

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

In the Matter of the First Amended)	
Petition to Revoke Probation Against:)	
)	
MOOSA HEIKALI, M.D.)	Case No. 8002013000782
)	
Physician's and Surgeon's Certificate)	OAH No. 2014030156
No. A 40559)	
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision of James Ahler, Administrative Law Judge, dated October 3, 2014, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C), to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. Page 1, Case No. 8002013000781 is stricken and replaced with Case No. 8002013000782

The Proposed Decision as amended is hereby accepted and 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 2, 2015.

IT IS SO ORDERED December 4, 2014.

MEDICAL BOARD OF CALIFORNIA

By: _____

Jamie Wright, J.D., Chair
Panel A

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

In the Matter of the First Amended Petition to
Revoke Probation Against:

MOOSA HEIKALI, M.D.,

Physician's and Surgeon's Certificate
No. A 40559

Respondent.

Case No. 8002013000781

OAH No. 2014030156

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 30, October 1, and October 2, 2014, in San Diego, California.

John E. DeCure, Deputy Attorney General, Department of Justice, State of California, represented complainant, Kimberly Kirchmeyer, Executive Director, Medical Board of California, Department of Consumer Affairs, State of California.

Navid Kanani and Daniel Moaddel, Attorneys at Law, represented respondent, Moosa Heikali, M.D., who was present throughout the administrative hearing.

The matter was submitted on October 2, 2014.

SUMMARY

On May 17, 2012, Dr. Heikali signed a stipulation in which he admitted that he engaged in gross negligence and repeated negligent acts, demonstrated incompetence, and made false representations of fact in his interactions with two patients. He agreed that his license to practice medicine was subject to discipline. He agreed to be bound by the terms and conditions of a stipulated disciplinary order that, among other matters, required him to successfully complete an approved clinical assessment and training program. On July 27, 2012, the Medical Board adopted the stipulation and disciplinary order Dr. Heikali signed as its decision. The decision became effective on August 24, 2012.

Dr. Heikali enrolled in the Physician Assessment and Clinical Education (PACE) Program conducted by the University of California, San Diego, School of Medicine. At the conclusion of the PACE Program, Dr. Heikali's performance was found to be unsatisfactory and consistent with a Fail outcome. The PACE Program advised the Medical Board's Probation Unit of its determination.

Complainant filed a petition to revoke probation due to Dr. Heikali's failure to successfully complete the PACE Program.¹ In this disciplinary proceeding, Dr. Heikali asserts that he was denied due process; the PACE Program assessments do not support a "fail" outcome; and he is currently fit and safe to practice medicine.

A preponderance of the evidence established that Dr. Heikali was afforded due process, that he failed to successfully complete the PACE Program, and that he is currently unfit to practice medicine. Dr. Heikali's license to practice medicine must be revoked.

FACTUAL FINDINGS

Dr. Heikali's Background, Education, Training and Experience

1. Dr. Heikali is in his mid-60s. He was born in Iran. He graduated from the National University of Iran School of Medicine in 1976. Dr. Heikali immigrated to the United States in 1979. He settled in San Jose, where he lived with his sister. He learned English and diligently studied for and passed the Educational Commission for Foreign Medical Graduates (ECFMG) and the Board of Medical Examiners and Federation Licensing (FLEX) examinations.

2. On November 21, 1983, the Medical Board issued Physician's and Surgeon's Certificate No. A 40559 to Dr. Heikali.

3. In 1983, Dr. Heikali participated in a one-year Pathology and Neuropathology residency at the VA Hospital in Long Beach. He completed one year of a four-year Neurology residency at the University of California, Irvine, School of Medicine in 1984, and he was engaged in the remaining three years of that residency at Kaiser Permanente. He completed the four-year Neurology residency program in 1987.

¹ A first amended petition to revoke probation was filed about two weeks before the hearing was scheduled to commence. It alleged, in addition to the matters already set forth in the original petition, that Dr. Heikali possessed cognitive and personality weaknesses that represented a significant risk for an independent medical practice and likely rendered him vulnerable to a higher error rate when treating complex patients. (Paragraph 7L.) This allegation was stricken because it was not filed and served in a timely fashion. No evidence related to this allegation was allowed to be presented.

4. In 1987, Dr. Heikali worked briefly on a per diem basis for Kaiser. He then became associated with Pacific Ocean Medical Clinic as a neurologist. He practiced with that clinic until 1991, when he opened a solo neurological practice with offices in Beverly Hills and the San Fernando Valley. He continued a neurological practice and was trained in pain management by a colleague. Dr. Heikali purchased the colleague's pain management practice and opened offices in Westwood.

5. Dr. Heikali held staff privileges at Sherman Oaks Hospital and Cedar Sinai Hospital for several years. His hospital staff privileges were never subject to any limitation or discipline. He no longer holds staff privileges at any hospital.

6. Dr. Heikali provided clinical education to neurology residents when he held staff privileges at Cedar Sinai Hospital. He has given lectures in neurology to chiropractic students. He has served as a clinical investigator in pharmacological studies. He has not published any articles in peer reviewed journals.

7. Dr. Heikali frequently testifies as an expert witness in workers' compensation proceedings and in civil actions, almost always for the applicant or plaintiff.

8. Dr. Heikali is a member of the Iranian Medical Society. He belongs to no other professional organization. He reads many professional journals. He is current in his continuing professional education.

9. Dr. Heikali cares for four to six new patients every day, and he sees about ten established patients per day in follow-up visits. He currently has offices in Westwood, Irvine, San Bernardino, and the San Fernando Valley. He treats patients who suffer from various neurological problems including Parkinson's disease, dementia, seizures, headaches, and concussions. He provides lumbar punctures, EMG/NCD testing, and other services at his offices.

10. Dr. Heikali is board eligible, but not board certified, in neurology.

Previous Disciplinary History

11. On February 12, 2012, a first amended accusation was filed in Case No. 17-2010-207512. It alleged that in Dr. Heikali's interaction with patients S.K. and D.K., he committed gross negligence and repeated negligent acts, was incompetent, and made false representations of fact.²

² Before their visits with Dr. Heikali, S.K. and D.K. applied for United States citizenship, which required S.K. and D.K. to demonstrate knowledge of the English language, knowledge of the fundamentals of United States history, and an understanding of the principles and forms of government. Dr. Heikali completed a medical certification disability form (Form N-648) for S.K. and D.K. that he signed under penalty of perjury. The form exempted S.K. and D.K. from citizenship testing. Dr. Heikali's purported medical

Dr. Heikali was served with the First Amended Accusation. He retained counsel and filed a Notice of Defense.

12. On May 17, 2012, Dr. Heikali signed a Stipulated Settlement and Disciplinary Order to resolve the allegations contained in the First Amended Accusation. He admitted "the truth of each and every charge and allegation" He agreed that his certificate to practice medicine was subject to discipline, and he agreed to be bound by probationary terms set forth in the Disciplinary Order he signed.

13. The Disciplinary Order provided for the revocation of Dr. Heikali's certificate to practice medicine, but stayed the order of revocation and placed Dr. Heikali on four years' probation.

14. Probation Condition 2 provided:

2. CLINICAL TRAINING PROGRAM. Within 30 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California – San Diego School of Medicine ("Program"). 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 program comprised of a two-day assessment of Respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Respondent's area of practice in which Respondent was alleged to be deficient, and at a minimum a 40 hour program of clinical education in the area of practice in which Respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

opinion in support of the exemptions was based on one office visit with each patient. In those office visits, he did not obtain or review medical records and did not consult or obtain diagnostic testing. Dr. Heikali admitted that he falsely certified in the exemption forms he signed that each patient possessed impairments that had lasted or were expected to last 12 months or more and were not the effects of illegal drug, and that he provided those certifications when he lacked sufficient information to reach such a conclusion.

Based on Respondent's performance and test results in the assessment and clinical education, the Program will advise the Board of or its designee of its recommendation(s) for the scope and length of any additional education or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, Respondent shall submit to and pass an examination. Determination as to whether Respondent successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

15. On July 27, 2012, the Medical Board adopted the Stipulated Settlement and Disciplinary Order as its Decision and Order. On August 24, 2012, the Medical Board's decision became effective.

The PACE Program

16. The PACE Program was founded in 1996. The program is conducted through the Department of Family and Preventive Medicine at the University of California, San Diego, School of Medicine. The PACE Program is used by medical boards, hospitals, medical groups, and others to assess physician competence and safety. Physicians participating in the program are evaluated in their medical specialties and practice environments. The PACE Program has assessed over 1,500 physicians since it was founded.

The Phase I Assessment

17. Each PACE assessment is tailored and interpreted in light of the participating physician's specialty, experience, and clinical environment. Every participant works under the direction of a case manager.

Phase I of the PACE assessment is a two-day process. It includes a pre-assessment self-report to obtain information about the participating physician's education and training, practice profile, and disciplinary history, if any; a health screening; a MicroCog screening to assess cognitive functioning; a National Board of Medical Examiner's post-licensure assessment to evaluate medical knowledge, clinical judgment, and patient management skills; a transaction-stimulated recall interview; an oral clinical examination; completion of a mock patient history and physical; and a patient chart audit. A physician who has the same medical specialty as the participating physician conducts the oral clinical examination and chart audit. According to William A. Norcross, M.D., Director of the PACE Program, "It's a pretty busy two days."

After information from Phase I is obtained, a case review committee reviews and discusses that information at a case conference. The committee typically consists of four PACE faculty members and four PACE case managers. To prevent bias, the physician who conducts the oral clinical examination and chart audit is not a member of the committee. After considering all data, the case review committee prepares a comprehensive Phase I report that is sent to the Medical Board. The Phase I report contains the results of all testing and assessments, a summary, and the committee's recommendation.

The PACE Program does not regard the two-day Phase I assessment as being sufficient to make a final assessment of a participating physician's competence, although there have been a few cases in which superior competence was established in Phase I and a recommendation was made to not require the participating physician to enroll in the Phase II assessment, and there have been other cases in which acute irremediable deficits were observed (usually involving mental competence) that eliminated any need to refer the participating physician for a Phase II assessment.

Phase I Findings and Results

18. Patricia Reid served as Dr. Heikali's case manager. Sean Evans, M.D., a board certified neurologist, PACE faculty member, and Associate Clinical Professor of Neurosciences at the UCSD School of Medicine, administered the oral competency examination and conducted the chart review. Sheila Pickwell, Ph.D., a certified family nurse practitioner, evaluated Dr. Heikali's performance in the mock patient assessment and screened Dr. Heikali's physical and mental condition.

19. Dr. Heikali provided a self-report concerning his education, training and experience. He reported that he currently worked 40 hours a week and saw approximately 50 patients a week in his practice.

20. The physical and mental health screenings did not reveal any condition that prohibited Dr. Heikali from practicing medicine safely.

21. MicroCog, a computer-based assessment of cognitive skills, required Dr. Heikali to use a computer to complete a neuropsychological assessment. Dr. Heikali possessed limited computer skills, so a proctor helped him during the MicroCog assessment. Based on the results of that assessment, it was recommended that Dr. Heikali undergo further neuropsychological testing to determine whether he was able to function safely and effectively as a physician. The MicroCog screening assessment did not provide a definitive diagnosis or establish that Dr. Heikali was unfit to practice medicine.

22. To assess Dr. Heikali's clinical decision-making and patient-management skills, a Psych/Neuro-related computer-based test was administered that was developed by the National Board of Medical Examiners. Computer literacy is an important factor in taking the examination, so a proctor was provided to Dr. Heikali. The assessment involved eight mock cases. Based on his responses to the testing related to those cases, Dr. Heikali scored

in the lowest quintile in all eight cases. He undertook an unfavorable action in one case that could have resulted in patient harm.

Dr. Heikali believed his low scores were the result of his limitations in using the computer, and there could be some validity to that belief based upon the results of the transaction-stimulated recall interview and the results of oral clinical testing. While the results of the transaction stimulated interview and oral clinical assessments demonstrated some clinical deficiencies, the deficits evident in those assessments were not as extensive as suggested by the computer-based testing.

23. Martin Schulman, M.D., a PACE faculty member and a Professor of Medicine with the Family Medicine Department at the UCSD School of Medicine, conducted a transaction-stimulated recall interview. In that interview, Dr. Heikali told Dr. Schulman that he was not comfortable using computers and that he had required a proctor during computer based-testing. During the transaction-stimulated recall interview, Dr. Schulman observed that Dr. Heikali correctly diagnosed seven of the eight mock cases he had been exposed to during computer-based testing; however, one mock patient was put at risk as a result of Dr. Heikali's failure to manage the patient's injury in an appropriate fashion. Dr. Schulman, who is not a neurologist, believed that Dr. Heikali demonstrated overall good to very good medical knowledge and clinical judgment.

24. In the oral competency examination that Dr. Evans conducted, Dr. Heikali was presented with six vignettes that had been used in the training and evaluation of third-year UCSD medical students and in multiple PACE evaluations. Dr. Heikali was asked to read each vignette and then to comment upon the deficits, localization, differential diagnosis, evaluation techniques, and empiric management appropriate for each case. He was given an hour to complete the oral examination. The competency testing occurred at the end of the day. Dr. Evans observed that Dr. Heikali appeared to be slightly tired during testing. A summary of Dr. Evans's comments concerning the testing follows:

In Case 1, Dr. Heikali met the standards for a practicing neurologist, although there was some deficiency in his thought about the cause of the patient's medical problem beyond the most classic presentation.

In Case 2, Dr. Heikali met the standards for a practicing neurologist, although he showed a relative deficiency in differential diagnosis and patient education, and he showed a deficiency in understanding therapeutic classes of neuropathic pain medications.

In Case No. 3, Dr. Heikali met the standards for a practicing neurologist, but showed a relative deficiency in differential consideration.

In Case 4, involving a 30-year-old right handed woman who presented with rapidly progressing aphasia in the context of severe headache and fever for the preceding two days, Dr. Heikali did not meet the standards for a practicing neurologist. The departures were the result of not initially planning a CSF analysis and never considering a bacterial etiology,

oversights that produced a true medical emergency despite multiple prompts. Dr. Heikali stated that he had not seen a patient with a similar presentation in years. He did not indicate that he would seek expert guidance in management of the patient.

In Case 5, involving a 60-year-old man who presented with one year of progressive stereotypical bilateral but asymmetric Parkinsonism, Dr. Heikali did not meet the standard of care. According to Dr. Evans, Dr. Heikali's performance "showed that he was well out of date with modern drug therapy concepts, and was quite willing to advocate non-standardized and unsupported therapies."

In Case 6, Dr. Heikali met the standards for a practicing neurologist in his ability to generate a differential diagnosis and recognize a likely vascular etiology, but he failed to appropriately address the urgency of the case, which could have led to blindness.

Dr. Evans concluded that Dr. Heikali's overall performance was consistent with that of a mid-level resident, but below the level of performance expected of practicing neurologists. Dr. Heikali made two critical errors that could have resulted in serious complications. Dr. Evans believed that Dr. Heikali's "willingness to openly discuss highly nonstandard therapies for Parkinson's disease . . . was disturbing."

25. In the mock patient history and physical examination that Dr. Pickwell observed, Dr. Heikali performed a complete neurological examination. However, the health history he obtained was incomplete; there was a limited systems review; and the mock patient stated that Dr. Heikali was rough when he checked lymph nodes and conducted the sensory examination.

26. Dr. Evans conducted reviews of seven of Dr. Heikali's patient chart entries that had been selected at random. Each chart note fell below the standard of care. The legibility of the handwritten notes was extremely poor. The notes did not conform to standard norms for documentation. Many notes did not contain the results of physical examinations. Many notes lacked detail about the patient's physical complaints. Dr. Evans wrote, "Overall, the assessments made were almost entirely unfounded based on the descriptions of history and examination in the documentation. Assessments included potentially pejorative descriptions including dementia without support, and important assessments such as driving safely . . . were not addressed."

27. Dr. Heikali completed a computer-based ethics and communication examination to assess his awareness in those areas. He scored 40 percent on the examination, which was in the first percent of the 2,000 physicians who had completed three years of residency and were taking the examination for the first time. Dr. Heikali did not demonstrate any areas of strength. In an exit interview, Dr. Heikali stated the examination questions were appropriate, but it was difficult for him to answer them in the limited time he was given. Dr. Norcross admitted during his testimony that the communication and ethics examination was a rigorous test.

28. The Phase I testing undertaken by Dr. Heikali was no different from the testing administered to any other Phase I participant. PACE administered Dr. Heikali's testing as fairly as possible. During his exit interview, Dr. Heikali did not complain about any injustice in the Phase I testing.

29. Dr. Norcross was a member of Dr. Heikali's case review committee. His testimony established that committee members carefully read and considered the reports of all persons who administered Phase I assessments, as well as the results of all computer-based testing. The committee prepared a comprehensive report following the Phase I case conference. The report was carefully reviewed by all committee members. The results of all Phase I assessments were included in the report, as well as the committee's summary and recommendations.

In its report, the committee concluded, "Overall, Dr. Heikali's performance on the Phase I, two-day assessment was unsatisfactory." The committee recommended that Dr. Heikali return to PACE for Phase II in order to complete the assessment process and obtain an official final grade.

Dr. Heikali was not provided with a copy of the Phase I report.

30. Dr. Norcross testified that neither he nor the case review committee could determine whether Dr. Heikali was fit to practice medicine based upon the results of the Phase I assessment. More information was needed to reach a conclusion.

Phase II Assessment

31. Phase II of the PACE Program involves a minimum one-week assessment and clinical education program that is provided at the UCSD Medical Center or one of its clinics. The results of the Phase I assessment are used to assist in the design of Phase II. Each Phase II program is individually tailored to the participating physician's specialty and relies upon Phase I findings. Phase II programs vary based upon the physician's specialty and what was learned about the physician's practice during Phase I. Phase II is highly influential in the final assessment of the physician's clinical skill, knowledge, judgment, and professionalism.

The Phase II assessment often includes a chart stimulated recall in which the participating physician discusses his clinical findings and conclusions based upon his review of patient charts randomly selected from his or her practice. The evaluator, a UCSD School of Medicine faculty member in the participating physician's medical specialty, assesses the participating physician's clinical skill and judgment based upon information contained in the charts and following the participating physician's discussion of the patient's case.

The Phase II assessment often includes a standardized patient evaluation in which two UCSD School of Medicine faculty members present the participating physician with four mock standardized patient encounters and independently evaluate the participating

physician's interviewing skills, physical examination skills, professionalism, clinical judgment, counseling skills, organization and efficiency.

In almost every case, the Phase II assessment requires the participating physician to work closely with an evaluating physician, a UCSD Medical School's faculty member who shares the same medical specialty. The participating physician shadows the evaluating physician each day on rounds, at clinics, in the office, in surgery, and elsewhere as may be necessary to obtain an accurate assessment. The evaluating physician constantly consults with the participating physician on such matters as a patient's presentation, the results of a physical examination, the impact of diagnostic studies, a review of pertinent records, the assessment of the patient's condition, reaching a diagnosis, establishing a plan of care, and documenting the patient encounter. In a comprehensive report submitted to the case review committee, the evaluating physician carefully reports what occurred.

At the conclusion of Phase II, a case review meeting is held to determine whether the participating physician has satisfactorily completed the PACE Program or whether more evaluation, education, or remediation is necessary. In the case of a Category 4 outcome that involves a "Fail," the case review committee's recommendation must be unanimous. The Category 4/Fail outcome is described as follows by the PACE Program as one that:

Signifies a poor performance that is not compatible with overall physician competency and safe practice. Physicians in this category performed poorly on all (or nearly all) aspects of the assessment These physicians are unsafe and, based on their observed performance in the PACE assessment, represent a potential danger to their patients. Some physicians in this category may be capable of remediating their clinical competency to a safe level and some may not The faculty and staff of the UCSD PACE Program do not give an outcome of "Fail" lightly or casually. This assignation reflects major, significant, deficiencies in clinical competence, and physicians who receive this outcome, if they are deemed to be candidates for remedial education, should think in terms of engaging in a minimum of one full year of dedicated study and other learning activities requiring on average 30 to 40 hours per week

32. According to Dr. Norcross, all Phase I and Phase II findings are carefully considered before the case review committee reaches a final conclusion. The Phase II report is edited at least eight times before it is signed and sent to the Medical Board. If there is unresolved dissent concerning the physician's competence, the committee "passes" the physician being assessed and does not issue a "Fail" rating.

33. Dr. Norcross testified that somewhere between 10 and 15 percent of all physicians who are referred to the PACE Program fail the program. Participating physicians are not provided with the Phase II report.

Phase II Findings and Results

34. On August 26, 2013, Dr. Schulman and David Bazzo, M.D., who are members of the UCSD School of Medicine, Department of Family Medicine and the PACE faculty, presented Dr. Heikali with four standardized simulated patient encounters to assess Dr. Heikali's clinical competence. They independently rated Dr. Heikali's performance in the areas of medical interviewing, physical examination skills, professionalism, clinical judgment, counseling skills, organization and efficiency. Each evaluator provided Dr. Heikali with a score that related to Dr. Heikali's performance for each case, with 1 to 3 points being unsatisfactory, 4 to 6 points being satisfactory, and 6 to 9 points being superior.

Dr. Schulman's and Dr. Bazzo's independent scores were remarkably similar. No score was in the unsatisfactory range. Dr. Heikali's average overall clinical competence score was 5.0, which was mid-range and satisfactory. The evaluators found Dr. Heikali demonstrated an organized approach to history taking, evaluated the patients' chief complaints, obtained information necessary to make clinical judgments, and examined appropriate organ systems. The evaluators observed some flaws in Dr. Heikali's physical examination techniques; he was occasionally "rough" in administering some physical examination maneuvers. Dr. Heikali's communication skills were acceptable, and his clinical judgment was sound. While Dr. Heikali's overall performance was satisfactory, the evaluators found there was room for improvement in the areas of physical examination techniques and professionalism.

35. Dr. Evans conducted the chart stimulated recall assessment on August 28, 2013, to assess clinical competence. Before that assessment began, Dr. Heikali provided Dr. Evans with 18 patient charts. Dr. Evans directed Dr. Heikali to review six of those charts and then to discuss them in detail. Dr. Evans completed a chart stimulated recall worksheet for each chart Dr. Heikali discussed. No feedback was given concerning the patient care that Dr. Heikali provided. Dr. Heikali was interactive and cooperative. Dr. Evans assigned a score for each case that Dr. Heikali reviewed and discussed, with 1 to 3 points being unsatisfactory, 4 to 6 points being satisfactory, and 6 to 9 points being superior. Dr. Evans kept detailed notes about what was said, and he typed the results of the assessment at the conclusion of the testing.

With respect to the six cases Dr. Heikali reviewed, he received one score of 1.0, four scores of 2.0, and one score of 3.0. Each score represented an unsatisfactory result. Dr. Evans described the assessment in detail in four pages of typewritten notes. He concluded:

Dr. Heikali displayed a number of problems during this assessment. He scored in the unsatisfactory range on all six cases. His documentation is poor, often omitting physical examinations. His assessments are often not fully realized, and he typically focuses on work up much more than management. Most disturbingly, it is clear that he sees no problem with letting insurance type, compensation rates, lawyers' wishes, racial and

national stereotypes, and personal benefits from other providers determine his documentation quality, management decisions, and treatments.

Dr. Evans's findings are highly significant when they are measured against Dr. Schulman's and Dr. Bazzo's findings. When Dr. Heikali knew he was being assessed by Dr. Evans and Dr. Schulman in the four simulated cases that comprised the standardized patient evaluation, his performance was satisfactory; however, in providing actual care and treatment to patients, as documented in the six cases he reviewed with Dr. Evans, not one case resulted in a finding that his clinical skill or judgment was satisfactory. The skill and judgment he demonstrated during formal testing was markedly different from the care and treatment he actually provided to patients.

36. Dr. Heikali's clinical experience with Dr. Evans began on Monday, August 26, 2013, and ended on Friday, August 30, 2013. Dr. Evans kept thorough notes of what occurred. He fully documented his observations each evening in typewritten summaries. At the conclusion of the week-long clinical interactions, Dr. Evans reached the following overall assessment:

Over the course of the week with Dr. Heikali, the overall tenor of our interaction was sociable and pleasant. His broad knowledge of neurology is actually good, and he has a good working knowledge of neurodiagnostics as well as neuropharmacology. He does have difficulty with focusing on a clear assessment of the patient's clinical presentation and seems to be inappropriately swayed by individual facts in the patient's history, out of context imaging results, and demographic information about the patient. His examination skills showed evidence of appropriate training, but his slow and unfocused approach to the examination would make it seem likely that he rarely uses these skills in a routine fashion. His description of his practice style is disturbing, as he states that in many cases he is not actually taking his own histories, relying on non-neurologists to do so. If this is compounded by minimalist examinations, it would mean that many of his patients have very little in the way of true neurological assessment. He appears to not have a modern conceptualization of evidence based practice, and equates his own limited experience with large scale clinical trials. His willingness to volunteer overtly racist and sexist assessments of patients and providers is startling. He seems to have little insight into his actions, and little sense that many of his behaviors fall outside accepted professional and ethical norms.

In total, Dr. Heikali does not appear to be limited by lack of knowledge or training in neurology. He does appear to embrace numerous inappropriate behaviors in his practice environment and has no apparent concern about this, which deeply impairs his ability to be an ethical, efficacious, and caring provider for his patients.

The following factual findings illustrate some of the events that occurred during Dr. Evans's assessment.

37. On August 26, according to Dr. Evans's report and testimony, Dr. Heikali endorsed riboflavin and magnesium supplementation to manage migraine headaches rather than a first-line, evidence-based medication, even though he and Dr. Evans had just discussed that issue. And, Dr. Heikali said he never sent his carpal tunnel syndrome patients directly to surgery, but instead recommended an intercarpal injection even though surgery was the first-line treatment most strongly supported by evidence-based guidelines. To support his recommendation of injections, Dr. Heikali told Dr. Evans, "Whenever I give them injections, they get better." When referring to Hispanic patients, Dr. Heikali said, "They are wonderful. They do not question you and they are thankful when you help them. They will never sue you." He also told Dr. Evans that he employed a nurse in his San Bernardino office and a physician in his Encino office who obtained patient histories directly from patients that he later "confirmed."

38. On August 27, according to Dr. Evans's report, Dr. Heikali "continued to generally advocate for what I would consider non-evidence based therapies, and in his discussions, placed his own 'studies' (uncontrolled, non-protocol series of 5-10 patients) on par with large randomized controlled clinical trials." According to the report, Dr. Heikali recommended certain testing be conducted that was not required to support a diagnosis, explaining to a medical student who was present during the discussion that "It pays the rent." On two occasions later that day, according to the report, Dr. Heikali advocated specific tests be performed with the goal of increasing the physician's income. Thereafter, he described working with Iranian doctors who paid him to do observerships to facilitate their placement in United States medical internships. He extensively described the appearance of "a really good looking" female doctor with whom he worked, according to Dr. Evans's report. Dr. Evans confirmed in his testimony that these events occurred.

39. On August 28, Dr. Heikali and Dr. Evans engaged in the chart stimulated recall exercise. During this exercise, it became clear to Dr. Evans that Dr. Heikali saw no problem with letting types of insurance, compensation rates, lawyers' wishes, racial and national origin stereotypes, and personal benefits from other providers determine the quality of his documentation, patient management decisions, and patient treatment.

40. On August 29, according to Dr. Evans's report and testimony, when he and Dr. Heikali were seeing patients at the UCSD Neuroscience Center, Dr. Heikali "persisted in generally advocating for a management with a high burden of investigational studies, and

routinely asked what type of financial coverage a patient had prior to forming a management plan." A resident was present during the interactions.

On August 29, Dr. Heikali spontaneously chose to discuss why he was placed on probation. He told Dr. Evans that he had written reports in which he falsely certified that his patients had unfounded disabilities. He told Dr. Evans, "Everyone does these things. You do not know, as you are only here in the University, but outside, it is routine." Dr. Heikali believed that he had not engaged in any wrongdoing. According to Dr. Evans, he expressed no remorse.

41. On August 30, according to Dr. Evans's report and testimony, Dr. Heikali tended to advocate for far more complex work-ups than Dr. Evans believed were necessary. Dr. Heikali continued to comment on patients' ethnicity and financial standing as important aspects of clinical decision-making.

42. Dr. Evans testified in this matter. Since 2010, he had served as a PACE evaluator in five assessments, including Dr. Heikali's assessment. Dr. Evans demonstrated an excellent recollection of his interactions with Dr. Heikali. He recalled Dr. Heikali making overtly sexist and racist comments that were well outside ethical norms. He recalled Dr. Heikali admitting that he used office personnel to obtain patient histories. He recalled Dr. Heikali advocating the use of unorthodox medical treatment rather than first-line, evidence-based treatment, particularly when doing so was to his financial advantage.

Dr. Evans was not aware of Dr. Heikali's ethnic or cultural background. He specifically told Dr. Heikali at the outset that he was going to assess Dr. Heikali's clinical skills and judgment and that Dr. Heikali's social interactions would be included in the assessment. Dr. Heikali never told Dr. Evans that he thought the PACE Program was simply a clinical education and training program. While Dr. Evans believed that Dr. Heikali was under stress as a result of being assessed, that was a common occurrence that Dr. Evans took into consideration. Dr. Evans believed that Dr. Heikali was open, cooperative, and direct. Dr. Evans did not recall Dr. Heikali mentioning that his sister had breast cancer or complaining about any other stress in his life. Dr. Evans was a credible witness who answered questions in a deliberate and thoughtful fashion.

43. Dr. Perry has been associated with UCSD's School of Medicine since 1991 and has been involved with the PACE Program since its inception. He reviews all MicroCog evaluations. Based on the MicroCog testing, Dr. Perry makes recommendations about the need for further neuropsychological testing.

Dr. Perry explained that the MicroCog assessment is a self-administered assessment that was developed by the Harvard Research Medical Group in the 1980s. It is the most commonly used instrument to determine whether physicians undergoing the assessment have neuropsychological deficits. No adjustment is made for language skills other than on the interpretive side.

Dr. Perry testified that, when the results of Dr. Heikali's MicroCog assessment were compared to others who were Dr. Heikali's age with similar educational backgrounds, Dr. Heikali scored in the second percentile, which suggested an impairment. Dr. Perry recommended that Dr. Heikali undergo further testing based upon the MicroCog results, a recommendation he provides in no more than 10 percent of the testing. Since the MicroCog instrument is a screening device, Dr. Perry reached no conclusion other than it was appropriate for Dr. Heikali to undergo further testing.

With regard to the possibility of stress and sleep disturbance being causes of Dr. Heikali's unusual test results, Dr. Perry testified: "These scores are quite beyond the result of stress or sleep deprivation While anything is possible, I cannot account for anything other than cognitive difficulties to explain these results." Dr. Perry was a credible witness.

The Final PACE Assessment

44. On October 15, 2013, Dr. Norcross, Dr. Bazzo, Ms. Reid, and four other PACE staff participated in a case conference concerning Dr. Heikali's assessment. Before issuing a final report, the committee carefully reviewed all Phase I and Phase II reports and findings. The committee reached unanimous agreement about Dr. Heikali's performance. After reaching the conclusion that Dr. Heikali failed the PACE Program, a draft report was prepared and circulated, and all committee members reviewed and edited it.

On October 21, 2013, the case review committee issued its formal assessment of Dr. Heikali's performance in the PACE Program. The evaluation extended only to Dr. Heikali's professional and clinical knowledge and behavior. The final report was based on all of the information that was available to the committee.

The committee's report stated: "Overall, Dr. Heikali's performance during Phase I was unsatisfactory. Reasons were provided for this conclusion. The committee's report stated: "Following his Phase II performance, of particular concern is Dr. Heikali's lack of professionalism. On several occasions, he advocated for performing a procedure or follow-up visit with the sole objective of increased income, admitting, 'It pays the rent.'" The report stated: "[I]t was clear that Dr. Heikali saw no problem with letting insurance type, compensation rates, lawyers' wishes, racial and national stereotypes, and personal benefits benefit from other providers determine his documentation quality, management decisions and treatments We feel his lack of professionalism and inappropriate behaviors in the practice environment deeply impairs his ability to be an ethical, efficacious and caring provider to the patients, and furthermore likely hinders his ability to practice safely." The committee found Dr. Heikali's performance in Phase I and Phase II was consistent with a Category 4 or "Fail" outcome.

45. Dr. Norcross testified that the committee's final report expressed the committee's unanimous opinion. The committee relied on the results of standardized testing and the observations of highly qualified evaluators. While Dr. Norcross believed no single test result or evaluation resulted in the "Fail" outcome, the "Fail" outcome was the only

result the committee could reasonably reach after considering all of the evidence. Among other matters, Dr. Heikali's admitted ethical transgressions and willingness to put his own economic interests above the interests of his patients demonstrated a lack of professionalism, a core concept in evaluating a physician's fitness for service.

Dr. Norcross testified that Dr. Heikali's lack of professionalism was consistent with a theme of dishonesty that led to the imposition of license discipline in the first instance. While the charting deficiencies could be remedied, Dr. Heikali's clinical judgment and insistence on providing non-evidence based treatments, coupled with ethical deficits, made him an unsafe practitioner. Dr. Norcross was a credible witness who carefully listened to the questions he was asked, provided answers directly to those questions, and did not appear to be an advocate.

Complainant's Expert Witnesses

46. Dr. Norcross is a board certified family medicine practitioner, with added qualifications in geriatric medicine. He has continuously taught medicine at the UCSD School of Medicine, Department of Family Medicine, since 1978. He currently serves as a Clinical Professor of Family Medicine. He is the Director of the PACE Program. He belongs to numerous professional organizations and has published many articles in peer reviewed journals. He is extremely familiar with physician assessments.

47. Dr. Evans is a board certified neurologist who continuously has taught medicine at the UCSD School of Medicine, Department of Neurosciences, since 2005. He has been a PACE faculty member since 2010. He has published six articles in peer reviewed journals or texts. He is extremely familiar with the standard of practice within the field of Neurology, as well as what is required to adequately document patient encounters.

48. Dr. William Perry has served as an Associate Adjunct Professor, Department of Psychology, San Diego State University, since 1995, and continuously as a Professor at the UCSD School of Medicine, Department of Psychiatry, since 1992. He is the Executive Director of the National Academy of Neuropsychology. He has published numerous articles in peer reviewed journals. He is knowledgeable about the MicroCog assessment.

Dr. Heikali's Testimony

49. Dr. Heikali provided the information about his background, education, medical training, and experience as previously noted. Dr. Heikali testified that he was not disciplined when he attended medical school, that he had not been the subject of any disciplinary action before the Medical Board's disciplinary action in 2012, and that while he was sued twice for malpractice, one case resulted in a defense verdict and the other case was dismissed.

50. Dr. Heikali testified that he entered into a stipulation and disciplinary order that resulting in his enrollment in the PACE Program. He testified that his sister was suffering from breast cancer when he participated in the PACE Program and that she passed

away in April 2013. Dr. Heikali testified he was under a great deal of stress when he participated the PACE Program.

Dr. Heikali testified that he was not aware that the PACE Program involved a formal assessment of his clinical skills and judgment or that an unsatisfactory assessment might result in the loss of his medical license. He testified that he believed the PACE Program was an educational and training program. He mentioned that he paid about \$9,000 to participate in the Phase I assessment and about \$5,000 to participate in the Phase II assessment.

Dr. Heikali testified that before he began the PACE Program, he told a PACE coordinator that he lacked computer skills. PACE provided him with an assistant who helped him during computer testing, but being required to use a computer interfered with his performance during testing. He testified the assistant "was slow but very good."

With respect to the oral competency examination Dr. Evans administered in Phase I, Dr. Heikali testified that the "tests were too much for a 65-year-old man." According to Dr. Heikali, Dr. Evans did not speak with him about his critical review of Dr. Heikali's patients' charts. Dr. Heikali was not provided with the Phase I test results.

Dr. Heikali testified that during his interactions with Dr. Evans during Phase II, Dr. Evans's comment about Dr. Heikali's performance and observations was always "good," so he had no reason to believe that his performance was anything other than satisfactory. He testified, "Dr. Evans was so nice." Dr. Heikali testified that Dr. Evans never told him that some of the therapies Dr. Heikali recommended were not current, first-line evidence-based treatments. Dr. Heikali believed the stimulated chart review assessment was unfair because he was not given an entire patient chart to review, just a portion of it.

Dr. Heikali testified that he does not provide patients with non-evidence based treatments. To support his claim that riboflavin and magnesium supplementation is appropriate to manage migraine headaches, Dr. Heikali produced an article from a medical journal on which he said he had relied; the problem with that article was the fact that it was first published in 2014, well after his discussion with Dr. Evans about the propriety of the treatment. To support his claim that carpal tunnel injections were a first line treatment in all carpal tunnel syndrome cases, Dr. Evans produced an article that stated, in effect, that only in some instances were carpal tunnel injections appropriate.

51. Dr. Heikali testified that his experience in the PACE Program resulted in his becoming a more skillful physician. He testified he is currently attempting to become proficient in the area of electronic medical record keeping.

52. Dr. Heikali testified that he recently sought board certification from the American Board of Psychiatry and Neurology to demonstrate his current level of competence and that he is safe to practice. In 2013, Dr. Heikali undertook a three-day examination at Loyola University Chicago. He provided a letter from Loyola University Chicago, dated August 7, 2013, that stated he had successfully completed the Neurology Clinical Evaluation

Exercise on August 6 and 7, 2013; that all examiners involved in the testing were board certified by the American Board of Psychiatry and Neurology; and that Dr. Heikali had passed the following case scenarios: ambulatory, child neurology, neurodegenerative, critical care, and neuromuscular.

Dr. Heikali was dismayed to learn that the American Board of Psychiatry and Neurology would not permit him to become board certified in Neurology because his California medical license was on probation.

53. Dr. Heikali obtained nearly 80 hours of continuing professional education from September 2012 through February 2014. In addition, Dr. Heikali testified he constantly reads various medical journals to remain current in Neurology.

54. Dr. Heikali did not produce any evidence to establish that the PACE Program faculty and staff treated him differently than any other PACE Program participant was treated, that improper testing was administered, or that he was discriminated against on the basis of race, ethnicity, national origin, religion, gender, age, or any other suspect classification.

In his testimony, Dr. Heikali did not dispute that he made comments to Dr. Evans about the significance of insurance coverage in the treatment of patients, comments about race and sex, and other unprofessional comments that were detailed in Dr. Evans's reports.

In his testimony, Dr. Heikali did not dispute that he voluntarily told Dr. Evans that he had falsified naturalization forms and that it was his belief that "[e]verybody does it." In his testimony, Dr. Heikali expressed no remorse for the misconduct that resulted in his being placed on probation.

The Expert Testimony

55. Dr. Norcross and Dr. Evans provided credible expert testimony concerning Dr. Heikali's unsatisfactory performance in Phase I and Phase II. It was not established that the PACE Program evaluators were unprofessional or biased or that members of the case review committee were prejudiced or biased against Dr. Heikali.

56. Based on Dr. Heikali's performance in Phase I and Phase II, the case review committee, after careful deliberation of all reports and findings, unanimously determined that Dr. Heikali deserved a "Category 4/Fail" outcome, which signified that his performance was not compatible with overall physician competence and safe practice. No single test result or evaluation resulted in a "Fail" outcome, but the "Fail" outcome was the only result the committee could reasonably reach after considering all of the evidence.

57. Under the Medical Board's Disciplinary Order, to which Dr. Heikali stipulated, "Determination as to whether Respondent successfully completed the examination or successful completed the program is solely within the program's jurisdiction."

58. Dr. Heikali sought to explain his unsatisfactory performance as follows: First, his performance was not so poor that it warranted a "Category 4/Fail" outcome; second, his Loyola University Chicago test results demonstrated that he was a competent and safe medical practitioner; third, he was not aware that the PACE Program involved an assessment that could result in the loss of his license; fourth, he lacked necessary computer skills to perform well in computer-based testing, and the assistant he was given did not provide reasonable accommodation; fifth, some testing was simply "too much for a 65-year-old man"; sixth, the assessment involving his review of patient charts was unfair because he was not given full patient charts; and seventh, he was not aware that his social interaction was a part of the assessment process. At the commencement of the hearing, Dr. Heikali made a motion for continuance, which was denied. Dr. Heikali failed to demonstrate that, had the motion for a continuance been granted, he could have produced further evidence concerning any of these matters.

It is without doubt that Dr. Heikali knew he was required to successfully complete the PACE Program as a condition of probation. He admitted that he had read and signed the stipulated settlement and disciplinary order. He knew that a term and condition of probation specifically required him to successfully complete an assessment program. His assertions to the contrary were self-serving and were not credible.

Dr. Heikali's percipient testimony did not constitute credible expert evidence. His testimony did not establish that PACE Program testing was not an accurate measure of his competence, that he was tested in an unfair manner, or that he was not provided with reasonable accommodations appropriate for his age and lack of computer skills. Dr. Heikali knew almost nothing about the protocols necessary to assess physician competence, what tests should be administered, how evaluations should be performed, or what records should be maintained to support assessment results.

59. A preponderance of the evidence supports the case review committee's determination that Dr. Heikali failed to successfully complete the PACE Program.

There Were No Due Process Violations

60. Prehearing Matters: On January 30, 2014, complainant signed the petition to revoke probation in this matter. The petition was served on Dr. Heikali.

On February 19, 2014, Dr. Heikali signed a notice of defense in which he stated that Attorney Michael Shemtoub would represent him in this matter.

On March 14, 2014, this matter was set for a four-day disciplinary hearing to commence on September 30, 2014, at 9:00 a.m. On March 14, 2014, Dr. Heikali and his attorney were notified that a prehearing conference and a mandatory settlement conference had been set for August 20, 2014.

On August 18, 2014, Dr. Heikali's (then) attorney, Michael Shemtoub, filed a motion to continue the prehearing conference, the settlement conference, and the disciplinary hearing as a result of the "press of business."

On August 19, 2014, Presiding Administrative Law Judge Robert Walker determined that "press of business is not good cause" to continue the hearing. PALJ Walker issued an order denying the motion for a continuance.

On August 19, 2014, Dr. Heikali substituted Attorney Navid Kanani as his new attorney of record in place of Attorney Shemtoub.

On August 20, 2014, a prehearing conference was held before Administrative Law Judge Greer Knopf. Attorney Daniel Moaddel appeared on behalf of Dr. Heikali. Attorney Kanani did not appear. Attorney Moaddel was not a member of Attorney Kanani's law firm.

On August 21, 2014, ALJ Knopf issued a prehearing conference order that confirmed the September 30, 2014, through October 3, 2014, hearing dates and set forth several other deadlines: Discovery was to be completed and exchanged on or before August 25, 2014, and witness lists and exhibit lists were to be exchanged by September 8, 2014.

On August 25, 2014, the cut-off date for the exchange of discovery, Attorney Kanani filed with the Office of Administrative Hearings a motion to continue the hearing, to dismiss the charges, and to compel discovery. Administrative Law Judge Roy Hewitt was assigned to review and decide those motions.

In his order denying respondent's motions, ALJ Hewitt observed that the motions were voluminous and confusing. ALJ Hewitt found that the motions were completely devoid of merit, and that there was no legal basis for a continuance, a dismissal, or an order compelling the Deputy Attorney General to obtain and provide raw data used by the PACE Program (a private program not affiliated with the Attorney General's office or the Medical Board), as demanded. ALJ Hewitt found that Attorney Kanani's motions and contacts with the Attorney General's Office constituted "frivolous tactics" within the meaning of Government Code section 11455.30 and California Code of Regulations, title 1, section 1040. After issuing an order denying the motions, ALJ Hewitt issued the following admonishment:

ADMONITION RE: FRIVOLOUS TACTICS

Dr. Heikali, and his attorney of record, Navid Kanani, Esq., are admonished to cease engaging in frivolous tactics. If further meritless motions are filed in this matter or if any other delaying or harassing tactics are employed by Dr. Heikali and/or attorney Kanani, a hearing re: sanctions will result.

On September 9, 2014, Attorney Kanani filed with the Superior Court of California, County of San Diego, a petition for a writ of mandate to compel discovery, for a continuance of the administrative hearing, and for an order staying the disciplinary proceedings.

On September 15, 2014, a First Amended Petition to Revoke Probation was signed and served on Attorney Kanani.

On September 29, 2014, the Honorable Katherine A. Bacal, Judge of the Superior Court, State of California, denied the Dr. Heikali's petition for a writ of mandate and denied the motion for an order staying the disciplinary proceedings. There was no denial of due process in the prehearing proceedings.

61. The Prehearing Motion for a Continuance: On September 29, 2014, the afternoon before the administrative hearing on the petition to revoke probation was scheduled to commence, Attorney Kanani filed an ex parte motion with the Office of Administrative Hearings seeking an order to continue the hearing. The motion was based upon trial counsel's unavailability; the recent amendment to the petition; and the denial of Dr. Heikali's discovery rights.

62. The record in this disciplinary matter was opened on September 30, 2014, before Administrative Law Judge James Ahler. Deputy Attorney General DeCure appeared on complainant's behalf. Attorney Kanani appeared on Dr. Heikali's behalf. Dr. Heikali was present. Arguments were presented concerning respondent's motion for a continuance.

In support of respondent's motion, Attorney Kanani argued: (1) complainant had recently amended the petition to revoke probation; insufficient time was provided to prepare a defense to the new charges; and discoverable materials had not been provided relating to the amendment. (2) Trial counsel, Attorney Moaddel, was currently engaged in jury selection in a criminal trial in Ventura County, which was important because Attorney Kanani had never defended an administrative disciplinary hearing before.³ (3) There were outstanding discovery issues. (4) Friday, October 3, 2014, was a religious holiday that prevented counsel and Dr. Heikali from participating in a hearing that day. (5) And a petition for a writ of mandate had been filed with the Superior Court. Respondent's counsel strenuously argued that Dr. Heikali's due process rights would be violated if the motion for a continuance was denied. Complainant's counsel opposed the motion for a continuance.

The following was established. Dr. Perry's report, which was the basis for the new allegations, was provided to complainant on June 16, 2014, but the first amended accusation

³ In a criminal prosecution, the defendant has the right to competent representation at trial based on the constitutional right to the assistance of counsel for his defense. There is no equivalent constitutional right in a civil proceeding where the due process clause guarantees the right of a party to appear by counsel retained at his own expense. Due process does not require that competent representation be furnished by counsel in a civil action. (*Kim v. Orellana* (1983) 145 Cal.App.3d 1024, 1027.)

that was based on that report was not served on respondent's counsel until 15 days before the hearing was scheduled to commence. Attorney Moaddel was not Dr. Heikali's attorney of record, and while Attorney Moaddel had once made a special appearance in this disciplinary matter, he had never been Dr. Heikali's attorney of record. Attorney Kanani was Dr. Heikali's only attorney of record. Complainant substantially complied with the prehearing conference orders and with all discovery orders that were in effect. The identity of the witnesses complainant intended to call, as well as the substance of their testimony, was set forth in the narrative reports that complainant timely provided to Dr. Heikali's attorney. The "discovery" violation that respondent complained about related to the disclosure of raw test data, a matter that had been litigated several times before, and striking complainant's recent amendment to the petition eliminated any possible claim of unfairness for the alleged failure to provide respondent with that raw data. In addition, the Superior Court never issued a stay order in connection with the petition for writ of mandate.

Based on the foregoing, and good cause appearing, the newly alleged matters set forth in Paragraph L of the First Amended Petition to Revoke Probation were stricken. It was ordered that no evidence would be permitted that related to Paragraph L's allegations. It was further ordered that the hearing would not go forward on Friday, October 3, 2014, but would commence again on Monday, October 6, 2014, if that became necessary. The alleged discovery violations did not support granting a continuance after the allegations in Paragraph L were stricken. The claim that "trial counsel" was unavailable and that Attorney Kanani lacked experience in administrative disciplinary proceedings did not establish good cause to grant a continuance. Respondent's motion for a continuance was denied. There was no denial of due process in denying the motion for a continuance. Respondent failed to establish good cause for the continuance.

63. The Hearing: A three-day administrative hearing was conducted in accordance with the provisions of the Administrative Procedure Act, Government Code section 11400, et seq. Each party was represented by counsel. Each party was given an opportunity to be heard. Each party was given the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, to impeach any witness, and to rebut any evidence that had been presented. (Gov. Code, § 11513, subd. (a).) Each party gave an opening statement and closing arguments. The administrative hearing was reported by a court reporter.

No evidence was taken that related to the allegations set forth in Paragraph L of the First Amended Petition to Revoke Probation. Nothing occurred during the hearing that suggested that Dr. Heikali did not, in fact, fully exercise all of the rights to which he was entitled under the Administrative Procedure Act. At no point did respondent's counsel make an offer of proof regarding any evidentiary matter that would have supported a request for a continuance. There was no denial of due process during the hearing.

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Violation of Probation

64. Term and condition 2 of Dr. Heikali's probation required him to enroll in a clinical training or educational program equivalent to the PACE Program and "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."

Dr. Heikali enrolled in the PACE Program, but he failed to successfully complete that program as required. Dr. Heikali's failure to complete the PACE Program constituted a violation of the terms and conditions of his probation.

Arguments

65. Counsel for complainant argued that a preponderance of the evidence established that Dr. Heikali violated probation by failing to successfully complete the PACE Program. He argued that the assessment was thorough, detailed, and fairly conducted, and that the committee had exercised restraint in reaching a final outcome. Dr. Heikali always knew that his clinical competence and professional judgment were being assessed. The assessment revealed cognitive difficulties; problems with fundamental clinical skills such as charting, obtaining a patient history, and conducting a physical examination; a lack of current medical knowledge; and the presence of ethical issues that were similar to the issues that resulted in Dr. Heikali being placed on probation.

Counsel for complainant recommended that Dr. Heikali's license be revoked.

66. Respondent's counsel argued that Dr. Heikali was not given a fair hearing, that the hearing was "trial by ambush," and that the denial of a continuance had prevented Dr. Heikali from being able to provide a complete defense.

Respondent's counsel argued that miscommunication resulted in Dr. Heikali not appreciating that the PACE program was an assessment of his clinical skills and judgment that could result in the revocation of his license. Dr. Heikali was under a great deal of stress when he participated in the PACE Program, and he lacked necessary computer skills to successfully complete required testing. A close review of the reports related to Dr. Heikali's medical knowledge and clinical skills demonstrated that most evaluators found Dr. Heikali's performance was satisfactory. No credible evidence established that Dr. Heikali suffers from a neuropsychological impairment. A preponderance of the evidence did not support the "Category 4/Fail" outcome, a result that was unfair.

Respondent's counsel argued that Dr. Heikali's success in board certification testing taking place in 2013 at Loyola University Chicago demonstrated that Dr. Heikali is a competent physician whose medical judgment is sound. In argument, it was claimed that Dr. Heikali denied making any racist or sexist comments. Dr. Heikali had completed many continuing education courses and made significant changes to his medical practice since he

finished the PACE Program, which demonstrated he was a concerned and responsible professional capable of rehabilitation.

Respondent's counsel argued that Dr. Heikali is a fit and safe medical practitioner; no evidence established that Dr. Heikali has ever put any patient's health at risk; if there were any areas of clinical deficiency, they are easily remedied; Dr. Heikali can be rehabilitated without revoking his license; and that additional terms and conditions of probation are available to ensure protection of the public during the remainder of the period of probation.

Disciplinary Guidelines

67. To implement the mandates of Business and Professions Code section 2229, the Medical Board adopted its Manual of Model Disciplinary Orders and Disciplinary Guidelines that must be considered when issuing a disciplinary order. Consistent with the mandates of Section 2229, these guidelines set forth the discipline the Medical Board finds appropriate and necessary for identified violations. Absent mitigating or other appropriate circumstances such as early acceptance of responsibility and demonstrated willingness to undertake Board-ordered rehabilitation, the guidelines should be followed. Any decision that departs from the disciplinary guidelines should identify the departure and the facts supporting the departure.

68. The Medical Board's disciplinary guidelines specifically provide:

It is the expectation of the Medical Board of California that the appropriate penalty for a physician who did not successfully complete a clinical training program ordered as a part of his or her probation is revocation.

Ultimate Conclusion

69. Probation is a grant of leniency. In the administrative disciplinary setting, granting probation is the alternative to the outright revocation of a license. Probation is appropriate when a regulatory agency, in this case the Medical Board, has reasonable concerns about a licensee's character or competence but is not certain that imposing the drastic sanction of an outright revocation is required to protect the public. Granting probation affords an agency the opportunity to impose terms and conditions of probation that will protect the public while a licensee's activities are being closely monitored, and granting probation provides the licensee with an opportunity to establish that he or she is capable of safe practice.

In this case, probation required Dr. Heikali to be evaluated at a clinical training or educational program equivalent to the PACE Program. This condition of probation provided the Medical Board with an opportunity to assess Dr. Heikali's professional competence, and this condition of probation afforded Dr. Heikali with the opportunity to demonstrate that he was safe to practice while he obtained further education to assist him in his rehabilitation.

However, during his participation in the PACE Program, Dr. Heikali demonstrated grave deficiencies related to his competency, judgment, and professionalism. These deficits represent a danger to patients. When Dr. Heikali failed to satisfactorily complete the PACE Program, and after the PACE Program determined that Dr. Heikali was an unsafe practitioner, the goals of rehabilitation and protection of the public became inconsistent.

Protection of the public is the highest priority for the Medical Board. The Medical Board's disciplinary guidelines are quite clear: Revocation is the appropriate discipline for a physician who does not successfully complete a clinical training program ordered as part of probation.

70. The PACE Program's assessment was thorough and fair. Dr. Heikali failed to successfully complete the PACE Program. It was determined that Dr. Heikali's continuing practice of medicine represented a danger to the public. There is no reason to depart from the Medical Board's disciplinary guidelines. Dr. Heikali's license should be revoked.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. The purpose of the Medical Practice Act is to assure the high quality of medical practice; in other words, to keep unqualified and undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.)

The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

The Standard of Proof

2. While a board is required to prove the allegations in an accusation by clear and convincing evidence, it is only required to prove allegations in a petition to revoke probation by a preponderance of the evidence. (*Sandarg v. Dental Board of California* (2010) 184 Cal.App.4th 1434, 1441.)

The phrase "preponderance of evidence" is usually defined in terms of probability of truth, e.g., such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth. In contrast, the phrase "clear and convincing" is often defined as clear, explicit and unequivocal, so clear as to leave no substantial doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. Otherwise stated, a preponderance calls for probability, while clear and convincing proof demands a high probability. (*Utility Consumers' Action Network v. Public Utilities Commission of State of California* (2010) 187 Cal.App.4th 688, 698-699.)

The Physician-Patient Relationship

3. There is no other profession in which one passes so completely within the power and control of another as does the medical patient. The physician-patient relationship is built on trust. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 578-579.)

4. The existence of patient harm is not required before discipline may be imposed upon a physician's license. The preventative functions of license discipline, whose main purpose is protection of the public, also include prevention of future harm and the improvement and rehabilitation of the physician. To prohibit license discipline until the physician-licensee harms a patient disregards these purposes; it is far more desirable to discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

Cause Exists to Impose License Discipline

5. Business and Professions Code section 2227 provides in part:

(a) A licensee . . . who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

[¶] . . . [¶]

(3) Be placed on probation

6. Business and Professions Code section 2229 provides in part:

(a) Protection of the public shall be the highest priority for the Division of Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

(b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence.

(c) It is the intent of the Legislature that the division . . . and the enforcement program shall seek out those licensees who have demonstrated deficiencies in competency and then take those actions as are indicated, with priority given to those

measures, including further education, restrictions from practice, or other means, that will remove those deficiencies. Where rehabilitation and protection are inconsistent, protection shall be paramount.

7. Condition 2 of the Medical Board's Decision and Disciplinary Order that Dr. Heikali stipulated to on May 17, 2012, and that became effective on August 24, 2012, provided in part:

2. CLINICAL TRAINING PROGRAM. Within 30 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California – San Diego School of Medicine ("Program"). 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.

[¶] . . . [¶]

Determination as to whether Respondent successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

8. A preponderance of the evidence established that Dr. Heikali failed to comply with Probation Term and Condition 2 in that he failed to successfully complete the PACE Program. On October 21, 2013, the PACE Program, following a comprehensive and fair assessment process, issued a formal assessment that determined that Dr. Heikali's performance in Phase I and Phase II was consistent with a "Category 4 or Fail" outcome. The reasons for this conclusion are detailed and well supported in the factual findings. There is no reason to set aside the PACE Program's determination.

Imposing an Outright Revocation Is Appropriate

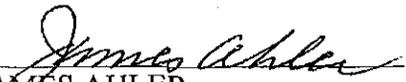
9. The only measure of discipline that is supported by a preponderance of the evidence is the outright revocation of Dr. Heikali's license. This sanction is consistent with the recommendation set forth in the Medical Board's disciplinary guidelines and is required to protect the public.

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ORDER

Physician's and Surgeon's Certificate No. A 40559 issued to Moosa Heikali, M.D., is revoked.

DATED: October 3, 2014


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the First Amended)
Accusation Against:)
)
)
Moosa Heikali, M.D.)
)
Physician's and Surgeon's)
Certificate No. A40559)
)
Respondent)
_____)

Case No. 17-2010-207512

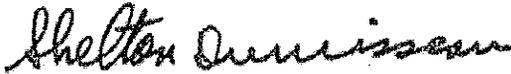
DECISION

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 August 24, 2012.

IT IS SO ORDERED: July 27, 2012.

MEDICAL BOARD OF CALIFORNIA



Shelton Duruisseau, Ph.D., Chair
Panel A

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA L. CASTRO
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH
Deputy Attorney General
4 State Bar No. 173955
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2148
6 Facsimile: (213) 897-9395
Attorneys for Complainant
7

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

10 In the Matter of the First Amended Accusation
11 Against:

12 **MOOSA HEIKALI, M.D.**

13 **830 Princeton**
Santa Monica, CA 90403
14 **Physician's and Surgeon's Certificate No.**
A40559
15

16 Respondent.

Case No. 17-2010-207512

OAH No. 2012020100
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and the responsibility of the Medical Board of California of the Department of Consumer
19 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
20 which will be submitted to the Board for approval and adoption as the final disposition of the
21 Accusation.

22 PARTIES

23 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of
24 California. She brought this action solely in her official capacity and is represented in this matter
25 by Kamala D. Harris, Attorney General of the State of California, by Vladimir Shalkevich,
26 Deputy Attorney General.
27
28

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A40559 issued to Respondent Moosa Heikali, M.D. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

1. **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. 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.

2. **CLINICAL TRAINING PROGRAM**. Within 30 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program"). Respondent shall successfully complete the Program not later than six (6) months after Respondent's initial enrollment unless the Board

1 or its designee agrees in writing to an extension of that time.

2 The Program shall consist of a Comprehensive Assessment program comprised of a two-
3 day assessment of Respondent's physical and mental health; basic clinical and communication
4 skills common to all clinicians; and medical knowledge, skill and judgment pertaining to
5 Respondent's area of practice in which Respondent was alleged to be deficient, and at minimum,
6 a 40 hour program of clinical education in the area of practice in which Respondent was alleged
7 to be deficient and which takes into account data obtained from the assessment, Decision(s),
8 Accusation(s), and any other information that the Board or its designee deems relevant.
9 Respondent shall pay all expenses associated with the clinical training program.

10 Based on Respondent's performance and test results in the assessment and clinical
11 education, the Program will advise the Board or its designee of its recommendation(s) for the
12 scope and length of any additional educational or clinical training, treatment for any medical
13 condition, treatment for any psychological condition, or anything else affecting Respondent's
14 practice of medicine. Respondent shall comply with Program recommendations.

15 At the completion of any additional educational or clinical training, Respondent shall
16 submit to and pass an examination. Determination as to whether Respondent successfully
17 completed the examination or successfully completed the program is solely within the program's
18 jurisdiction.

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

27 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.
28

1 4. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
2 prohibited from supervising physician assistants.

3
4 5. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
5 governing the practice of medicine in California and remain in full compliance with any court
6 ordered criminal probation, payments, and other orders.

7 6. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
8 under penalty of perjury on forms provided by the Board, stating whether there has been
9 compliance with all the conditions of probation.

10 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
11 of the preceding quarter.

12
13 7. GENERAL PROBATION REQUIREMENTS.

14 Compliance with Probation Unit

15 Respondent shall comply with the Board's probation unit and all terms and conditions of
16 this Decision.

17 Address Changes

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

23 Place of Practice

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

27 License Renewal

1 Respondent shall maintain a current and renewed California physician's and surgeon's
2 license.

3 Travel or Residence Outside California

4 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
5 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
6 (30) calendar days.

7 In the event Respondent should leave the State of California to reside or to practice
8 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
9 departure and return.

10
11 8. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
12 available in person upon request for interviews either at Respondent's place of business or at the
13 probation unit office, with or without prior notice throughout the term of probation.

14
15 9. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
16 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
17 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
18 defined as any period of time Respondent is not practicing medicine in California as defined in
19 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
20 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
21 time spent in an intensive training program which has been approved by the Board or its designee
22 shall not be considered non-practice. Practicing medicine in another state of the United States or
23 Federal jurisdiction while on probation with the medical licensing authority of that state or
24 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
25 not be considered as a period of non-practice.

26 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
27 months, Respondent shall successfully complete a clinical training program that meets the criteria
28 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and

1 Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

4 Periods of non-practice will relieve Respondent of the responsibility to comply with the
5 probationary terms and conditions with the exception of this condition and the following terms
6 and conditions of probation: Obey All Laws; and General Probation Requirements.

7
8 10. COMPLETION OF PROBATION. Respondent shall comply with all financial
9 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
10 completion of probation. Upon successful completion of probation, Respondent's certificate shall
11 be fully restored.

12
13 11. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
14 of probation is a violation of probation. If Respondent violates probation in any respect, the
15 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
16 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
17 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
18 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
19 the matter is final.

20
21 12. LICENSE SURRENDER. Following the effective date of this Decision, if
22 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
23 the terms and conditions of probation, Respondent may request to surrender his or her license.
24 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
25 determining whether or not to grant the request, or to take any other action deemed appropriate
26 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
27 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
28

1 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
2 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
3 application shall be treated as a petition for reinstatement of a revoked certificate.
4

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

10 ACCEPTANCE

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

16
17 DATED: 5-17-12 
18 MOOSA HEIKALI, M.D.
Respondent

19 I have read and fully discussed with Respondent Moosa Heikali, M.D. the terms and
20 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
21 I approve its form and content.

22 DATED: 5-17-12 
23 Adam B. Brown, Esq.
Attorney for Respondent

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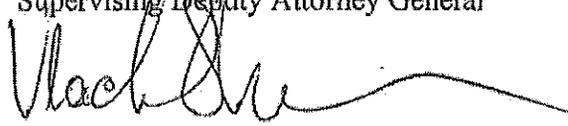
ENDORSEMENT

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

Dated: 5/17/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GLORIA L. CASTRO
Supervising Deputy Attorney General



VLADIMIR SHALKEVICH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 17-2010-207512

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA L. CASTRO
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 22, 2012
BY: J. Telchak ANALYST

8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
10 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 17-2010-207512

12 MOOSA HEIKALI, M.D.
13 PO BOX 49911
LOS ANGELES, CA 90049

FIRST AMMENDED
ACCUSATION

14 Physician's and Surgeon's Certificate
15 No. A 40559

16 Respondent.

17
18
19
20 Complainant alleges:

21 PARTIES

22 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
23 as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

24 2. On or about November 21, 1983, the Medical Board of California issued Physician's
25 and Surgeon's Certificate Number A 40559 to Moosa Heikali, M.D. (Respondent). The
26 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
27 charges brought herein and will expire on June 30, 2013, unless renewed.

28 ///

JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions 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 division, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the division.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

"(4) Be publicly reprimanded by the division.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the division or an administrative law judge may deem proper.

"(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 division 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 2234 of the Code states:

"The Division of Medical Quality¹ 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:

¹ Business and Professions Code Section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in the State Medical (continued...)

1 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical
3 Practice Act].

4 "(b) Gross negligence.

5 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
6 omissions. An initial negligent act or omission followed by a separate and distinct departure from
7 the applicable standard of care shall constitute repeated negligent acts.

8 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate for
9 that negligent diagnosis of the patient shall constitute a single negligent act.

10 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
11 constitutes the negligent act described in paragraph (1), including, but not limited to, a
12 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
13 applicable standard of care, each departure constitutes a separate and distinct breach of the
14 standard of care.

15 "(d) Incompetence.

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

18 "(f) Any action or conduct which would have warranted the denial of a certificate."

19 6. Section 2261 of the Code states:

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

23 7. Section 2262 of the Code states:

24 "Altering or modifying the medical record of any person, with fraudulent intent, or
25 creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

26 Practice Act (Bus. & Prof. Code, section 2000, et seq.) means the Medical Board of California,
27 and references to the Division of Medical Quality and Division of Licensing in the Act or any
28 other provision of law shall be deemed to refer to the Board.

1 8. Section 2262 of the Code states, with respect to civil fines:

2 "In addition to any other disciplinary action, the Division of Medical Quality or the
3 California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars (\$500)
4 for a violation of [section 2262]."

5 9. Section 2266 of the Code states:

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

8 10. Section 2292 of the Code states:

9 "(a) A licensee may be ordered to undergo a professional competency examination if,
10 after investigation and review by a medical expert designated by the division or the Board of
11 Podiatric Medicine, as applicable, there is reasonable cause to believe that the licensee is unable
12 to practice medicine with reasonable skill and safety to patients. Reasonable cause shall be
13 demonstrated by one or more of the following: (1) a single incident of gross negligence; (2) a
14 pattern of inappropriate prescribing; (3) an act of incompetence or negligence causing death or
15 serious bodily injury; or (4) a pattern of substandard care.

16 "(b) The results of a competency examination shall be admissible as direct evidence and
17 may be considered relevant in any subsequent disciplinary or interim proceeding against the
18 licensee taking it, and, assuming it is determined to be relevant, shall be considered together with
19 other relevant evidence in making a final determination.

20 "(c) Upon referral from the division, the matter shall be drafted and presented by the
21 Senior Assistant Attorney General of the Health Quality Enforcement Section or his or her
22 designee by way of a written petition detailing the reasonable cause. The petition shall contain all
23 conclusions and facts upon which the presumption of reasonable cause is based. A copy of the
24 petition shall be served on the physician who shall have the opportunity to file written opposition
25 to the petition within 30 days after service. Service of the petition and any orders shall be in
26 accordance with the methods of service authorized by subdivision (c) of Section 11505 of the
27 Government Code.

28 "(d) A panel of the division shall review the petition and any opposition paper from the

1 physician, or the panel of the division, or an administrative law judge to whom the petition is
2 assigned by the division, may hold a hearing in accordance with the provisions of the
3 Administrative Procedure Act to determine if reasonable cause exists, as specified in subdivision
4 (a). The physician shall have the right to be represented at that hearing by the person of his or her
5 choice. If the panel of the division or administrative law judge is satisfied that reasonable cause
6 exists as to the circumstances specified in subdivision (a), the division or panel shall issue an
7 order compelling the physician to undergo an examination of professional competency as
8 measured by community standards. For purposes of this section, "community standards" means
9 the statewide standards of the community of licensees. Failure to comply with the order duly
10 served on the physician shall constitute unprofessional conduct for purposes of disciplinary
11 proceedings."

12 11. Section 2293 of the Code states:

13 "(a) The professional competency examination shall be in the form of an oral clinical
14 examination to be administered by three physician examiners selected by the division or its
15 designee, who shall test for medical knowledge specific to the physician's specialty or specific
16 suspected deficiency. The examination shall be audio recorded.

17 "(b) A failing grade from two of the examiners shall constitute a failure of an
18 examination. In the event of a failure, the board shall supply a true and correct copy of the audio
19 recording of the examination to the unsuccessful examinee.

20 "(c) Within 45 days following receipt of the audio recording of the examination, a
21 physician who fails the examination may request a hearing before the administrative law judge as
22 designated in Section 11371 of the Government Code to determine whether he or she is entitled to
23 take a second examination.

24 "(d) If the physician timely requests a hearing concerning the right to reexamination under
25 subdivision (c), the hearing shall be held in accordance with the Administrative Procedure Act
26 (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370),
27 Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500)
28 of Part 1 of Division 3 of Title 2 of the Government Code). Upon a finding that the examination

1 completed by the applicant's doctor. The impairment(s) must result from anatomical,
2 physiological, or psychological abnormalities, which can be shown by medically acceptable
3 clinical and laboratory diagnostic techniques.³

4
5 ³ Section 312.2 of title 8 of the Code of Federal Regulations (C.F.R.) sets forth this requirement
as follows:

6 (a) General. No person shall be naturalized as a citizen of the United States upon his or her own
7 application unless that person can demonstrate a knowledge and understanding of the
8 fundamentals of the history, and of the principles and form of government, of the United States. A
9 person who is exempt from the literacy requirement under § 312.1 (b) (1) and (2) must still satisfy
10 this requirement.;

11 (b) Exceptions. (1) The requirements of paragraph (a) of this section shall not apply to any person
12 who is unable to demonstrate a knowledge and understanding of the fundamentals of the history,
13 and of the principles and form of government of the United States because of a medically
14 determinable physical or mental impairment, that already has or is expected to last at least 12
15 months. The loss of any cognitive skills based on the direct effects of the illegal use of drugs will
16 not be considered in determining whether an individual may be exempted. For the purposes
17 of this paragraph the term medically determinable means an impairment that results from
18 anatomical, physiological, or psychological abnormalities which can be shown by medically
19 acceptable clinical or laboratory diagnosis techniques to have resulted in functioning so impaired
20 as to render an individual to be unable to demonstrate the knowledge required by this section or
21 that renders the individuals unable to participate in the testing procedures for naturalization, even
22 with reasonable modifications.

23 (2) Medical certification. All persons applying for naturalization and seeking an exception from
24 the requirements of § 312.1(a) and paragraph (a) of this section based on the disability exceptions
25 must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a
26 medical or osteopathic doctor licensed to practice medicine in the United States or a clinical
27 psychologist licensed to practice psychology in the United States (including the United States
28 territories of Guam, Puerto Rico, and the Virgin Islands). Form N-648 must be submitted as an
attachment to the applicant's Form N-400, Application for Naturalization. These medical
professionals shall be experienced in diagnosing those with physical or mental medically
determinable impairments and shall be able to attest to the origin, nature, and extent of the
medical condition as it relates to the disability exceptions noted under § 312.1(b)(3) and paragraph
(b)(1) of this section. In addition, the medical professionals making the disability determination
must sign a statement on the Form N-648 that they have answered all the questions in a complete
and truthful manner, that they (and the applicant) agree to the release of all medical records
relating to the applicant that may be requested by the Service and that they attest that any
knowingly false or misleading statements may subject the medical professional to the penalties
for perjury pursuant to title 18, United States Code, Section 1546 and to civil penalties under
section 274C of the Act. The Service also reserves the right to refer the applicant to another
authorized medical source for a supplemental disability determination. This option shall be
invoked when the Service has credible doubts about the veracity of a medical certification that
has been presented by the applicant. An affidavit or attestation by the applicant, his or her
relatives, or guardian on his or her medical condition is not a sufficient medical attestation for
purposes of satisfying this requirement.

(continued...)

1 14. For each of the two patients previously referenced, Respondent completed under
2 penalty of perjury a Department of Homeland Security "Medical Certification for Disability
3 Exception" (Form N-648).⁴ In all of the forms, he described his specialty as "Neurology
4 Qualified Medical Examiner."

5 15. Respondent made findings and declared under penalty of perjury that each of the
6 two patients referenced in this Accusation had impairment(s) that affected their ability to learn
7 and/or demonstrate knowledge and that he based these findings on an examination of the patient,
8 the applicant's symptoms, previous medical records, clinical findings or tests. Respondent also
9 made findings and declared under penalty of perjury that in his professional opinion the
10 impairments had lasted or that he expected them to last 12 months or longer, or were permanent.
11 Finally, Respondent declared that the patients' impairments were not the direct effect of the

12
13 (c) History and government examination -- (1) Procedure. The examination of an applicant's
14 knowledge of the history and form of government of the United States shall be given orally by a
15 designated examiner in the English language unless: (i) The applicant is exempt from the English
16 literacy requirement under § 312.1 (b), in which case the examination may be conducted in the
17 applicant's native language with the assistance of an interpreter selected in accordance with §
18 312.4 of this part, but only if the applicant's command of spoken English is insufficient to
19 conduct a valid examination in English; (ii) The applicant is required to satisfy and has satisfied
20 the English literacy requirement under § 312.1 (a), but the officer conducting the examination
21 determines that an inaccurate or incomplete record of the examination would result if the
22 examination on technical or complex issues were conducted in English. In such a case the
23 examination may be conducted in the applicant's native language, with the assistance of an
24 interpreter selected in accordance with § 312.4;

25 (iii) The applicant has met the requirements of § 312.3.

26 (2) Scope and substance. The scope of the examination shall be limited to subject matters covered
27 in the Service authorized Federal Textbooks on Citizenship except for the identity of current
28 officeholders. In choosing the subject matters, in phrasing questions and in evaluating responses,
due consideration shall be given to the applicant's education, background, age, length of residence
in the United States, opportunities available and efforts made to acquire the requisite knowledge,
and any other elements or factors relevant to an appraisal of the adequacy of the applicant's
knowledge and understanding.

⁴ Form N-648 is used by Homeland Security's U.S. Citizenship and Immigration Services. The
laws governing naturalization of immigrants require that applicants for naturalization demonstrate
an ability to read, write and speak the English language and knowledge and understanding of the
fundamentals of the history, and of the principles and form of government, of the United States. A
Form 648, signed by a medical professional, is used to seek a waiver of the English and/or civics
requirements based on a physical or developmental disability or mental impairment.

1 illegal use of drugs. He based all of these findings on one patient visit, without obtaining or
2 reviewing any medical records, or collecting or ordering any collateral information, such as
3 laboratory results or reports, or performing sufficient diagnostic tests.

4 PATIENT S.K

5 16. On or about January 29, 2005, Respondent executed under penalty of perjury a
6 Medical Certification for Disability Exceptions form for Patient S.K., a female who was 57 years
7 old at the time, and applying for U.S. Citizenship.

8 17. Respondent, who is a neurologist, certified that the patient was permanently
9 disabled due to a psychological diagnosis, which he described as "acute anxiety that has become
10 manifest in panic attacks when her stress levels are heightened."

11 18. Respondent stated that S.K. also evinces symptoms of Paranoid Personality
12 Disorder, and suffered from medical problems, such as dizziness, headaches, low back pain, bone
13 pain, burning sensations to her feet, and numbness and tingling in her extremities, which he
14 claimed contributed to the patient's learning disability. Respondent indicated that he was unable
15 to perform an MMSE (Mini-Mental Status Evaluation) test. He certified that the patient was
16 permanently disabled and needed psychiatric treatment and supervision for her symptoms.

17 19. Respondent did not retain any medical records of his treatment or examination of
18 patient S.K. However, his billing indicates that the patient came to him only once, and she was
19 billed for examination due to complaints of headaches and dizziness. Respondent did not bill for
20 and did not perform any diagnostic testing to determine if the patient was, in fact, disabled.

21 20. Respondent's certification that the patient was permanently disabled because of
22 acute anxiety, a treatable psychological condition, constituted an extreme departure from the
23 standard of care.

24 21. Respondent's attribution of dizziness, headaches, low back pain, bone pain,
25 burning sensations to her feet, and numbness and tingling in the patient's extremities as
26 contributing factors to her capacity to learn, constituted an extreme departure from the standard of
27 care.

28 ///

PATIENT D.K.

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2 22. On or about January 29, 2005, Respondent executed under penalty of perjury a
3 Medical Certification for Disability Exceptions form for patient D.K., a female who was 66 years
4 old at the time, and applying for U.S. Citizenship.

5 23. Respondent, who is a neurologist, certified that the patient was permanently
6 disabled due to a diagnosis which he described as "Senile Dementia of the Alzheimer's type."
7 Even though during his interview with the Medical Board Respondent indicated that this
8 diagnosis was not the same as a diagnosis of Alzheimer's disease, he did not so differentiate on
9 the N-648 form submitted for this patient. In fact, respondent directly attributed "Alzheimer's
10 disease process" as one of the causes the patient was unable to articulate or learn the material for
11 the citizenship test.

12 24. In the N-648 forms submitted for patient D.K. Respondent stated that D.K. was
13 unable to learn the material necessary for the citizenship examination because of the progression
14 of Alzheimer's disease, which causes progressive memory loss. Respondent's basis for diagnosis
15 of Alzheimer's disease in this patient consisted of patient's history, testing of the patient's
16 palmomental grasp reflex, and a Mini-Mental Status Examination (MMSE). Respondent
17 performed and documented no other testing, diagnostic studies or review of records of other
18 medical providers to justify this patient's diagnosis. Respondent's testing and examination of
19 patient D.K. was not sufficient to arrive at a diagnosis that the patient suffered from "Senile
20 Dementia of the Alzheimer's type." The patient, in fact, was not afflicted with Alzheimer's
21 disease.

22 25. Respondent also certified that the patient's high cholesterol was a factor of the
23 patient's memory loss and disability, by describing the process of hypoxia caused by vascular
24 obstruction, a process also known as vascular dementia. Respondent certified that the patient
25 suffered from vascular dementia based solely on the patient's history of high cholesterol.
26 Respondent did not perform any testing or examination to determine whether the patient was
27 suffering from vascular dementia, or even to determine the patient's cholesterol level.
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FOURTH CAUSE FOR DISCIPLINE

(FALSE REPRESENTATIONS)

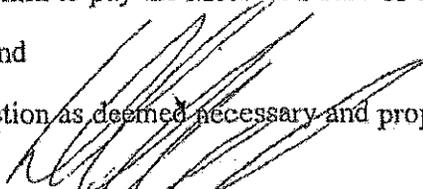
41. By reason of the matters alleged in paragraphs 13 through 31, incorporated herein by reference, Respondent is subject to disciplinary action under section 2261, in that Respondent knowingly made and signed a certificate or other documents, to wit the two Form N-648s for patients S.K. and D.K, which are directly or indirectly related to the practice of medicine, wherein he falsely represented the existence or nonexistence of a state of facts, which, in essence, was that Respondent diagnosed these two patients with impairments that qualified them for the N-648 exception.

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 40559, issued to Moosa Heikali, M.D.;
2. Revoking, suspending or denying approval of his authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. If placed on probation, ordering him to pay the Medical Board of California the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: February 22, 2012


LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California,
Complainant

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