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13 *Pro hac vice application to be filed

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15 *Marilyn M. Singleton, M.D., and Do No Harm*

16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18
19 AZADEH KHATIBI, M.D., an individual,
20 MARILYN M. SINGLETON, M.D., an
21 individual, and DO NO HARM, a Virginia
22 nonprofit corporation,

Plaintiffs,

23 v.

24 KRISTINA LAWSON, in her official
25 capacity as President of the Medical Board of
26 California, RANDY W. HAWKINS, in his
27 official capacity as Vice President of the
28 Medical Board of California, LAURIE
ROSE LUBIANO, in her official capacity as

Case No.: _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 Secretary of the Medical Board of California, }
 2 REJI VARGHESE, in his official capacity as }
 3 Executive Director of the Medical Board of }
 4 California, and MARINA O’CONNOR, in }
 5 her official capacity as Chief of Licensing, }
 6 Medical Board of California, }
 7 Defendants. }

INTRODUCTION

8 1. In 2019, the California Legislature enacted Assembly Bill 241. As of
 9 January 1, 2022, all continuing medical education courses in California must
 10 include discussion of “implicit bias.” But the efficacy of implicit bias training in
 11 reducing disparities and negative outcomes in healthcare is controversial in the
 12 medical community and lacks evidence. Because of that controversy, because they
 13 prefer to teach different, evidence-based subjects, and because they do not want to
 14 espouse the government’s view on implicit bias, Plaintiffs Azadeh Khatibi and
 15 Marilyn Singleton, as well as at least one member of Plaintiff Do No Harm, do not
 16 want to be compelled to include discussion of implicit bias in the continuing
 17 medical education courses they teach.

18 2. Rather than respect the freedom and judgment of continuing medical
 19 education instructors to choose which topics to teach, California law now requires
 20 the Medical Board of California to enforce the mandate that all continuing medical
 21 education courses include discussion of implicit bias. Under the First Amendment
 22 to the United States Constitution, the government cannot compel speakers to
 23 engage in discussions on subjects they prefer to remain silent about. Likewise, the
 24 government cannot condition a speaker’s ability to offer courses for credit on the
 25 requirement that she espouse the government’s favored view on a controversial
 26 topic. This case seeks to vindicate those important constitutional rights.

1 9. Defendant Randy W. Hawkins is the Vice President of the Medical
2 Board of California. Mr. Hawkins is sued in his official capacity.

3 10. Defendant Laurie Rose Lubiano is the Secretary of the Medical Board
4 of California. Ms. Lubiano is sued in her official capacity.

5 11. Defendant Reji Varghese is the Executive Director of the Medical
6 Board of California and is sued in his official capacity.

7 12. Defendant Marina O'Connor is the Chief of Licensing for the Medical
8 Board of California. As Chief of Licensing, Ms. O'Connor has principal
9 responsibility for enforcing state requirements for continuing medical education,
10 including Cal. Bus. & Prof. Code § 2190.1(d)(1). Ms. O'Connor is sued in her
11 official capacity.

12 **FACTUAL ALLEGATIONS**

13 **California's Continuing Medical Education Requirements**

14 13. All California-licensed physicians are required to complete 50 hours
15 of continuing medical education every two years. Cal. Code Regs. tit. 16, §
16 1336(a).

17 14. To qualify for credit by the Medical Board, continuing education
18 courses must be approved by the California Medical Association, American
19 Medical Association, American Academy of Family Physicians, or "other
20 organizations and institutions acceptable to" the Medical Board. Cal. Code Regs.
21 tit. 16, § 1337(a).

22 15. The Medical Board sets out criteria to determine whether courses
23 taught by "other organizations and institutions" are acceptable, including that
24 course content "shall be directly related to patient care, community health or public
25 health, preventive medicine, quality assurance or improvement, risk management,
26 health facility standards, the legal aspects of clinical medicine, bioethics,
27 professional ethics, or improvement of the physician-patient relationship." Cal.
28 Code Regs. tit. 16, § 1337.5(a)(3).

1 16. Physicians are required to attest that they satisfied the 50-hour
2 continuing education requirement when renewing their licenses. Cal. Code Regs.
3 tit. 16, § 1336(c).

4 17. Each year, the Medical Board randomly audits physicians for
5 compliance with the continuing education requirement. Cal. Code Regs. tit. 16, §
6 1338(a). When reviewing a physician’s documentation for completed continuing
7 education, the Medical Board will randomly audit courses to determine whether
8 the course is approved for credit. Cal. Code Regs. tit. 16, §§ 1337.5(b), 1338(d).

9 18. Should a course not qualify for credit after an audit, then physicians
10 will not receive credit for that course. Cal. Code Regs. tit. 16, § 1337.5(c). And
11 should a physician fail to satisfy the 50-hour requirement as a result, he or she will
12 be required to cure the deficiency during the next renewal period. Cal. Code Regs.
13 tit. 16, § 1338(b).

14 **The Challenged Law**

15 19. Cal. Bus. & Prof. Code § 2190.1(d)(1) declares that “[o]n and after
16 January 1, 2022, all continuing medical education courses shall contain curriculum
17 that includes the understanding of implicit bias.”

18 20. In order to satisfy the curriculum requirements of Cal. Bus. & Prof.
19 Code § 2190.1(d)(1), continuing medical education courses must include
20 “[e]xamples of how implicit bias affects perceptions and treatment decisions of
21 physicians and surgeons, leading to disparities in health outcomes,” or “[s]trategies
22 to address how unintended biases in decisionmaking may contribute to health care
23 disparities by shaping behavior and producing differences in medical treatment
24 along lines of race, ethnicity, gender identity, sexual orientation, age,
25 socioeconomic status, or other characteristics,” or a combination of both. §
26 2190.1(e).

Implicit Bias Trainings Are Controversial

1
2 21. While there is no consensus definition, the concept of “implicit bias”
3 refers to stereotypical or prejudicial beliefs or attitudes that an individual may
4 unconsciously possess toward others, which can result in discriminatory actions
5 taken by the implicitly biased individual when those beliefs or attitudes are
6 activated.

7 22. In the context of healthcare, some people worry that a physician who
8 holds implicit bias toward a patient under his or her care will render disparately
9 worse care.

10 23. There is inconsistent evidence that implicit bias in healthcare is
11 prevalent and results in disparate treatment outcomes.

12 24. Even assuming sufficient evidence exists that implicit bias in
13 healthcare is prevalent and results in disparate treatment outcomes, there is no
14 evidence-based consensus that trainings intended to reduce implicit bias are
15 effective.

16 25. Moreover, evidence shows that implicit bias trainings can cause
17 counterproductive anger, frustration, and resentment among those taking the
18 trainings.

19 26. Because neither Cal. Bus. & Prof. Code § 2190.1 nor any other
20 California statute or regulation sets forth recognized criteria for conducting
21 mandated implicit bias trainings, there are no measures to assure the trainings are
22 effective.

23 27. By mandating all continuing medical education instructors include
24 training on implicit bias even though evidence-based criteria ensuring the trainings
25 are effective does not exist, section 2190.1(d) is unlikely to address the problem of
26 implicit bias in healthcare, if any.

1 **The Challenged Law Compels Plaintiffs' Speech**

2 *Azadeh Khatibi*

3 28. Azadeh Khatibi was a child in Tehran during the Iranian Revolution
4 of 1979. As a result of increasingly theocratic changes to Iranian society following
5 the Revolution, her family joined the diaspora and uprooted to the United States,
6 settling in Los Angeles.

7 29. After matriculating at UCLA, Dr. Khatibi went on to earn an M.D.
8 from University of California, San Francisco, and master's degrees in public health
9 and health and medical sciences from University of California, Berkeley. Now an
10 ophthalmologist, Dr. Khatibi also teaches and organizes continuing medical
11 education courses in California.

12 30. Dr. Khatibi has taught continuing medical education courses on many
13 topics in ophthalmology, including retinal tumors, glaucoma, and other ocular
14 diseases, as well as systemic diseases. Dr. Khatibi has also organized continuing
15 medical education courses. All courses taught and organized by Dr. Khatibi were
16 done under the auspices of approved continuing medical education providers.

17 31. In addition to the joy of sharing knowledge with others, Dr. Khatibi
18 also benefits reputationally from teaching continuing medical education courses.

19 32. Dr. Khatibi wishes to continue teaching continuing medical education
20 courses in California, but does not want to be compelled to include discussion of
21 implicit bias in her courses when there is no relevance to her topics, or discussion
22 of other topics is more relevant to minimize treatment outcome disparities. This is
23 especially true given the lack of evidentiary support for implicit bias trainings and
24 the significant time constraints usually present in delivering continuing medical
25 education courses, which limit the amount of information capable of being
26 discussed.

27 33. Further, Dr. Khatibi disagrees that implicit bias is the primary factor
28 driving disparities in healthcare. Thus, because Dr. Khatibi's courses do not

1 generally cover disparities in care, and because there is limited time available for
2 instruction in a given course, section 2190.1(d)'s mandate to include discussion of
3 implicit bias prevents her from having a more robust and appropriate discussion of
4 the topic. Instead, she is limited to only discussing the government's preferred
5 topic and viewpoint.

6 34. Should Dr. Khatibi teach a course without the mandated implicit bias
7 discussion, the course would not qualify for continuing medical education credit in
8 California. As a result, it is unlikely that physicians would elect to take such a
9 course.

10 *Marilyn M. Singleton*

11 35. Dr. Singleton is a board-certified anesthesiologist and past president
12 of the Association of American Physicians and Surgeons.

13 36. Dr. Singleton earned her bachelor's degree from Stanford University
14 and her medical degree from University of California, San Francisco.

15 37. Dr. Singleton has taught continuing medical education courses for
16 several years. She has also organized continuing medical education courses. All
17 courses taught and organized by Dr. Singleton were done under the auspices of
18 approved continuing medical education providers.

19 38. Dr. Singleton is often called upon to teach continuing medical
20 education courses and expects to be asked to do so in the future.

21 39. Dr. Singleton enjoys teaching continuing medical education courses
22 and benefits financially and reputationally from doing so.

23 40. Should Dr. Singleton be required to include discussion of implicit bias
24 in the courses she teaches, she would be forced to include information that is not
25 relevant to her chosen topic. Including discussion of implicit bias in her courses
26 would require her to change a portion of the talk to include information on implicit
27 bias at the expense of other information she would prefer to include.
28

1 41. Further, Dr. Singleton disagrees that including discussion of implicit
2 bias in her courses is helpful and important. To the contrary, she believes that such
3 trainings are harmful to physicians and patients. Yet because section 2190.1(d)
4 requires a discussion of “examples” of disparities in care resulting from implicit
5 bias or of “strategies” to address such disparities due to implicit bias, informing an
6 audience of her disagreement with including mandatory discussion of implicit bias
7 would be insufficient to make clear that the government’s required message is not
8 her own.

9 42. If, instead, Dr. Singleton taught a course without the mandated
10 implicit bias discussion, the course would not qualify for continuing medical
11 education credit in California. As a result, it is unlikely that physicians would elect
12 to take such a course.

13 *Do No Harm*

14 43. Do No Harm’s membership is comprised of physicians, healthcare
15 professionals, medical students, patients, and policymakers united by a mission to
16 protect healthcare from radical, divisive, and discriminatory ideologies.

17 44. Do No Harm’s members believe that all patients deserve access to the
18 best possible care and that barriers to care should be broken down.

19 45. Do No Harm’s membership includes at least one individual who
20 teaches, has taught, and intends to teach continuing medical education courses in
21 the future for credit in California.

22 46. At least one of Do No Harm’s members does not want to include
23 discussion of implicit bias in the continuing medical education courses she teaches
24 because such trainings have not been shown to successfully reduce barriers to
25 healthcare, and instead risk infecting healthcare decisions with divisive and
26 discriminatory ideas.

1 47. If not for Cal. Bus. & Prof. Code § 2190.1(d), at least one of Do No
2 Harm’s members would not include discussion of implicit bias in the continuing
3 medical education courses taught by her.

4 **CAUSES OF ACTION**

5 **FIRST CLAIM FOR RELIEF**

6 **Violation of Plaintiffs’ First Amendment Right to Freedom of Speech**

7 **(42 U.S.C. § 1983)**

8 48. Plaintiffs reallege and incorporate by reference all allegations
9 contained in the previous paragraphs.

10 49. An actual and substantial controversy exists between Plaintiffs, their
11 members, and Defendants. All Plaintiffs and their members have the right to not
12 speak on topics they would rather remain silent about.

13 50. The First Amendment to the United States Constitution, as applied to
14 the States through the Fourteenth Amendment, protects the choice of Plaintiffs and
15 their members to not include discussions of implicit bias in the continuing medical
16 education courses taught by them.

17 51. On its face and as enforced by Defendants, Cal. Bus. & Prof. Code §
18 2190.1(d)(1) compels Plaintiffs and their members to include discussion of implicit
19 bias in continuing medical education courses taught by them when they would
20 otherwise remain silent about implicit bias.

21 52. Compelling Plaintiffs and their members to include discussion of
22 implicit bias in the continuing medical education courses taught by them when
23 they would otherwise remain silent about the topic burdens their rights to free
24 speech.

25 53. Section 2190.1(d)(1) is a content-based restriction on Plaintiffs’ and
26 their members’ freedom of speech because it mandates the discussion of a certain
27 topic (implicit bias) in continuing medical education courses taught by them.
28

1 54. Section 2190.1(d)(1) is also a viewpoint-based restriction on
2 Plaintiffs' and their members' freedom of speech because it mandates speech
3 accepting the premise of implicit bias and resulting healthcare disparities due to
4 such bias, despite the controversial nature of both propositions.

5 55. Section 2190.1(d)(1) is not sufficiently tailored to serve a compelling
6 government interest.

7 56. By requiring Plaintiffs and their members to include discussion of
8 implicit bias in the continuing medical education courses they teach, Defendants
9 maintain and actively enforce a set of laws, practices, policies, and procedures
10 under color of state law that deprive Plaintiffs and their members of their right to
11 free speech, in violation of the First Amendment to the United States Constitution,
12 as applied to the States through the Fourteenth Amendment and 42 U.S.C. § 1983.

13 57. Plaintiffs have no adequate remedy at law to compensate for the loss
14 of their freedom of speech and will suffer irreparable injury absent an injunction
15 prohibiting Defendants' enforcement of the requirement in section 2190.1(d)(1)
16 that all continuing medical education courses include a discussion of implicit
17 bias.

18 58. Plaintiffs are therefore entitled to prospective declaratory and
19 permanent injunctive relief against continued enforcement of section 2190.1(d)(1).

20 **SECOND CLAIM FOR RELIEF**

21 **Unconstitutional Condition on Plaintiffs' First Amendment Speech Rights**
22 **(42 U.S.C. § 1983)**

23 59. Plaintiffs reallege and incorporate by reference all allegations
24 contained in the previous paragraphs.

25 60. An actual and substantial controversy exists between Plaintiffs, their
26 members, and Defendants. All Plaintiffs and their members have the right to teach
27 continuing medical education courses for credit free from the condition that they
28 include the government's favored message and viewpoint in their courses.

1 B. A permanent injunction restraining Defendants and Defendants’
2 officers, agents, affiliates, servants, successors, employees, and all other persons in
3 active concert or participation with Defendants from enforcing Cal. Bus. & Prof.
4 Code § 2190.1(d)(1) against Plaintiffs and all others teaching continuing medical
5 education courses;

6 C. Judgment for Plaintiffs and against Defendants for the deprivation of
7 Plaintiffs’ rights;

8 D. An award of attorney fees, costs, and expenses in this action pursuant
9 to 42 U.S.C. § 1988; and

10 E. Any further relief as the Court may deem just, necessary, or proper.

11 DATED: August 1, 2023.

12 Respectfully submitted,

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19 CALEB R. TROTTER

20 *Pro hac vice application to be filed

21 *Attorneys for Plaintiffs Azadeh Khatibi,*
22 *M.D., Marilyn M. Singleton, M.D., and*
23 *Do No Harm*