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

In the Matter of the Accusation Against: Derakhsh Fozouni, M.D. Physician's & Surgeon's Certificate No A95051 Respondent.	Case No. 800-2016-027417

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 17, 2020.

IT IS SO ORDERED August 18, 2020.

MEDICAL BOARD OF CALIFORNIA

By: Ronald H. Lewis, MD

Ronald H. Lewis, M.D., Chair
Panel A

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
ROSEMARY F. LUZON
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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: **Derakhsh Fozouni, M.D.** **555 E. Tachevah Drive** **Suite 2W-103** **Palm Springs, CA 92262** **Physician's and Surgeon's Certificate No. A 95051** Respondent.	Case No. 800-2016-027417 OAH No. 2019110175 **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. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical Board of California (Board). This action was brought by then Complainant Kimberly Kirchmeyer solely in her official capacity.[1] Complainant is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Rosemary F. Luzon, Deputy Attorney General.

[1] Ms. Kirchmeyer became the Director of the Department of Consumer Affairs on October 28, 2019.

2. Respondent Derakhsh Fozouni, M.D. (Respondent) is represented in this proceeding by attorneys Dennis Ames, Esq. and Pogey Henderson, Esq., whose address is: La Follette, Johnson, DeHaas, Fesler & Ames, 2677 North Main Street, Suite 901, Santa Ana, CA 92705-6632.

3. On or about April 21, 2006, the Board issued Physician's and Surgeon's Certificate No. A 95051 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. 800-2016-027417, and will expire on September 30, 2021, unless renewed.

JURISDICTION

4. On or about September 26, 2019, Accusation No. 800-2016-027417 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent, at his address of record. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2016-027417 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. 800-2016-027417. 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, having been fully advised of same by his attorneys of record, Dennis Ames, Esq. and Pogey Henderson, Esq.

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7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2016-027417, 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. A 95051 to disciplinary action.

9. Respondent agrees that if an accusation is ever filed against him before the Medical Board of California, all of the charges and allegations contained in Accusation No. 800-2016-027417, except the allegations contained in the FOURTH CAUSE FOR DISCIPLINE (specifically, paragraphs 31 and 32, at page 8, lines 13-20), shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

10. Respondent agrees that his Physician's and Surgeon's Certificate No. A 95051 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

11. This Stipulated Settlement and Disciplinary Order shall be subject to approval by the Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and

agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Board does not, in its discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

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 Respondent Derakhsh Fozouni, M.D., Physician's and Surgeon's Certificate No. A 95051, shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a), subsection (4). This Public Reprimand is issued in connection with the allegations relating to Respondent's care and treatment of Patient A, which are set forth in Accusation No. 800-2016-027417, as follows:

1. PUBLIC REPRIMAND.

In or about June 2015, you failed to adequately manage and document the C-section delivery of Patient A and you exhibited a lack of professional conduct during a visit with Patient A, in violation of California Business and Professions Code sections 2234 and 2266, as more fully described in Accusation No. 800-2016-027417.

2. EDUCATION COURSE.

Within 60 calendar days of the effective date of this Decision, 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. 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. Within one (1) year of the effective date of this Decision, Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

3. 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.

4. 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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5. 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.

6. FAILURE TO COMPLY.

Any failure by Respondent to comply with the terms and conditions of the Disciplinary Order set forth above shall constitute unprofessional conduct and grounds for further disciplinary action.

7. 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. 800-2016-027417, except the allegations contained in the FOURTH CAUSE FOR DISCIPLINE (specifically, paragraphs 31 and 32, at page 8, lines 13-20), 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.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Dennis Ames, Esq. and Pogey Henderson, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A 95051. 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: 6/7/2020

DERAKHSH FOZOUNI, M.D.
Respondent

I have read and fully discussed with Respondent Derakhsh Fozouni, 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: June 08, 2020

DENNIS AMES, ESQ.
POGEY HENDERSON, ESQ.
Attorneys for Respondent

ENDORSEMENT

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

DATED: _____

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

ROSEMARY F. LUZON
Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Dennis Ames, Esq. and Pogey Henderson, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A 95051. 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: _____

DERAKHSH FOZOUNI, M.D.
Respondent

I have read and fully discussed with Respondent Derakhsh Fozouni, 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: _____

DENNIS AMES, ESQ.
POGEY HENDERSON, ESQ.
Attorneys for Respondent

ENDORSEMENT

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

DATED: 6-8-2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

ROSEMARY F. LUZON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-027417

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Sept. 26 2019
BY A. Cerrillo ANALYST

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

In the Matter of the Accusation Against: **Derakhsh Fozouni, M.D.** **555 E. Tachevah Drive** **Suite 2W-103** **Palm Springs, CA 92262** **Physician's and Surgeon's Certificate No. A 95051,** Respondent.	Case No. 800-2016-027417 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about April 21, 2006, the Board issued Physician's and Surgeon's Certificate No. A 95051 to Derakhsh Fozouni, 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 September 30, 2021, unless renewed.

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 2220 of the Code states:

> Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. . .

5. 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.
>
> . . .

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:
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> . . .
>
> (b) Gross negligence.
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> (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.

. . .

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.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent has subjected his Physician's and Surgeon's Certificate No. A 95051 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, as more particularly alleged hereinafter:[1]

9. On or about December 8, 2014, Patient A attended her first obstetric visit with Respondent. On this visit, Patient A was 10.5 weeks pregnant and her due date was July 2, 2015. Patient A continued to see Respondent through on or about June 22, 2015. During a visit that took place on or about May 18, 2015, Patient A's abdominal circumference measured at 37 weeks, while the remaining measurements were at 33 weeks. Patient A was 34 weeks and 1 day pregnant on this visit. Respondent noted "poor nutrition" and that he discussed "poor outcome[s] and potential issues with birth and injury" with Patient A and her husband.

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[1] References to "Patient A" herein are used to protect patient privacy.

10. On or about the early morning of June 25, 2015, Patient A went to the hospital by ambulance. When speaking with Nurse P.M., the triage nurse, Patient A complained of leaking clear fluid before 3:00 a.m. At approximately 3:50 a.m., Nurse P.M. noted SROM (Spontaneous Rupture of Membranes), negative GBS (Group B Streptococcus), and "Fluid: thick meconium."[2] The meconium was described as large in quantity and odorless. Patient A was admitted to the hospital at approximately 4:16 a.m.

11. At approximately 5:01 a.m., Nurse P.M. spoke with Respondent by telephone regarding Patient A. Nurse P.M. relayed Patient A's complaints to Respondent, who then ordered Pitocin[3] to be started at 6:00 a.m.

12. At approximately 10:46 a.m., Nurse A.N. spoke with Respondent by telephone regarding Patient A and notified him of "prolonged decel[eration], SVE [sterile vaginal exam], contraction frequency, pitocin off, and interventions done." Respondent ordered that they wait for half an hour more to restart Pitocin and, if the prolonged decelerations continued, to do an amnioinfusion.

13. At approximately 2:30 p.m., Respondent was at the nurse's station reviewing the fetal heart rate (FHR) tracing. He was aware of Patient A's decelerations. Nurse A.N. noted that no new orders were received from Respondent. Respondent did not document any corresponding assessment or plan, nor the rationale for his decision-making at that time.

14. At approximately 5:00 p.m., Respondent was at the nurse's station and was notified of an SVE, Pitocin dose, and MVUs (Montevideo units). Nurse A.N. noted that no new orders were received. Respondent did not document any corresponding assessment or plan, nor the rationale for his decision-making at that time.

15. From approximately 6:15 a.m. until approximately 5:44 p.m., the presence of meconium was documented numerous times in the nurse notations. No subsequent notations regarding meconium were made until the next day during the C-section delivery.

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[2] Meconium is the baby's first stool, or poop, which is sticky, thick, and dark green. It is typically passed in the womb during early pregnancy and again in the first few days after birth.

[3] Pitocin is the synthetic version of oxytocin, a natural hormone that helps the uterus to contract during labor.

16. At approximately 7:19 p.m., Respondent was at the nurse's station and ordered that Pitocin be stopped at that time, restarted at 2:00 a.m., and then increased every 20 minutes thereafter by two milliunits. Respondent did not document any corresponding assessment or plan, nor the rationale for his decision-making at that time.

17. Between approximately 7:00 p.m. and 7:30 p.m., Respondent visited Patient A and her husband. According to a notation entered at approximately 7:15 p.m. by Nurse D.P., the plan of care was discussed with, and agreed to, by Patient A and her family. Respondent did not document this patient encounter, including any discussions he had with Patient A and her husband regarding the plan of care, the rationale for the plan of care, or any information relating to SROM, meconium, dilation, or the timing and need for a C-section.

18. At approximately 11:45 p.m., Respondent was at the nurse's station reviewing the FHR tracing. Nurse D.P. informed Respondent of Patient A's recurrent late decelerations. Respondent ordered Pitocin to be stopped and to prepare Patient A for a C-section in the morning. Respondent did not document any corresponding assessment or plan, nor the rationale for his decision-making regarding the C-section at that time.

19. The next day, on or about June 26, 2015, at approximately 4:32 a.m., Nurse D.P. spoke with Respondent and notified him of Patient A's recurrent late decelerations, UC (uterine contraction) pattern, and current temperatures, including a temperature of 100.1°F. Respondent stated that Terbutaline[4] may be given to Patient A and to consent Patient A for a C-section. Respondent further stated that he would perform a C-section in the morning.

20. At approximately 5:00 a.m., Patient A signed a hospital consent form for a primary C-section. According to a nursing note that was belatedly entered at approximately 7:50 a.m., Respondent was at Patient A's bedside and obtained her informed consent for a C-section.

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[4] Terbutaline is a medication used to delay preterm labor. It belongs to a class of drugs called betamimetics, which help to prevent and slow contractions of the uterus.

21. According to a late entry nurse note, prior to approximately 7:39 a.m., Respondent was at the nurse's station. Nurse H.A. asked Respondent if he wanted to proceed with Patient A's case first or another scheduled case. Respondent decided to proceed with the other scheduled case.

22. According to a late entry nurse note, prior to approximately 7:45 a.m., Respondent was at the nurse's station reviewing the FHR tracings. Nurse L.N. noted that they were to get Patient A ready for a C-section "to follow the scheduled case."

23. On or about June 26, 2015, prior to the C-section surgery, Respondent completed and signed a "Physician Progress Note – Obstetrical Pre-Delivery Assessment Note." Respondent did not document the presence of thick meconium in his note.

24. At approximately 9:17 a.m., Patient A was transferred to the operating room. According to Respondent's operative report, the indication for surgery was "failure to dilate."

25. By the time of the C-section surgery, Patient A had been at 5 cm dilated since approximately 5:44 p.m. the previous day, a period of almost 16 hours. Patient A also had documented ruptured membranes for a period of almost 31 hours, having spontaneously ruptured at approximately 3:00 a.m. the previous day. In addition, Patient A had documented thick meconium. Since approximately 4:15 a.m. the previous day, Patient A also had nine SVEs and two internal devices placed, *i.e.*, an intrauterine pressure catheter and a fetal scalp electrode.

26. At approximately 9:56 a.m., Patient A gave birth to a baby girl. In his operative report, Respondent noted the presence of "[e]xtremely thick meconium" and "foul amniotic fluid" during the delivery. The baby required immediate resuscitation and intubation, and was promptly taken to the NICU department and, subsequently, to another hospital. The baby passed away later that night. The documented causes of death were cardiorespiratory failure, severe hypoxemia, severe hypotension, and septic shock from bacterial infection.

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

(a) On or about June 26, 2015, prior to approximately 7:39 a.m., Respondent delayed in proceeding with Patient A's C-section delivery in order to perform the scheduled C-section delivery of another patient, despite the presence of multiple, worsening risk factors that rendered Patient A's condition non-elective.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

28. Respondent has subjected his Physician's and Surgeon's Certificate No. A 95051 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 treatment of Patient A, as more particularly alleged in paragraphs 9 through 27, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

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

(a) On or about June 26, 2015, prior to approximately 7:39 a.m., Respondent delayed in proceeding with Patient A's C-section delivery in order to perform the scheduled C-section delivery of another patient, despite the presence of multiple, worsening risk factors that rendered Patient A's condition non-elective.

(b) On or about June 26, 2015, at approximately 4:32 a.m., Respondent delayed in proceeding with Patient A's C-section delivery and did not follow up to provide a definitive C-section in a timely fashion, despite ongoing indications of Patient A's failure to progress and the presence of multiple risk factors.

(c) Respondent did not document an encounter with Patient A that took place on or about June 25, 2015, between approximately 7:00 p.m. and 7:30 p.m., including his discussion with Patient A and her husband regarding the plan of care, the rationale for the plan of care, or any information relating to SROM, meconium, dilation, or the timing and need for a C-section.

(d) Respondent did not document any assessment or plan regarding his decision on or about June 25, 2015, to perform a C-section the following morning, nor did he document the rationale for his decision-making relating to the C-section.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

30. Respondent has subjected his Physician's and Surgeon's Certificate No. A 95051 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 regarding his care and treatment of Patient A, as more particularly alleged in paragraphs 9 through 29, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

31. Respondent has subjected his Physician's and Surgeon's Certificate No. A 95051 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 hereinafter:

32. On or about June 22, 2015, Patient A had her last office visit with Respondent. Patient A's spouse was also present during the visit. Respondent performed a cervical exam on Patient A, during which he stated to Patient A: "Oh, I bet you like that."

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. A 95051, issued to Respondent Derakhsh Fozouni, M.D.;

2. Revoking, suspending or denying approval of Respondent Derakhsh Fozouni, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice nurses;

3. Ordering Respondent Derakhsh Fozouni, 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: September 26, 2019

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

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