)

51. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code, in that he engaged in negligence in his care and treatment of Patient A. Complainant refers to and, by this reference, incorporates herein, paragraphs 16 through 44, above, as though fully set forth herein. The circumstances are as follows:

52. The standard of care requires that physicians maintain complete, accurate and consistent medical records pertaining to patient care.

53. In reviewing Respondent's records for Patient A there are a number of discrepancies that indicate that the records are inaccurate. These tend to underestimate the actual findings as documented by comparison with the photos contained in the medical records.

54. For example, the operative note dated December 10, 2016 states that all of the skin below the umbilicus was removed. However, a review of the pre-operative and post-operative photographs depict that statement is not true.

55. Respondent's chart note dated February 8, 2017, indicates that Patient A's abdominal incision edges were together. However, post-operative photographs depict wound separation across a majority of the wound closure.

56. Respondent's chart note dated March 21, 2017, indicates that Patient A's mid-abdominal incision was slightly open. Respondent's note dated March 24, 2017, indicates that Patient A's incision was closed. However, post-operative photographs, dated March 12, 2017 and April 23, 2017, depict significant skin breakdown extending below the incision closure.

57. Respondent's progress note dated July 27, 2017, indicates that Patient A's umbilicus was "doing better." However, there was erythema at the edges. Further, photographs captured by Patient A on July 26 and July 27, 2017, depict a necrosis of the neoumbilical flap tissues with complete loss of the umbilical reconstruction.

58. In the progress note of August 18, 2017, Respondent notes that there is granulation tissue or healing at the center of the umbilical site. The image of the area shows what appears to be a complete separation and loss of the umbilical flaps.

59. The standard of care requires that all patients undergoing a surgical procedure should review, understand and consent to, and sign an informed consent document regarding the procedure to be performed.

60. Respondent did not have Patient A sign an informed consent document for the tumescent liposuction procedure he performed on her on or about December 10, 2016.

61. Respondent's acts and/or omissions as set forth in paragraphs 51 through 60, above, whether proven individually, jointly, or in any combination thereof, constitute repeated negligent acts pursuant to section 2234, subdivision (c), of the Code. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Surgical Procedure in Non-Accredited Facility)

62. Respondent is subject to disciplinary action under Code section 2216 in that he used anesthesia during a procedure that potentially placed Patient A at risk for loss of the patient's life-preserving protective reflexes, in an outpatient facility, as more particularly alleged in paragraphs 16 through 44, above, which are hereby incorporated by reference and alleged as if fully set forth herein. The circumstances are as follows:

63. The standard of care requires a physician who plans to administer anesthesia, during a procedure, in doses that have the probability of placing the patient at risk for loss of patient's life-preserving protective reflexes, to perform the procedure in an accredited, licensed, or certified setting.

64. Demerol, as supportive anesthesia, should be administered as repeated slow intravenous injections of fractions of doses, or continuous infusions of a more dilute solution. Rapid intravenous injections of Demerol increase the incidence of adverse reactions, such as severe respiratory depression and cardiac arrest. As such, Demerol should not be administered intravenously unless the facilities for assisted or controlled respiration are immediately available.

65. Intravenous Versed has been associated with respiratory depression and respiratory arrest, especially when used for sedation in noncritical care settings. Intravenous Versed should be used only in hospital and ambulatory care settings, including physician offices that provide for continuous monitoring of respiratory and cardiac function. However, immediate availability of

resuscitative drugs and appropriate equipment for ventilation and intubation and trained personnel should be assured. Further, the initial intravenous dose for sedation in adult patients should not exceed 2.5 mg in a normal healthy adult.

66. During the initial abdominoplasty, Respondent sedated Patient A with intravenous Demerol. The Demerol was given as a bolus of 50 mg and 25 mg intravenously, which is not in accordance Demerol's use as a supportive anesthesia.

67. During at least 13 subsequent procedures, Respondent sedated Patient A with intravenous Versed of 5 mg, which placed Patient A at risk for loss of life-preserving protective reflexes. Further, according to Respondent's notes, there were single line entries of vital signs and no indication of continuous monitoring or immediate availability of resuscitative drugs, and age and size appropriate equipment for ventilation and intubation and personnel trained in their use and skilled airway management.

68. Respondent's use of local anesthesia during his treatment of Patient A was augmented and, as a result, Patient A was put at risk for respiratory depression and loss of life-preserving protective reflexes

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

69. Respondent is subject to disciplinary action under 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 16 through 44, and 52 through 60, above, which are hereby incorporated by reference and alleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

70. Respondent is subject to disciplinary action under Code section 2234, subdivision (a), in that Respondent engaged in unprofessional conduct. The circumstances are as follows:

71. The allegations in the First, Second, Third and Fourth Causes for Discipline, in paragraphs 45 through 69, above, are incorporated herein by reference as if fully set forth.

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DISCIPLINARY CONSIDERATIONS

72. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about May 26, 2016, in a prior disciplinary action titled *In the Matter of the Accusation Against Aref Bhuiya, M.D.* before the Medical Board of California, in Case Number 09-2013-232081, Respondent's license was revoked, with the revocation stayed for a period of thirty-five (35) months, subject to terms and conditions. This action was taken due to sustained allegations of aiding and abetting unlicensed practice; false representations; practicing under false or fictitious name without fictitious name permit; and unprofessional conduct. That decision is now final and is incorporated by reference as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 67793, issued to Respondent Aref Bhuiya, M.D.;

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

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

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

DATED: MAY 16 2022

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

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