

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
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**BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA**

* * * * *


**In the Matter of Charges and)
Complaint Against)
AMIR R. YAZDANSHENAS, M.D.,)
Respondent.)**

Case No. 13-38510-1

FILED

JAN 30 2013

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

COMPLAINT

The Investigative Committee of the Nevada State Board of Medical Examiners (Board), composed of Theodore B. Berndt, M.D., Chairman, Ms. Valerie J. Clark, BSN, RHU, LUTCF, Member and Michael J. Fischer, M.D., Member at the time of the authorization of filing this formal Complaint, by and through Edward O. Cousineau, Deputy Executive Director for the Board and counsel for the Investigative Committee, having a reasonable basis to believe that Amir R. Yazdanshenas, M.D., hereinafter referred to as "Respondent," has violated the provisions of Nevada Revised Statutes (NRS) Chapter 630, hereby issues its formal Complaint, stating the Investigative Committee's charges and allegations, as follows:

1. Respondent was licensed to practice medicine in the state of Nevada on June 3, 2011, Respondent's license to practice medicine is currently in active status, and at all times alleged herein, Respondent was licensed in active status by the Board pursuant to the provisions of Chapter 630 of the NRS.

2. On August 17, 2012, the Medical Board of California adopted a Proposed Decision (see Exhibit 1), which revoked license to practice medicine in the state of California, the revocation was stayed with Respondent being placed on probation for three years and an

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1 obligation to meet the various probationary terms. The Respondent has never noticed the Board
2 of the stayed revocation of his license to practice medicine in the state of California.

3 3. Section 630.301(3) of the NRS provides that any disciplinary action, including
4 without limitation, the revocation, suspension, modification or limitation of the license to practice
5 any type of medicine by any other jurisdiction is grounds for disciplinary action.

6 4. The disciplinary action related to Respondent's license to practice medicine in the
7 state of California constitutes a violation of the provisions of NRS 630.301(3).

8 5. Section 630.306(11) of the NRS provides that the failure by a licensee to report in
9 writing, within 30 days, any disciplinary action taken against the licensee by another state, is
10 grounds for disciplinary action.

11 6. The failure of Respondent to report to the Board the disciplinary action, in the state
12 of California constitutes a violation of NRS 630.306(11).

13 7. Based upon the forgoing, Respondent has violated NRS 630.301(3) and
14 NRS 630.306(11), and is subject to discipline by the Board as provided NRS 630.352.

15 WHEREFORE, the Investigative Committee prays:

16 1. That the Board fix a time and place for a formal hearing;

17 2. That the Board give Respondent notice of the charges herein against him, the time and
18 place set for the hearing, and the possible sanctions against him;

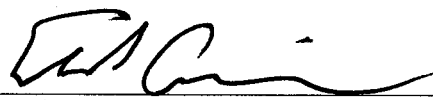
19 3. That the Board determine what sanctions it determines to impose for the violation or
20 violations committed by Respondent; and

21 4. That the Board make, issue and serve on Respondent its findings of facts, conclusions
22 of law and order, in writing, that includes the sanctions imposed.

23 DATED this 30th day of January, 2013.

24
25 INVESTIGATIVE COMMITTEE OF
26 THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

27 By:


28 Edward O. Cousineau
Attorney for the Investigative Committee of the
Nevada State Board of Medical Examiners

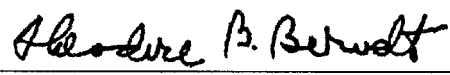
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VERIFICATION

STATE OF NEVADA)
 : ss.
COUNTY OF WASHOE)

Theodore B. Berndt, M.D., having been duly sworn, hereby deposes and states under penalty of perjury that he is the Chairman of the Investigative Committee of the Nevada State Board of Medical Examiners that authorized the Complaint against the Respondent herein; that he has read the foregoing Complaint; and that based upon information discovered in the course of the investigation into a complaint against Respondent, he believes that the allegations and charges in the foregoing Complaint against Respondent are true, accurate, and correct.

Dated this 30th day of January, 2013.



Theodore B. Berndt, M.D.

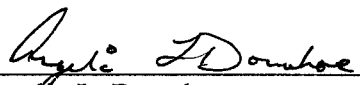
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CERTIFICATE OF MAILING

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on 30th day of January 2013; I served a filed copy of the Complaint and Fingerprint information via USPS e- certified return receipt mail to the following:

Amir R. Yazdanshenas, M.D.
10345 S. Eastern Ave., #120
Henderson, NV 89052

Dated this 30th day of January, 2013.



Angela L. Donohoe
Legal Assistant

EXHIBIT

1

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

In the Matter of the Statement of Issues Against:)

AMIR REZA YAZDANSHENAS)

) Case No. 22-2009-200419

) OAH No. 2012031098

Respondent.)
_____)

DECISION

The attached Proposed Decision is hereby adopted by the Medical Board of California, Department of Consumer Affairs, State of California, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on August 17, 2012.

IT IS SO ORDERED July 18, 2012.

MEDICAL BOARD OF CALIFORNIA

By: _____

Hedy Chang, Chair
Panel B



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

In the Matter of the Statement of Issues
Against:

AMIR REZA YAZDANSHENAS,

Respondent.

Agency Case No. 22-2009-200419

OAH Case No. 2012031098

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 21, 2012, in Los Angeles, California.

David M. Carr, Deputy Attorney General, represented Linda K. Whitney (Complainant), Executive Director of the California Medical Board (Board).

Frederick M. Ray, Attorney at Law, represented Amir Reza Yazdanshenas (Respondent). Respondent was present.

STATEMENT OF THE CASE

Respondent applied for licensure as a physician and surgeon in 2011. The Board denied his application on September 2, 2011. The Board contends that Respondent's application warrants denial for Respondent's 1) aiding and abetting the unlicensed practice of medicine, 2) using an unauthorized fictitious business name, and 3) practicing medicine without a license.

Respondent denies the charges against him and requests that the Board grant his medical license application.

FACTUAL FINDINGS

1. In September 2006, Respondent applied to the Board for a post-graduate training authorization letter. The Board initially denied that application based on a criminal conviction suffered by Respondent in 2005. Respondent appealed the denial, and after an administrative hearing in February 2008, the Board granted Respondent's application for a post-graduate training authorization letter in May 2008.

2. Once in receipt of a post-graduate training authorization letter, Respondent began a post-graduate training program in family medicine at Kaiser Permanente in Riverside, California (Kaiser Riverside). Respondent completed that program in June 2011 and thereafter applied for a medical license as a physician and surgeon.

3. The Board denied Respondent's application for a medical license in September 2011. The Board based its denial on the findings of an investigation it conducted in 2010 involving Respondent and a medical clinic called Gentle Touch Laser Center (hereinafter, "Gentle Touch") in Irvine, California. At the time at issue in this matter, Gentle Touch was operated and owned by Carl Luem, M.D. (Luem).

4. In July 2009, the Board received an anonymous complaint alleging that Respondent was operating Gentle Touch and practicing medicine there without a license.

5. In July 2010, Supervising Board Investigator Carmen Aguilera-Marquez (Aguilera-Marquez) made an undercover visit to Gentle Touch. On July 20, 2010, Aguilera-Marquez posed as a potential patient under a pseudonym. She met with Chanel Volpicelli (Volpicelli), a registered nurse employed by Luem. Aguilera-Marquez told Volpicelli that she was interested in having laser hair removal treatments and asked if she could have the procedure done that day. Aguilera-Marquez completed, among other forms, a patient questionnaire and a consent form, disclosed her medical history, and answered Volpicelli's health-related questions while in an examination room. Volpicelli examined the areas where Aguilera-Marquez sought laser hair removal (her upper lip and underarm areas). Volpicelli described the procedure, the risks, and the price. Aguilera-Marquez asked Volpicelli whether she needed to be seen by a doctor. Volpicelli responded no, explaining that she, as a registered nurse, could perform the procedure.

6. During Volpicelli's examination and at the time she agreed to perform laser treatments on Aguilera-Marquez, Luem was not supervising Volpicelli. No other physician was supervising Volpicelli. Neither Luem nor any other physician examined Aguilera-Marquez, nor did Volpicelli contact and consult with Luem or any other physician before or after Aguilera-Marquez's examination, or before or after offering to treat Aguilera-Marquez. Luem never met Volpicelli.

7. Volpicelli directed Aguilera-Marquez to the office manager to clarify whether the treatment could be provided that day. The office manager that day was Mona Tehrani (Tehrani). Tehrani agreed that Aguilera-Marquez could receive the procedure by Volpicelli that day.

8. Thereafter, Aguilera-Marquez identified herself to Volpicelli as a Board Investigator. After being read her Miranda rights, Volpicelli informed Aguilera-Marquez that she was a new employee and that Respondent interviewed and hired her on May 28, 2010. Volpicelli further asserted that Respondent trained her on how to use the laser, and that as part of her training, she watched Respondent perform laser treatments on patients and other Gentle Touch nursing staff. Volpicelli restated these assertions in her testimony at

hearing. Volpicelli further asserted at hearing that she observed Respondent at Gentle Touch on at least two occasions wearing scrubs.

9. Neither Respondent nor Luem were present at Gentle Touch on July 20, 2010.

10. Complainant offered the testimony of Shoaib U. Naqvi, M.D. Naqvi received his medical degree from the University of Punjab, King Edward Medical College in 1973. He completed a junior residency in orthopedic surgery at the Orthopedic & Arthur Hospital in Toronto, Canada in 1975, and additional post-graduate work at St Joseph Hospital in Chicago, Illinois in 1976. He completed a residency in internal medicine at the Ravenswood Hospital Medical Center in Chicago in 1979. He is a Diplomate of the American Board of Internal Medicine; there was no evidence establishing when he became board certified. Naqvi is currently a District Medical Consultant for the Board.

11. Naqvi opined that Volpicelli's acts of examining Aguilera-Marquez and offering to treat her for laser hair removal constituted the practice of medicine. Naqvi further opined that Volpicelli was aided in this unlicensed practice by Luem, as Gentle Touch's owner, and by Respondent, as Gentle Touch's chief executive officer (CEO), secretary, and chief financial officer (CFO). Naqvi believed Respondent held these titles with Gentle Touch based on information obtained during the Board investigation. This belief was inaccurate, as discussed in Factual Findings 16-19.

12. Naqvi opined that a physician does not need to be physically present when the laser treatments are being performed; a registered nurse can perform the laser treatments so long as the nurse is under the supervision of a physician. Naqvi opined that adequate supervision means that a physician must see and examine the patient and ensure that the registered nurse is competent to perform the procedure. Additionally, in Naqvi's opinion, a physician must be immediately available to address any complications that may arise. There was no expert opinion other than the opinions of Naqvi.

13. Considering Naqvi's uncontradicted testimony, Volpicelli's acts of examining Aguilera-Marquez and agreeing to treat her for laser hair removal, without the supervision of Luem or any other physician, constituted the unauthorized practice of medicine.

14. At hearing, Respondent explained that he first became involved with Gentle Touch in approximately May 2007. Luem and Respondent had met years earlier, in approximately 2004, and struck a personal and professional relationship. In approximately 2007, Luem, intending to soon thereafter retire, discussed with Respondent the possibility of having Respondent continue with Gentle Touch after Luem retired. Luem mentored Respondent. Respondent agreed to help Luem with creating and maintaining the Internet website for Gentle Touch. Respondent asserted at hearing that the extent of his work and assistance at Gentle Touch was website maintenance, the mechanical maintenance of the laser, and the training of Gentle Touch staff regarding the maintenance and general operation of the laser, although he did not train staff on how to perform laser procedures. Respondent further asserted that Luem never paid him for his help at Gentle Touch; he never worked at

Gentle Touch as an employee, never treated patients with the laser, and never wore scrubs while at Gentle Touch. He conceded at hearing that he had conducted initial interviews of patients, but that he would thereafter schedule a consult between the patient and Luem. The evidence did not sufficiently establish the extent or nature of those initial interviews, when they occurred, or how many times he conducted such interviews. According to Respondent, the only persons who used the laser to treat patients were the registered nurses. Respondent had access to Gentle Touch's electronic mail (email) system, and would check and respond to emails from time to time. Respondent described his connection with Gentle Touch as attenuated, although he agreed that he acted as the manger of Gentle Touch.

15. In a 2009 email from Respondent to another physician, Respondent described himself as a Gentle Touch manager and identified himself as "work[ing] for Dr. Luem." Respondent's email sent to a "Dr. Will Kirby" on November 12, 2009, discussing an apparent advertising issue, read as follows:

My name is Amir and I am one of the managers of the clinic and I work for Dr. Luem. I was out of the country and just returned and was updated on what was going on. We did hire an advertising company that guaranteed us google placement We also record and log everything that is done on our computers by staff and Mona [referring to Mona Tehrani, discussed in Factual Findings 21-22] has gone through the logs and saved them to make sure it was not done by any of our staff. Dr. Luem has been practicing medicine for over 30 years and this situation is not a business practice we condone. I know that Mona has worked had in the last week or so to get this situation resolved immediately.

Respondent signed the email, "Amir Yazdan M.D."

16. The Board's investigation found that Respondent had filed documents with the California Secretary of State, showing Respondent's corporate titles within the corporation entitled, "Gentle Touch Lasering, Inc." Gentle Touch Lasering, Inc. has the same address as Gentle Touch but it was not established that Gentle Touch Lasering, Inc. is the same entity as Gentle Touch. On May 1, 2007, Respondent filed articles of incorporation for "Gentle Touch Lasering, Inc." with the Secretary of State, naming Respondent as the agent for service of process and incorporator. On February 27, 2009, Respondent filed a statement of information with the Secretary of State, naming himself as CEO, Secretary, CFO, and Director of Gentle Touch Lasering, Inc.

17. Respondent explained at hearing that he filed these documents "to get the name started" in anticipation of taking over Gentle Touch from Luem. He asserted that "Gentle Touch Lasering, Inc." was never used.

18. There was no evidence showing the incorporation of Gentle Touch. Respondent solely offered evidence that Luem incorporated "Carl Luem M.D., Inc." in April 2007.

19. The evidence did not establish that Respondent held any ownership interest or corporate title in Gentle Touch during the time at issue in this proceeding.

20. There was no evidence that Luem obtained a fictitious name permit from the Board for Gentle Touch. There was no evidence that Respondent obtained a fictitious name permit from the Board for Gentle Touch Lasering, Inc. There was no evidence that Gentle Touch Lasering, Inc. ever operated.

21. Mona Tehrani (Tehrani) testified. She was the office manager on the day Aguilera-Marquez conducted her undercover visit to Gentle Touch. Tehrani asserted at hearing that she is not the regular office manager for Gentle Touch, but was substituting or "filling in" that day as a favor. She asserted that Respondent has never appeared at Gentle Touch in scrubs and does not work and has never worked at Gentle Touch as a physician, and that he has never performed laser treatments on any patients.

22. Tehrani's assertions are not given any weight because her credibility was questionable and she testified in an untrustworthy manner. First, there was evidence that called into question her assertion that she was not the office manager for Gentle Touch. According to Tehrani, in 2009 she was (and she currently is) a California-licensed attorney practicing law. She explained that she had laser treatments at Gentle Touch as a patient and was asked by the staff to help them by acting as the office manager, but only on one occasion. She failed to convincingly explain why or how it came to be that the staff asked her to take on this task, given her legal profession. Second, during her examination, Tehrani asserted that the day of the Board's undercover visit was her first time "covering" as Gentle Touch's office manager. However, later in her testimony, she conceded that she has acted as Gentle Touch's office manager at least two or three other times. Additional evidence belies her description of herself as someone who agreed to work as the office manager at Gentle Touch on only a few isolated instances. Respondent's responsive email from Dr. Kirby (Factual Finding 15) was sent to Tehrani on October 30, 2009. Thus, Tehrani was working at Gentle Touch on that day. Furthermore, Respondent's assertions in his email to Dr. Kirby confirm that Tehrani had been working at Gentle Touch the week before October 30, 2009, to resolve whatever issue there was between them. Additionally, an undated Better Business Bureau company report offered into evidence displays Tehrani as Gentle Touch's manager. Lastly, upon cross-examination, Tehrani was evasive, argumentative, and antagonistic; she was admonished by the ALJ.

23. Melodie Sarebanha testified and asserted that she worked in the front office and as manager for Gentle Touch. She began working at Gentle Touch in approximately 2007; she currently works at Gentle Touch in the front office and as manager. Sarebanha testified as follows: she never saw Respondent at Gentle Touch in scrubs and never saw him use the laser with patients. On a few occasions, Respondent would bring her paycheck, bring office supplies like towels, and would maintain the laser. He would also assist with patient scheduling problems; for these problems, Respondent would usually contact her and other staff by email or text message. She asserted that she saw Respondent only one or two times

at Gentle Touch. Sarebanha was not at Gentle Touch on the day of the undercover visit by Aguilera-Marquez.

24. Tiffany Joyner, a registered nurse employed at Gentle Touch, testified that she has never seen Respondent at the clinic when patients were being treated. She never saw Respondent treat any patients at Gentle Touch. She never saw him in scrubs. Respondent would only fix and maintain the laser. Joyner was not at Gentle Touch on the day of the undercover visit by Aguilera-Marquez.

25. Carl Luem, M.D., testified. Luem is board certified in obstetrics and gynecology; he became interested in cosmetic gynecology in approximately 1985. He has been licensed by the Board since 1973. In 2010, Luem had a medical practice in Brawley, California. He would travel weekly to Gentle Touch and be generally present on Fridays and Saturdays.

26. Luem sees Respondent as a son. Luem wanted Respondent to take over Gentle Touch upon Luem's retirement. He described the documents filed with the Secretary of State (Factual Finding 16) as their (Luem's and Respondent's) attempts to begin that process. Luem described Respondent's role in Gentle Touch as limited to training staff on fixing and maintaining the laser. Luem would call Respondent for help on the laser's maintenance as needed. Luem asserted that Respondent never treated patients, he (Luem) never paid Respondent, and that Respondent never worked for him. According to Luem, Respondent only came to Gentle Touch between two and four times total. He described his failure to obtain a fictitious name permit for Gentle Touch as an oversight.

27. Luem asserted that he believed Gentle Touch functioned in accordance with the law. He testified that the registered nurses would "pretty much" telephone him before treating patients, but he conceded there were "probably" times when the nurses did not telephone him before treating patients. He believed it could have been that there were times when the nurses would consult with a patient, treat the patient, and Luem would review the patient chart thereafter. Luem asserted that he was always available by telephone. Luem did not describe any process by which his nursing staff or any others at Gentle Touch were to contact him by telephone or any other means to discuss patient examinations or potential laser treatments.

28. Barbara Blasko, M.D. supervises residents at Kaiser Riverside. She supervised Respondent in 2008 and 2009. She described Respondent as very knowledgeable and having excelled in his residency. She asserted that she never knew Respondent to be absent or late while at Kaiser Riverside.

29. Walter Morgan, M.D., is Kaiser Riverside's Program Director for family medicine residents. Morgan described Respondent as a good doctor who excelled in his residency. Morgan does not believe Respondent was ever absent during his residency program. He does not believe Respondent could have been at Gentle Touch on any day during this three-year training program with Kaiser Riverside because the attendance

requirements during residency are too rigorous and Respondent was always present, diligent, and hard working.

LEGAL CONCLUSIONS

1. Respondent bore the burden of proof.
2. Business and Professions Code section 2221, subdivision (a) provides that the Board "may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license; or, the board in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions."
3. Business and Professions Code section 2052, subdivision (a), provides that, "any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment."
4. Subdivision (b) of the same provision provides that "[a]ny person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision."
5. Business and Professions Code section 2052, subdivision (c), provides that "[t]he remedy provided in this section shall not preclude any other remedy provided by law."
6. The evidence did not establish that Respondent ever performed laser treatments or otherwise practiced medicine on patients at Gentle Touch. Volpicelli, in testifying to the contrary, failed to provide any specific dates or descriptions of seeing Respondent use the laser on patients. When juxtaposed with the testimony of the other witnesses (other than Tehrani's) and in light of the whole record, Volpicelli's evidence alone was insufficient to establish that Respondent used the laser on patients or otherwise practiced medicine at Gentle Touch.
7. Cause does not exist to deny Respondent's application for licensure, pursuant to Business and Professions Code section 2221, for the unlicensed practice of medicine, as set forth in Factual Findings 1-29, and Legal Conclusions 1-6.

8. Volpicelli's examination and offer to treat Aguilera-Marquez without physician supervision constitutes the unauthorized practice of medicine. Neither Luem nor any other physician reviewed, assessed, or otherwise took any part in Volpicelli's examination of Aguilera-Marquez, nor did Luem or any other physician review, assess, or otherwise consult with Volpicelli before Volpicelli agreed and offered to treat Aguilera-Marquez with laser hair removal.

9. Respondent's actions with respect to the operations of Gentle Touch show a sufficient connection to Gentle Touch to conclude that he aided and abetted in Volpicelli's unauthorized practice of medicine.

10. Respondent did not have an ownership interest in nor did he hold corporate title in Gentle Touch. However, this conclusion does not shield Respondent. Respondent took a greater role in the operations of Gentle Touch than he attempted to portray at hearing. He maintained the laser. He trained staff on the laser's maintenance and functioning. He took an active role in patient scheduling. At times, he brought supplies and brought staff their paychecks. He corresponded with others using Gentle Touch's email. Saliiently, he acted and represented himself as a manager at Gentle Touch, a title he conceded in his testimony. Thus, Respondent played an active role in the regular operations of Gentle Touch. That he was not on staff and that Luem did not employ him or compensate him directly is of no moment. The question is whether Respondent aided or abetted in the medical practice at Gentle Touch. His actions in support of Gentle Touch's operations and functioning supported and aided the nursing staff in providing laser hair removal treatments to patients. As Volpicelli engaged in the unauthorized practice of medicine, it was established that Respondent aided and abetted the unlicensed practice of medicine at Gentle Touch.

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

For the purposes of denial, suspension or revocation of a license, certificate or permit . . . a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.

12. Respondent's actions that constitute the aiding and abetting of the unlicensed practice of medicine at Gentle Touch evidence a present and potential unfitness of Respondent to practice medicine in a manner consistent with the public health, safety, and

welfare. Therefore, Respondent's actions are substantially related to a licensed physician's qualifications, functions, and duties. (Cal. Code Regs., tit. 16, § 1360.)

13. Cause exists to deny Respondent's application for licensure, pursuant to Business and Professions Code section 2221, for aiding and abetting the unlicensed practice of medicine, as set forth in Factual Findings 1-27, and Legal Conclusions 1-5, and 8-12.

14. Business and Professions Code section 2415, subdivision (a), provides that "[a]ny physician and surgeon . . . who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of Section 2285 may practice under that name if the proprietor, partnership, group or corporation obtains and maintains in current status a fictitious-name permit issued by the Division of Licensing"

15. Business and Professions Code section 2285 provides that the use of a fictitious business name without a fictitious name permit constitutes unprofessional conduct.

16. As Respondent holds no ownership or corporate interest in Gentle Touch, he cannot be found to have operated Gentle Touch and he is not liable for the unauthorized use of Gentle Touch's fictitious name.

17. With regard to the entity "Gentle Touch Lasering, Inc.," since Respondent never operated that entity, he did not practice medicine within that entity. Respondent is not liable for failing to obtain a fictitious name permit from the Board for that corporate entity.

18. Cause does not exist to deny Respondent's application for licensure, pursuant to Business and Professions Code section 2415, for the unauthorized use of a fictitious name, as set forth in Factual Findings 1-3, 10, 11, 14, 16-20, 26, and Legal Conclusions 1, and 14-17.

19. The evidence did not establish that Respondent's actions were intentional. More likely, due to Respondent's limited experience, he was unaware of the deficient functioning of Luem's practice at Gentle Touch. Respondent's aiding and abetting warrants discipline, but given the findings and conclusions herein, outright denial would be too severe. The granting of a probationary license requiring Respondent to take an ethics course is sufficient to protect the public and educate Respondent as to the legal and ethical requirements in the practice of medicine.

ORDER

Respondent Amir Reza Yazdanshenas's application for a physician's and surgeon's certificate is granted and immediately revoked. However, the revocation is stayed and Respondent is placed on probation for three years upon the following terms and conditions.

Ethics Course

1(a). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in ethics, at Respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation.

1(b). An ethics course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

1(c). Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

Notification

2(a). Prior to engaging in the practice of medicine Respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

Supervision of Physician Assistants

3. During probation, Respondent is prohibited from supervising physician assistants.

Obey All Laws

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

Quarterly Declarations

5(a). Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

5(b). Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

Probation Unit Compliance

6(a). Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board or its designee.

6(b). Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

6(c). Respondent shall not engage in the practice of medicine in Respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

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

Interview with the Board or its Designee

7. Respondent shall be available in person for interviews either at Respondent's place of business or at the probation unit office, with the Board or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

Residing or Practicing Out-of-State

8(a). In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

8(b). All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not

be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

8(c). Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California totals two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

Failure to Practice Medicine - California Resident

9(a). In the event Respondent resides in the State of California and for any reason Respondent stops practicing medicine in California, Respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

9(b). All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

9(c). Respondent's license shall be automatically cancelled if Respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

Completion of Probation

10(a). Respondent shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation.

10(b). Upon successful completion of probation, Respondent's certificate shall be fully restored.

Violation of Probation

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

License Surrender

12. Following the effective date of this Decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of Respondent's license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

Probation Monitoring Costs

13. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

Dated: June 20, 2012



DANIEL JUÁREZ
Administrative Law Judge
Office of Administrative Hearings