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

In the Matter of the Petition for Early Termination of Probation By: John Hassan Rastegar, M.D. Physician's & Surgeon's Certificate No A53847 Respondent	Case No.: 800-2019-063188

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the Petition for Reconsideration, filed by Respondent's Attorney, and the time for action having expired at 5:00 p.m. on January 18, 2021, the petition is deemed denied by operation of law.

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

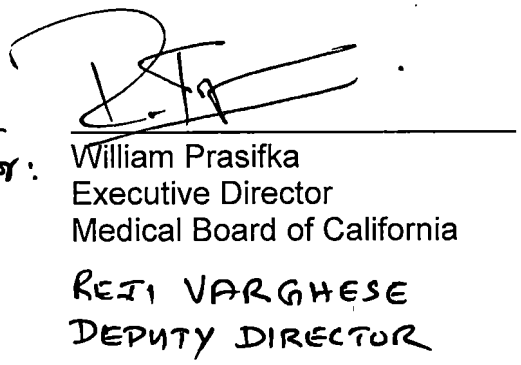
In the Matter of the Decision Against: John Hassan Rastegar, M.D. Physician's & Surgeon's Certificate No A53847 Respondent.	Case No. 800-2019-063188 **ORDER GRANTING STAY** (Government Code Section 11521)

Derek F. O'Reilly-Jones, on behalf of Respondent, John Hassan Rastegar, M.D., has filed a Request for Stay of Execution of the Decision in this matter with an effective date of January 8, 2021, at 5:00 p.m.

Execution is stayed until January 18, 2021, at 5:00 p.m.

This Stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: January 7, 2021



for: William Prasifka
Executive Director
Medical Board of California

REJI VARGHESE
DEPUTY DIRECTOR

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

In the Matter of the Petition for Early Termination of Probation of: John Hassan Rastegar, M.D. Physician's and Surgeon's Certificate No. A 53847 Respondent.	Case No. 800-2019-063188

DECISION

The attached Decision 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 8, 2021.

IT IS SO ORDERED: December 10, 2020.

MEDICAL BOARD OF CALIFORNIA

By: Kristina Lawson
Kristina D. Lawson, J.D., President
Panel B

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

In the Matter of the Petition for Early Termination of Probation of:

JOHN HASSAN RASTEGAR, M.D.,

Physician's and Surgeon's Certificate No. A 53847

Petitioner.

Case No. 800-2019-063188

OAH No. 2020070404

PROPOSED DECISION

Regina Brown, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter remotely on August 17, 2020.

Thomas Ostly, Deputy Attorney General, represented the Office of the Attorney General, Department of Justice.

Derek F. O'Reilly-Jones, Attorney at Law, represented petitioner John Hassan Rastegar, M.D., who was present.

The matter was submitted for decision on August 17, 2020.

FACTUAL FINDINGS

License History

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 53847 (Certificate) to petitioner John Hassan Rastegar, M.D., on January 4, 1995. His Certificate is current with an expiration date of January 31, 2021.

2. On July 12, 2007, the Board filed an accusation alleging that petitioner's Certificate was subject to disciplinary action due to repeated negligence in his care and treatment of patients, incompetence, and inadequate record keeping. The Board issued a Decision and Order after adopting a Stipulated Settlement and Disciplinary Order, effective February 25, 2008, that revoked petitioner's Certificate and placed him on probation for a period of three years on certain terms and conditions. On February 25, 2011, the probation was completed and his Certificate was fully restored.

3. On October 23, 2017, the Board filed an accusation alleging that petitioner's Certificate was subject to disciplinary action due to gross negligence and repeated negligent acts in the treatment of a patient, inadequate and inaccurate record keeping, and unprofessional conduct. The Board issued a Decision and Order after adopting a Stipulated Settlement and Disciplinary Order, effective October 26, 2018, that revoked petitioner's Certificate and placed him on probation for a period of 35 months, on conditions that included: completing 40 hours of additional continuing medical educational courses each year; completing a medical recordkeeping course; having a practice monitor; and being prohibited from supervising physician assistants and advanced practice nurses. Petitioner's probation is scheduled to terminate in September 2021.

4. The circumstances underlying petitioner's current discipline are that, in August 2014, petitioner worked at a clinic and a Spanish-speaking patient complained of abdominal pain. Petitioner found a palpable abdominal mass in the right and left lower quadrants, but he did not document his findings in the chart. He did not conduct a pelvic examination or refer her to another provider. He diagnosed malignant hypertension and a urinary tract infection. Petitioner ordered blood tests and a urinalysis, and prescribed medications. He referred the patient to the emergency room. Petitioner did not schedule a follow up appointment and he did not inform the patient of the abdominal mass or instruct her to follow up with further testing at an appropriate facility. Petitioner told the patient that her condition was not serious and she would get better soon. Petitioner did not document any history in the chart about the patient's complaint of abdominal pain or her severely elevated blood pressure. He did not conduct an adequate physical examination. His chart notes were illegible, inaccurate, and inadequate.

On September 4, 2014, the patient returned to the clinic and a physician assistant reviewed the blood and urinalysis results. The patient was diagnosed with hypertension, abdominal pain (resolved) and hyperlipidemia. She was advised to diet, exercise, and follow up in three months.

By February 14, 2016, the patient's pain had worsened and an ultrasound revealed a 30 cm mass in her left ovary. She underwent a complete hysterectomy. The pathology tests revealed a benign tumor with extensive hemorrhaging and inflammation. She required blood transfusions and a 10-day hospital stay.

5. On December 21, 2019, petitioner filed the petition to terminate probation and this hearing followed.

Petitioner's Evidence

6. Petitioner stated that he agreed to the stipulated settlement (that he did not read before he signed it) in exchange for probation, because he wanted to avoid an expensive and stressful hearing. Petitioner explained that until 2016, he worked on Saturdays at Lincoln Heights Family Medical Group, a private triage clinic in East Los Angeles. The clinic did not have an ultrasound or EKG machine or its own laboratory and it was standard practice to refer patients to an appropriate facility.

Petitioner stated that the accusation was based on a single visit by an obese female patient who was new to the clinic. He stated that he performed a complete examination and he did not palpate any mass on the patient's abdomen at the time. He stated that he ordered tests that the clinic could perform immediately, but she refused them except for the affordable urinalysis test. He stated that he offered to call 911 to transport her to the emergency room so that the patient could have additional tests performed for free, but she declined and said that she would take herself to the emergency room.

Petitioner also stated that if he had been more insistent with the patient or called for an ambulance over her objection, she "may not have blown off the recommended emergency room visit that he assumed she would timely undertake." He placed the blame on the patient and referred to her as a "difficult patient."

7. Petitioner disputed allegations in the accusation and believes that the "criticisms of the Board" were not entirely valid. Petitioner relies on the reports of two independent experts who also disagreed with certain conclusions in the accusation, including one expert who wrote that the "Board's expert reviewer may have wrongly

applied the standard of care that obtains to an academic or university hospital setting to the small, limited-scope, triage-clinic where the visit at issue actually took place."

8. Petitioner admitted that his medical documentation was inadequate, and his handwritten notes were sparse and difficult to read. He stated that if his notes had been "clearer about the patient's refusals of care," this may have been of assistance to the physician assistant that the patient saw a few weeks after his examination.

Petitioner also stated that he stopped working at the clinic because he felt that the systems in place, including the medical record keeping system, were not up to date. Petitioner stated that he has had no other incidents regarding charting or patient care. He now only works at facilities that use electronic medical records systems or "substantially more thorough printed written forms." Also, he has changed his practice to ensure that all chart notes are dictated and transcribed or input into an electronic medical record.

9. In compliance with the conditions of probation, petitioner completed a medical record-keeping course and the required continuing medical education courses. He has paid and is current on all financial obligations. A practice monitor report from Antaun Kiley, M.D., indicated that petitioner's medical records were found to be in compliance with community standards of care with documentation of history, physical exams, supporting lab orders, and plan management. According to petitioner, despite his employment situation and his own hospitalization for a severe respiratory virus in January 2020, he continued to meet his medical practice requirement as he reviewed patients' charts while hospitalized.

Petitioner's Background

10. Petitioner graduated from the Isfahan Medical School in Iran in 1974. He performed military service in family medicine, completed a residency in pediatrics, and became a primary care physician in Iran. In 1993, he moved to the United States and completed a residency at Brookdale Hospital Medical Center in New York, and a fellowship in adult neuropsychiatry at the University of California, Irvine, Long Beach Veterans Administration Hospital from 1996 to 1999. Petitioner has been an active member and Diplomate of the American Board of Urgent Care Medicine since 2001.

11. For 23 years, petitioner worked almost exclusively in urgent care centers and low income family clinics serving the underserved, uninsured and indigent population in the Southern California area. On May 9, 2017, petitioner received a commendation for his work at Central Neighborhood Community Health Foundation. On March 7, 2018, petitioner received the National Committee for Quality Assurance's Patient-Centered Medical Home recognition awarded to six primary care physicians in America for his exceptional performance at his employer, Mission City Community Network. However, these recognitions were before his Certificate was placed on probation.

12. During his probation, petitioner worked at Hollywood Presbyterian where he treated patients without personal care providers during hospital stays, performed preoperative evaluations for surgeons, and evaluated and admitted patients to the hospital from the emergency room. For this work, he is reimbursed at the minimal rate offered by Medi-Cal or Medicare. After the onset of the COVID-19 pandemic, petitioner's physician instructed him to stop working due to his medical conditions and he is now limited to telehealth home-call visits and preoperative chart reviews.

13. Petitioner submitted letters of support, dated prior to his probation, from Myunghae Choi, M.D.; Carlos A. Cosenza, M.D.; and Joseph Eshaghian, M.D.

14. Peter H. Lee, M.D., is a Board-certified Internist and Nephrologist and he previously served as chairman of the governing board and currently serves as president of the medical staff at Hollywood Presbyterian. He testified at the hearing and submitted a letter of support. Dr. Lee has known petitioner for over 17 years and has observed his interactions with patients. Dr. Lee is not aware of any issues regarding petitioner's patient care in the past year and confirmed that petitioner remains in good standing at Hollywood Presbyterian. Dr. Lee has no reservations about petitioner's competence or qualifications. Dr. Lee is confident that the educational requirements and experience of his probation have impressed on petitioner the importance of being complete in his examinations and documentation.

15. Petitioner submitted letters of support for the Board's consideration.

a. Aret Aklan, M.D., is petitioner's colleague at Hollywood Presbyterian. Dr. Aklan did not observe any issues with petitioner's patient care or any documentation issues. He described petitioner as a competent and dedicated doctor in good standing.

b. Myunghae Choi, M.D., M.A.S., F.A.C.C., is a cardiologist and former chief of staff at Hollywood Presbyterian. She has known petitioner for over 10 years. As chief of staff, she was not aware of any issues related to his care and treatment of patients. Dr. Choi described petitioner as ethical, methodical, and one who cares deeply for his patients and "delivers the best medicine possible."

c. Juan Carlos Ricaurte, M.D., is a Board-certified infectious diseases specialist, and has known petitioner since 2012, as a consultant for his patients at Hollywood Presbyterian. Dr. Ricaurte has no reservations about petitioner's clinical

competence and he states that petitioner continues to demonstrate and provide excellent, meticulous, and selfless care to his patients. Dr. Ricaurte has not observed any issues with petitioner's medical documentation, clinical assessments, or treatment plans. He described petitioner as thorough, competent, and an advocate for his patients' best interest.

16. Petitioner states that he has improved his charting, he has followed the orders of his practice monitor, and he has completed the required continuing medical education units. He seeks early termination of probation for various reasons. First, he takes care of his diabetic wife and needs to pay for her medication and his medication stemming from a kidney transplant. Being on probation has reduced his income to one fifth of his pre-probation level and he is under financial pressure. Also, he cannot work at community clinics because he is prohibited from supervising physician assistants and advanced practice nurses and his salary would increase if he could supervise them because it would allow him to see more patients. Additionally, Anthem Blue Cross has terminated petitioner from its provider networks based on his probationary status. Finally, he has been asked to assist with opening a community clinic, but he cannot do so while on probation.

17. Although petitioner is in compliance with the conditions of his probation, he has not demonstrated sufficient insight into his misconduct or a changed attitude. He does not take full responsibility for his actions and appears to be attempting to relitigate the underlying facts which resulted in his probation. He only takes responsibility for some of the deficiencies alleged in the accusation, primarily those related to his charting.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. In a proceeding for the restoration of a license, the burden rests on the petitioner to prove that he or she is rehabilitated and entitled to have his or her license fully restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The showing of rehabilitation must be sufficient to overcome the former adverse determination; the standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

Statutory Authority

2. Business and Professions Code section 2307 provides that a licensee whose certificate has been placed on probation for 35 months may petition for early termination of probation after one year and a licensee whose certificate has been placed on probation for three years or longer may petition for early termination of probation after two years. Petitioner's certificate was placed on probation effective October 26, 2018, and his petition is timely.

3. In determining whether to grant a petition for early termination of probation, all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability may be considered. (Bus. & Prof. Code, § 2307, subd. (e).)

4. Factors considered in determining whether a licensee has been rehabilitated include the following: a) the nature and severity of the act involved; b)

subsequent misconduct; c) the amount of time that has elapsed since the misconduct took place; d) evidence of rehabilitation; and e) whether the licensee has complied with the terms of probation. (Cal. Code Regs., tit. 16, §§ 1360.1, 1360.2.)

Analysis

5. The above described criteria have been considered to determine the outcome of petitioner's request for early termination of probation. The underlying misconduct occurred over six years ago and he has successfully complied with his probation conditions. He is highly regarded by his colleagues. However, he has failed to fully acknowledge his wrongdoing and lacks appreciation that the allegations against him are more than just a medical record-keeping issue. This is particularly troubling as his conduct in the recent probation involved negligent patient care and record-keeping deficiencies similar to the causes for discipline underlying his previous probation in 2008. Petitioner has failed to establish by clear and convincing evidence that he is rehabilitated to the extent that further monitoring by the Board is not necessary for public protection. Pursuant to Business and Professions Code section 2307, it would be against the public interest to grant the petition and terminate petitioner's probation.

ORDER

The petition for early termination of probation of John Hassan Rastegar, M.D., is denied.

DATE: September 16, 2020

DocuSigned by:
Regina Brown
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REGINA BROWN

Administrative Law Judge

Office of Administrative Hearings