

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

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

Asghar Oliai, M.D.)

Case No. 800-2017-038201

**Physician's and Surgeon's)
Certificate No. C50271)**

**Respondent)
_____)**

DECISION

The attached Stipulated Surrender of License 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 July 1, 2020.

IT IS SO ORDERED April 7, 2020.

MEDICAL BOARD OF CALIFORNIA

By: _____

Christine J. Lally

Interim Executive Director

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 KAROLYN M. WESTFALL
Deputy Attorney General
4 State Bar No. 234540
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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 800-2017-038201

14 **ASGHAR OLIAI, M.D.**
278000 Medical Center Dr., #318
15 Mission Viejo, CA 92691

OAH No. 2019120068

**STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY ORDER**

16 **Physician's and Surgeon's Certificate**
17 **No. C 50271**

Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. This action was brought by Complainant Kimberly Kirchmeyer in her official
23 capacity as the then Executive Director of the Medical Board of California (Board). Kimberly
24 Kirchmeyer became the Director of the Department of Consumer Affairs on October 28, 2019.
25 On that date, Christine J. Lally became the Interim Executive Director of the Board, and the
26 Complainant in this action. She is represented in this matter by Xavier Becerra, Attorney General
27 of the State of California, by Carolyn M. Westfall, Deputy Attorney General:

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2. Asghar Oliai, M.D. (Respondent) is represented in this proceeding by Raymond J. McMahon, Esq., of Doyle Schafer McMahon, whose address is 5440 Trabuco Road, Irvine, California 92620.

3. On or about June 18, 1999, the Board issued Physician's and Surgeon's Certificate No. C 50271 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. 800-2017-038201 and will expire on December 21, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-038201 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 October 1, 2019. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2017-038201 is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-038201. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License 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. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 **CULPABILITY**

2 8. Respondent does not contest that, at an administrative hearing, Complainant could
3 establish a *prima facie* case with respect to the charges and allegations contained in Accusation
4 No. 800-2017-038201, a true and correct copy of which is attached hereto as Exhibit A, and that
5 he has thereby subjected his Physician's and Surgeon's Certificate No. C 50271 to disciplinary
6 action. Respondent hereby surrenders his Physician's and Surgeon's Certificate No. C 50271 for
7 the Board's formal acceptance with an agreed upon effective date of July 1, 2020.

8 9. Respondent agrees that his Physician's and Surgeon's Certificate No. C 50271 is
9 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth
10 in the Disciplinary Order below.

11 10. Respondent further agrees that if he ever petitions for reinstatement of his Physician's
12 and Surgeon's Certificate No. C 50271, all of the charges and allegations contained in Accusation
13 No. 800-2017-038201 shall be deemed true, correct, and fully admitted by Respondent for
14 purposes of any such proceeding or any other licensing proceeding involving Respondent in the
15 State of California or elsewhere.

16 11. Respondent understands that by signing this stipulation he enables the Interim
17 Executive Director of the Board to issue an order, on behalf of the Board, accepting the surrender
18 of his Physician's and Surgeon's Certificate No. C 50271 without further process.

19 **CONTINGENCY**

20 12. Business and Professions Code section 2224, subdivision (b), provides, in pertinent
21 part, that the Medical Board "shall delegate to its executive director the authority to adopt a ...
22 stipulation for surrender of a license."

23 13. This Stipulated Surrender of License and Disciplinary Order shall be subject to the
24 approval of the Interim Executive Director on behalf of the Board. The parties agree that this
25 Stipulated Surrender of License and Disciplinary Order shall be submitted to the Interim
26 Executive Director for her consideration in the above-entitled matter and, further, that the Interim
27 Executive Director shall have a reasonable period of time in which to consider and act on this
28 Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this

1 stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or
2 seek to rescind this stipulation prior to the time the Interim Executive Director, on behalf of the
3 Board, considers and acts upon it.

4 14. The parties agree that this Stipulated Surrender of License and Disciplinary Order
5 shall be null and void and not binding upon the parties unless approved and adopted by the
6 Interim Executive Director on behalf of the Board, except for this paragraph, which shall remain
7 in full force and effect. Respondent fully understands and agrees that in deciding whether or not
8 to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Interim
9 Executive Director and/or the Board may receive oral and written communications from its staff
10 and/or the Attorney General's Office. Communications pursuant to this paragraph shall not
11 disqualify the Interim Executive Director, the Board, any member thereof, and/or any other
12 person from future participation in this or any other matter affecting or involving Respondent. In
13 the event that the Interim Executive Director on behalf of the Board does not, in her discretion,
14 approve and adopt this Stipulated Surrender of License and Disciplinary Order, with the
15 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
16 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
17 hereto. Respondent further agrees that should this Stipulated Surrender of License and
18 Disciplinary Order be rejected for any reason by the Interim Executive Director on behalf of the
19 Board, Respondent will assert no claim that the Interim Executive Director, the Board, or any
20 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
21 Stipulated Surrender of License and Disciplinary Order or of any matter or matters related hereto.

22 **ADDITIONAL PROVISIONS**

23 15. This Stipulated Surrender of License and Disciplinary Order is intended by the parties
24 herein to be an integrated writing representing the complete, final, and exclusive embodiment of
25 the agreements of the parties in the above-entitled matter.

26 16. The parties agree that copies of this Stipulated Surrender of License and Disciplinary
27 Order, including copies of the signatures of the parties, may be used in lieu of original documents
28 and signatures and, further, that such copies shall have the same force and effect as originals.

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

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 50271, issued to Respondent Asghar Oliai, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a physician and surgeon in California as of the effective date of the Board's Decision and Order, which shall be on July 1, 2020.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2017-038201 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. 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 agency in the State of California, all of the charges and allegations contained in Accusation, No. 800-2017-038201 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 licensure.

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1 ACCEPTANCE

2 I have carefully read the above Stipulated Surrender of License and Disciplinary Order and
3 have fully discussed it with my attorney, Raymond J. McMahon, Esq. I understand the
4 stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. C 50271. I
5 enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and
6 intelligently, and agree to be bound by the Decision and Order of the Medical Board of
7 California.

8
9 DATED: 3/21/20


ASGHAR OLIAI, M.D.
Respondent

11 I have read and fully discussed with Respondent, Asghar Oliai, M.D., the terms and
12 conditions and other matters contained in this Stipulated Surrender of License and Disciplinary
13 Order. I approve its form and content.

14
15 DATED: March 25, 2020


RAYMOND J. MCMAHON, ESQ.
Attorney for Respondent

17 ENDORSEMENT

18 The foregoing Stipulated Surrender of License and Disciplinary Order is hereby
19 respectfully submitted for consideration by the Medical Board of California of the Department of
20 Consumer Affairs.

21 DATED: 3/27/2020

Respectfully submitted,

22 XAVIER BECERRA
23 Attorney General of California
24 ALEXANDRA M. ALVAREZ
25 Supervising Deputy Attorney General

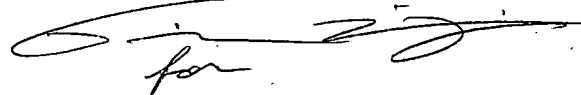

26 KAROLYN M. WESTFALL
27 Deputy Attorney General
28 Attorneys for Complainant

Exhibit A

Accusation No. 800-2017-038201

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Oct 1 2019
BY D. Richards ANALYST

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
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14 **ASGHAR OLIAI, M.D.**
27800 Medical Center Rd., #318
15 Mission Viejo, CA 92691

ACCUSATION

16 **Physician's and Surgeon's Certificate**
No. C 50271,

17 Respondent.

18
19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about June 18, 1999, the Medical Board issued Physician's and Surgeon's
24 Certificate No. C 50271 to Asghar Oliai, M.D. (Respondent). The Physician's and Surgeon's
25 Certificate was in full force and effect at all times relevant to the charges brought herein and will
26 expire on December 31, 2020, unless renewed.

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JURISDICTION

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

4. Section 2227 of the Code 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.

5. Section 2234 of the Code, states in pertinent part:

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

...

(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.

...

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

...

6. Section 2261 of the Code states:

Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct.

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.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 8. Respondent has subjected his Physician's and Surgeon's Certificate No. C 50271 to
4 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of
5 the Code, in that he was grossly negligent in his care and treatment of Patient A,¹ as more
6 particularly alleged hereinafter:

7 9. On or about October 14, 2012, Patient A, a forty-eight year old female, presented to
8 the emergency room with complaints of recurring non-radiating abdominal pain in the mid-
9 epigastric area. The patient reported having a cholecystectomy² two years prior. Blood tests
10 revealed significantly elevated liver enzymes, and the patient was admitted to the hospital for a
11 biliary ultrasound and treatment of pancreatitis.

12 10. On or about October 14, 2012, an ultrasound revealed Patient A's common bile duct
13 measured 1 cm in size, which was abnormal postcholecystectomy, and a magnetic resonance
14 cholangiopancreatography (MRCP)³ was recommended.

15 11. Sometime between on or about October 14, 2012, and on or about October 16, 2012,
16 Patient A refused an MRCP due to anxiety and claustrophobia.

17 12. On or about October 16, 2012, Respondent met with Patient A for a gastroenterology
18 consultation. In order to rule out the possibility of common duct stone and ampullary stenosis,
19 Respondent recommended an endoscopic retrograde cholangiopancreatography (ERCP).⁴

20 13. On or about October 18, 2012, at approximately 2:09 p.m., Respondent began an
21 ERCP on Patient A under monitored anesthesia care sedation. Respondent was initially unable to

22
23 ¹ To protect the privacy of the patient involved, the patient's name has not been included in this
pleading. Respondent is aware of the identity of the patient referred to herein.

24 ² Cholecystectomy is the surgical removal of the gall bladder.

25 ³ MRCP is a noninvasive MRI exam used to diagnose medical conditions. It produces detailed
26 images of the hepatobiliary and pancreatic systems, including the liver, gallbladder, bile ducts, pancreas
and pancreatic duct.

27 ⁴ ERCP is an endoscopic procedure used to inject dye into the bile and pancreas ducts. X-ray
28 pictures are then taken to see if there is a blockage or narrowing in the biliary or pancreatic ducts caused
by stones, tumors, or scarring.

1 introduce the duodenoscope into the upper esophagus, so he dilated the esophagus with a 15 mm
2 diameter balloon. Respondent was again unable to introduce the duodenoscope into the upper
3 esophagus, so he then dilated the esophagus with a 17 mm diameter balloon.

4 14. After finding no evidence of a tear in the esophagus, Respondent then passed the
5 duodenoscope into the duodenum. He was unable to cannulate the ampulla with standard
6 techniques, so Respondent used a needle knife to cut the orifice of the ampulla, placed a
7 guidewire into what he believed to be the common duct, and obtained a cholangiogram. Over the
8 guidewire, he placed a stent, but did not see any evidence of bile coming through the opening of
9 the stent. Respondent then removed the duodenoscope. An intraoperative fluoroscopy revealed a
10 plastic stent and contrast material in an uncertain location.

11 15. After he removed the duodenoscope, Respondent noticed crepitance in Patient A's
12 neck and clavicular regions on both sides. A chest x-ray was obtained that revealed a
13 pneumothorax and air under the subcutaneous area in the neck and upper chest. At approximately
14 4:30 p.m., the patient was then transferred to the intensive care unit (ICU).

15 16. After being transferred to the ICU, CT scans of Patient A's neck and chest revealed a
16 large right pneumothorax and very extensive subcutaneous emphysema essentially throughout all
17 compartments within the neck and prevertebral space, and a possible esophageal tear. A CT scan
18 of Patient A's abdomen and pelvis revealed a severe pneumoperitoneum⁵ and
19 pneumoretroperitoneum,⁶ consistent with bowel perforation. The scans further revealed a stent
20 located in the upper abdomen, appearing to lie within the peritoneum and retroperitoneum, with a
21 small portion engaging the bowel and not engaging any biliary structures. Respondent was
22 informed of these findings at approximately 10:00 p.m.

23 17. At approximately 10:45 p.m., an emergent chest tube was inserted by Dr. K.C. to
24 reduce the pneumothorax. A subsequent chest x-ray revealed a smaller pneumothorax, continued

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26 ⁵ Pneumoperitoneum is the abnormal presence of air or other gas in the peritoneal cavity.

27 ⁶ Pneumoretroperitoneum is the presence of air in the retroperitoneum. It is always a pathological
28 condition and can be caused by a perforation of a retroperitoneal hollow organ such as the duodenum,
colon, or rectum.

1 severe subcutaneous emphysema throughout the chest and neck, and large volume
2 pneumoretroperitoneum.

3 18. On or about October 19, 2012, Patient A was seen by multiple specialists to
4 determine the exact site of perforation and to determine the next course of action.

5 19. At approximately 10:00 a.m., an esophagram and upper GI showed contrast material
6 along the upper tip of the stent.

7 20. At approximately 10:55 a.m., Respondent performed an upper GI endoscopy on
8 Patient A and removed the biliary stent.

9 21. At approximately 10:15 p.m., Patient A was noted to be draining bile from her right-
10 sided chest tube as well as passing copious amounts of liquid black stool with some bright red
11 blood.

12 22. On or about October 20, 2012, at approximately 2:30 a.m., Dr. S.C. performed an
13 exploratory laparotomy on Patient A, during which a duodenal perforation was identified and
14 repaired, and a large retroperitoneal abscess was drained.

15 23. At approximately 6:50 a.m., Patient A was noted to have critical lab results and
16 continued bleeding.

17 24. At approximately 9:20 a.m., Dr. S.C. performed an emergent exploratory laparotomy
18 with duodenostomy and control of duodenal bleeding.

19 25. At approximately 4:55 p.m., Patient A was noted to be critically ill with disseminated
20 intravascular coagulation and multi-system organ failure.

21 26. On or about October 21, 2012, at approximately 12:52 a.m., Patient A was
22 pronounced dead, and was subsequently transported to Pacific View Mortuary.

23 27. On or about October 21, 2012, Dr. V.E. reported to Pacific View Mortuary that
24 Patient A's death was due to multi-system organ failure and duodenal perforation.

25 28. On or about October 25, 2012, Respondent reported to Pacific View Mortuary that
26 Patient A's death was due to acute respiratory distress syndrome, disseminated intravascular
27 coagulation, hemorrhagic gastritis, and pancreatitis. Respondent did not identify duodenal
28 perforation as a cause or contributing condition to her death.

29. On or about October 25, 2012, Respondent certified the cause of death on Patient A's death certificate to be acute respiratory distress syndrome, disseminated intravascular coagulation, hemorrhagic gastritis, and pancreatitis. Duodenal perforation was not identified as a cause or contributing condition.

30. On or about November 15, 2012, Respondent prepared a Death Summary in Patient A's chart. Within this summary, Respondent specified that several hours after the chest tube was placed in the ICU, Patient A "developed distention of the abdomen and bowel sounds were absent. Immediately the patient was taken to the operating room."

31. On or about June 13, 2019, Respondent was interviewed by an investigator from the Division of Investigations. During that interview, Respondent admitted that the etiology for the causes of death listed on Patient A's death certificate was the duodenal perforation.

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

- A. Failing to cannulate the bile-duct during the ERCP;
- B. Failing to immediately remove the stent and treat the patient for duodenal perforation after seeing Gastrografin outside the duodenum;
- C. Failing to recognize the existence of a duodenal perforation and immediately send the patient to surgery;
- D. Delaying necessary surgery by performing an unnecessary endoscopic stent removal;
- E. Documenting false information in the patient's death summary; and
- F. Failing to accurately report the duodenal perforation as the cause of death or contributing condition on Patient A's death certificate.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

33. Respondent has further subjected his Physician's and Surgeon's Certificate No. C 50271 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and

1 treatment of Patient A, as more particularly alleged in paragraphs 8 through 32, above, which are
2 hereby incorporated by reference and realleged as if fully set forth herein.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Dishonesty or Corruption)**

5 34. Respondent has further subjected his Physician's and Surgeon's Certificate No.
6 C 50271 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
7 subdivision (e), of the Code, in that he has committed an act or acts of dishonesty or corruption,
8 as more particularly alleged in paragraphs 8 through 32, above, which are hereby incorporated by
9 reference and realleged as if fully set forth herein.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(False Representations)**

12 35. Respondent has further subjected his Physician's and Surgeon's Certificate No.
13 C 50271 to disciplinary action under sections 2227 and 2234, as defined by section 2261, of the
14 Code, in that he has knowingly made or signed a certificate or document directly or indirectly
15 related to the practice of medicine which falsely represented the existence or nonexistence of a
16 state of facts, as more particularly alleged in paragraphs 8 through 32, above, which are hereby
17 incorporated by reference and realleged as if fully set forth herein.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Failure to Maintain Adequate and Accurate Records)**

20 36. Respondent has further subjected his Physician's and Surgeon's Certificate No.
21 C 50271 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the
22 Code, in that Respondent failed to maintain adequate and accurate records regarding his care and
23 treatment of Patient A, as more particularly alleged in paragraphs 8 through 32, above, which are
24 hereby incorporated by reference and realleged as if fully set forth herein.

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1 PRAYER

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

4 1. Revoking or suspending Physician's and Surgeon's Certificate No. C 50271, issued to
5 Respondent, Asghar Oliai, M.D.;

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

8 3. Ordering Respondent, Asghar Oliai, M.D., if placed on probation, to pay the Board
9 the costs of probation monitoring; and

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

11
12 DATED: October 1, 2019


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

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