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STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
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BY [Signature] ANALYST

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

13 In the Matter of the Accusation Against:

Case No. 800-2018-040683

14 Amir S. Makoui, M.D.
Post Office Box 4008
15 Lancaster, California 93539

ACCUSATION

16 Physician's and Surgeon's Certificate
No. A 75531,

17 Respondent.
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20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about June 29, 2001, the Medical Board issued Physician's and Surgeon's
26 Certificate Number A 75531 to Amir S. Makoui, M.D. ("Respondent"). That license was in full
27 force and effect at all times relevant to the charges brought herein and will expire on September
28 30, 2020, unless renewed.

1 **JURISDICTION**

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

5 4. Section 2004 of the Code states:

6 "The board shall have the responsibility for the following:

7 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
8 Act.

9 "(b) The administration and hearing of disciplinary actions.

10 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
11 administrative law judge.

12 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
13 disciplinary actions.

14 "(e) Reviewing the quality of medical practice carried out by physician and surgeon
15 certificate holders under the jurisdiction of the board.

16 "(f) Approving undergraduate and graduate medical education programs.

17 "(g) Approving clinical clerkship and special programs and hospitals for the programs in
18 subdivision (f).

19 "(h) Issuing licenses and certificates under the board's jurisdiction.

20 "(i) Administering the board's continuing medical education program."

21 5. Section 2227 of the Code states:

22 "(a) A licensee whose matter has been heard by an administrative law judge of the Medical
23 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
24 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
25 action with the board, may, in accordance with the provisions of this chapter:

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

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

1 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
2 order of the board.

3 “(4) Be publicly reprimanded by the board. The public reprimand may include a
4 requirement that the licensee complete relevant educational courses approved by the board.

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

7 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
8 review or advisory conferences, professional competency examinations, continuing education
9 activities, and cost reimbursement associated therewith that are agreed to with the board and
10 successfully completed by the licensee, or other matters made confidential or privileged by
11 existing law, is deemed public, and shall be made available to the public by the board pursuant to
12 Section 803.1.”

13 6. Section 2234 of the Code, states:

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

17 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
18 violation of, or conspiring to violate any provision of this chapter.

19 “(b) Gross negligence.

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

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

25 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
26 constitutes the negligent act described in paragraph (1), including, but not limited to, a
27 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs from the

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1 applicable standard of care, each departure constitutes a separate and distinct breach of the
2 standard of care.

3 “(d) Incompetence.

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

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

7 “(g) The practice of medicine from this state into another state or country without meeting
8 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
9 apply to this subdivision. This subdivision shall become operative upon the implementation of
10 the proposed registration program described in Section 2052.5.

11 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
12 participate in an interview by the board. This subdivision shall only apply to a certificate holder
13 who is the subject of an investigation by the board.”

14 7. Section 2236 of the Code states:

15 “(a) The conviction of any offense substantially related to the qualifications, functions, or
16 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
17 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive
18 evidence only of the fact that the conviction occurred.

19 “(b) The district attorney, city attorney, or other prosecuting agency shall notify the
20 Division of Medical Quality¹ of the pendency of an action against a licensee charging a felony or
21 misdemeanor immediately upon obtaining information that the defendant is a licensee. The
22 notice shall identify the licensee and describe the crimes charged and the facts alleged. The
23 prosecuting agency shall also notify the clerk of the court in which the action is pending that the
24 defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds
25 a license as a physician and surgeon.

26 ¹ California Business and Professions Code section 2002, as amended and effective January 1,
27 2008, provides that, unless otherwise expressly provided, the term “board” as used in the State Medical
28 Practice Act (Cal. Bus. & Prof. Code, §§§§ 2000, et seq.) means the “Medical Board of California,” and
references to the “Division of Medical Quality” and “Division of Licensing” in the Act or any other
provision of law shall be deemed to refer to the Board.

1 “(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours
2 after the conviction, transmit a certified copy of the record of conviction to the board. The
3 division may inquire into the circumstances surrounding the commission of a crime in order to fix
4 the degree of discipline or to determine if the conviction is of an offense substantially related to
5 the qualifications, functions, or duties of a physician and surgeon.

6 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
7 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
8 shall be conclusive evidence of the fact that the conviction occurred.”

9 8. Section 490 of the Code states:

10 “(a) In addition to any other action that a board is permitted to take against a licensee, a
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
13 or profession for which the license was issued.

14 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
15 discipline a licensee for conviction of a crime that is independent of the authority granted under
16 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
17 of the business or profession for which the licensee's license was issued.

18 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
19 conviction following a plea of nolo contendere. An action that a board is permitted to take
20 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
21 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
22 made suspending the imposition of sentence, irrespective of a subsequent order under Section
23 1203.4 of the Penal Code.

24 “(d) The Legislature hereby finds and declares that the application of this section has been
25 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
26 554, and that the holding in that case has placed a significant number of statutes and regulations
27 in question, resulting in potential harm to the consumers of California from licensees who have
28 been convicted of crimes. Therefore, the Legislature finds and declares that this section

1 establishes an independent basis for a board to impose discipline upon a licensee, and that the
2 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
3 to, but rather are declaratory of, existing law.”

4 9. California Code of Regulations, title 16, section 1360, states:

5 “For the purposes of denial, suspension or revocation of a license, certificate or permit
6 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
7 considered to be substantially related to the qualifications, functions or duties of a person holding
8 a license, certificate or permit under the Medical Practice Act if to a substantial degree it
9 evidences present or potential unfitness of a person holding a license, certificate or permit to
10 perform the functions authorized by the license, certificate or permit in a manner consistent with
11 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
12 following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
13 violation of, or conspiring to violate any provision of the Medical Practice Act.”

14 **FACTUAL SUMMARY**

15 10. On February 14, 2018, in proceedings entitled *The People of the State of California v.*
16 *Amir Shahram Makoui*, case number CJ01798, in the Los Angeles County Superior Court,
17 Respondent, following a jury verdict, was convicted of the following misdemeanor counts:
18 willfully and unlawfully inflicted a corporal injury resulting in a traumatic condition upon his
19 former spouse, E.H., on November 1, 2016 in violation of Penal Code Section 273.5, subdivision
20 (a); willfully and unlawfully using force and violence upon the person of another on November 1,
21 2016, in violation of Penal Code Section 242-243, subdivision (e)(1); willfully, unlawfully,
22 intentionally and knowingly violated a protective order on November 1, 2016, as defined in
23 Family Code section 6218, in violation of Penal Code Section 273.6, subdivision (a); and,
24 willfully, unlawfully, intentionally and knowingly violated a protective order on or about August
25 1, 2016 through September 19, 2016, as defined in Family Code section 6218, in violation of
26 Penal Code Section 273.6, subdivision (a). On April 26, 2018, Respondent was sentenced to
27 summary probation for thirty-six (36) months, including the following terms and conditions:

28 A. Pay fines and assessments;

- 1 B. Not use or threaten to use force or violence on any person;
2 C. Not annoy, harass or molest any person or witness involved in the case;
3 D. Enroll within 30 days and successfully complete a 52-week domestic violence
4 treatment program;
5 E. Obey the protective order issued in this or any other case;
6 F. Obey all laws and orders of the court;
7 G. Not own, use or possess any dangerous or deadly weapons, including any
8 firearms, knives or other concealable weapons.

9 11. The circumstances leading to Respondent's conviction are as follows:

10 A. On July 25, 2016, in the domestic relations matter of *E.H. v. Amir Shahram*
11 *Makoui*, case number BD593216, the Los Angeles Superior Court issued a protective order in
12 which Respondent was not to have any contact with E.H. except in the case of an emergency or as
13 ordered by the court for exchanging their child for visitation. Despite that order, Respondent sent
14 text messages to E.H., including a text message on August 1, 2016.

15 B. On November 1, 2016, Respondent and E.H. attended a child support hearing in
16 Department 7 of the Los Angeles Superior Court, located at 111 North Hill Street, Los Angeles,
17 California 90012.

18 C. Following the November 1, 2016 hearing, Respondent confronted E.H. and her
19 attorney, S.M., in the hallway. Respondent struck E.H. in the back of her left shoulder with his
20 right fist. He grinded his fist into her while cursing in Farsi calling her a "whore" and a "bitch."
21 Respondent then placed his face close to E.H.'s right ear and stated in Farsi, "I'm going to tear
22 you from your vagina." Respondent yelled at S.M. and repeatedly told him not to work for E.H.

23 D. The sound of Respondent's yelling caused a Sheriff bailiff to come out of the
24 courtroom. The bailiff separated Respondent and E.H. from each other. Respondent exited the
25 courthouse and the bailiff recommended that E.H. and S.M. wait an additional 5-10 minutes to
26 exit the courthouse.

27 E. On November 2, 2016, E.H. reported the incident to the Beverly Hills Police
28 Department.

1 F. On November 14, 2016, E.H. reported the incident to the Los Angeles Police
2 Department, Central Division.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of a Crime)**

5 12. By reason of the facts set forth above in paragraphs 10 and 11, Respondent's license
6 is subject to disciplinary action under section 2234, subdivision (a), section 2236, subdivision (a),
7 and section 490 of the Code and California Code of Regulations, title 16, section 1360, in that he
8 has been convicted of a crime substantially related to the qualifications, functions, or duties of a
9 physician and surgeon.

10 13. Respondent's acts and/or omissions as set forth in paragraphs 10 and 11 above,
11 whether proven individually, jointly, or in any combination thereof, constitute a conviction of a
12 crime substantially related to the qualifications, functions, or duties of a physician and surgeon
13 pursuant to section 2234, subdivision (a), section 2236, subdivision (a), and section 490 of the
14 Code and California Code of Regulations, title 16, section 1360.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Violation of the Medical Practice Act)**

17 14. By reason of the facts set forth above in paragraphs 10 and 11, Respondent's license
18 is subject to disciplinary action under section 2234, subdivision (a), in that he has violated or
19 attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired
20 to violate a provision of the Medical Practice Act.

21 15. Respondent's acts and/or omissions as set forth in paragraphs 10 and 11 above,
22 whether proven individually, jointly, or in any combination thereof, constitute a violation or
23 attempted violation of a provision of the Medical Practice Act pursuant to section 2234,
24 subdivision (a) of the Code.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct)**

27 16. By reason of the facts set forth above in paragraphs 10 and 11, Respondent's license
28 is subject to disciplinary action under section 2234, subdivision (a) of the Code and California

1 Code of Regulations, title 16, section 1360, in that he engaged in conduct which breaches the
2 rules or ethical code of the medical profession, or conduct which is unbecoming to a member in
3 good standing of the medical profession, and which demonstrates an unfitness to practice
4 medicine.

5 17. Respondent's acts and/or omissions as set forth in paragraphs 10 and 11 above,
6 whether proven individually, jointly, or in any combination thereof, constitute conduct which
7 breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a
8 member in good standing of the medical profession, and which demonstrates an unfitness to
9 practice medicine pursuant to section 2234, subdivision (a) of the Code and California Code of
10 Regulations, title 16, section 1360.

11 **PRAYER**

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

- 14 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 75531,
15 issued to Amir S. Makoui, M.D.;
- 16 2. Revoking, suspending or denying approval of Amir S. Makoui, M.D.'s authority to
17 supervise physician assistants and advanced practice nurses;
- 18 3. Ordering Amir S. Makoui, M.D., if placed on probation, to pay the Board the costs of
19 probation monitoring; and
- 20 4. Taking such other and further action as deemed necessary and proper.

21
22 DATED: October 31, 2018


23 KIMBERLY KIRCHMEYER
24 Executive Director
25 Medical Board of California
26 Department of Consumer Affairs
27 State of California
28 Complainant

LA2018502635