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

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 AZADEH KHATIBI, M.D., *et al.*,

17 Plaintiffs,

18 v.

19 RANDY W. HAWKINS, in his official  
20 capacity as President of the Medical  
21 Board of California, *et al.*,

22 Defendants.

23 ) Case No.: 2:23-cv-06195-MRA (Ex)

24 ) **JOINT CASE MANAGEMENT**  
25 ) **STATEMENT**

26 ) Judge: Hon. Mónica Ramírez  
27 ) Almadani

1 Counsel for Plaintiffs Azadeh Khatibi, M.D., Marilyn M. Singleton, M.D., and  
2 Do No Harm and counsel for Defendants Randy W. Hawkins, in his official capacity  
3 as President of the Medical Board of California, Laurie Rose Lubiano, in her official  
4 capacity as Vice President of the Medical Board of California, Ryan Brooks, in his  
5 official capacity as Secretary of the Medical Board of California, Reji Varghese, in his  
6 official capacity as Executive Director of the Medical Board of California, and Marina  
7 O'Connor, in her official capacity as Chief of Licensing of the Medical Board of  
8 California jointly present the Court with the following statement:

9 **A. Date of filing**

10 The original complaint was filed on August 1, 2023. The operative First  
11 Amended Complaint was filed on December 22, 2023. (ECF No. 26).

12 **B. Parties**

13 Plaintiffs: Azadeh Khatibi, M.D.; Marilyn M. Singleton, M.D.; and Do No  
14 Harm, a Virginia nonprofit corporation with no subsidiaries, parents, or affiliates.

15 Defendants: Randy W. Hawkins, in his official capacity as President of the  
16 Medical Board of California; Laurie Rose Lubiano, in her official capacity as Vice  
17 President of the Medical Board of California; Ryan Brooks, in his official capacity as  
18 Secretary of the Medical Board of California; Reji Varghese, in his official capacity as  
19 Executive Director of the Medical Board of California; and Marina O'Connor, in her  
20 official capacity as Chief of Licensing for the Medical Board of California.

21 **C. Summary of claims**

22 Plaintiffs' First Amended Complaint raises two claims challenging the  
23 constitutionality of Cal. Bus. & Prof. Code § 2190.1(d)(1): the requirement that  
24 continuing medical education courses include discussion of implicit bias compels their  
25 speech in violation of the First Amendment and serves to unconstitutionally condition  
26 the conferral of credit for continuing medical education courses taught by them on  
27 foregoing their First Amendment right to not include discussion of implicit bias as  
28 required by section 2190.1(d)(1).

1 It is Defendants' position that the implicit bias training requirement under  
2 section 2190.1(d)(1) constitutes government speech not subject to First Amendment  
3 protection. And even if the implicit bias training requirement under section  
4 2190.1(d)(1) were protected speech under the First Amendment, the law would  
5 survive constitutional scrutiny. As for Plaintiffs' First Amendment claim under the  
6 unconstitutional conditions doctrine, it is Defendants' position that Plaintiffs do not  
7 have a constitutional right to teach continuing medical education courses for credit,  
8 and Plaintiffs fail to identify any other right or benefit of which they are deprived  
9 because of any unconstitutional condition.

#### 10 **D. Events underlying the action**

11 In 2019, the California Legislature enacted Assembly Bill 241 to amend Cal.  
12 Bus. & Prof. Code § 2190.1. As of January 1, 2022, certain continuing medical  
13 education courses in California "shall contain curriculum that includes the  
14 understanding of implicit bias." § 2190.1(d)(1). Plaintiffs Dr. Azadeh Khatibi and Dr.  
15 Marilyn M. Singleton, as well as at least one member of Plaintiff Do No Harm, allege  
16 that they are California-licensed physicians who teach and organize continuing  
17 medical education courses in California. Plaintiffs allege that, as a result of section  
18 2190.1(d), they are now required to include discussion of implicit bias in the courses  
19 they teach. Plaintiffs further allege that implicit bias trainings are controversial, that  
20 the very concept of implicit bias is controversial, that the efficacy of implicit bias  
21 trainings is unproven, and that the training requirement diverts time and attention  
22 away from more valuable topics.

23 It is Defendants' position that speech that the State Legislature requires to be  
24 included in continuing medical education courses necessary for state licensure  
25 constitutes government speech not subject to First Amendment protection. Thus, the  
26 State's requirement that continuing medical education courses include discussion of  
27 implicit bias as part of their curriculum does not implicate Plaintiffs' First  
28 Amendment rights. And even if the implicit bias training requirement under section

1 2190.1(d)(1) were protected speech under the First Amendment, the law would  
2 survive constitutional scrutiny. As for Plaintiffs' First Amendment claim under the  
3 unconstitutional conditions doctrine, it is Defendants' position that Plaintiffs do not  
4 have a constitutional right to teach continuing medical education courses for credit,  
5 and that the Medical Board of California has ultimate discretion over the standards  
6 for the continuing education of licensed physicians and surgeons.

#### 7 **E. Relief sought**

8 Both of Plaintiffs' legal claims arise under the First and Fourteenth  
9 Amendments to the United States Constitution and 42 U.S.C. § 1983. Plaintiffs seek  
10 an injunction prohibiting Defendants from enforcing Cal. Bus. & Prof. Code  
11 § 2190.1(d)(1) and declaratory relief pursuant to the Declaratory Judgment Act, 28  
12 U.S.C. §§ 2201–2202. Plaintiffs do not seek damages.

#### 13 **F. Status of discovery**

14 Plaintiffs served Defendants with their Rule 26(a) initial disclosures on  
15 November 6, 2023. Defendants served Plaintiffs with their Rule 26(a) initial  
16 disclosures on November 20, 2023. No other discovery has been conducted.

17 Plaintiffs anticipate seeking written discovery, including interrogatories,  
18 document requests, and requests for admission as to Defendants' approval,  
19 supervision, and auditing of continuing medical education courses and providers. In  
20 addition, Plaintiffs anticipate deposing Defendant O'Connor and/or a deponent  
21 designated by Defendants pursuant to Rule 30(b)(6).

22 Defendants currently intend to serve each Plaintiff with written discovery,  
23 including interrogatories, requests for production of documents, and requests for  
24 admission, relevant to the factual basis, if any, for the allegations and legal theories  
25 in the First Amended Complaint. Defendants also intend to notice the depositions of  
26 some or all of the Plaintiffs, including a Rule 30(b)(6) deposition of Plaintiff Do No  
27 Harm, and any expert witness(es) that Plaintiffs may designate, in order (1) to test  
28 the factual allegations in Plaintiffs' First Amended Complaint, and (2) to discover

1 evidence relevant to the claims and defenses asserted in this action. Defendants  
2 anticipate that the need for further discovery and additional topics may be identified  
3 during the course of discovery.

4 The Court previously issued a Scheduling Order on November 22, 2023 (ECF  
5 No. 23), in which the following discovery deadlines were set:

6 Discovery cut-off: July 31, 2024.

7 Expert witness exchange deadline: June 1, 2024, for initial experts; July 15,  
8 2024, for rebuttal experts; August 15, 2024, expert cut-off date.

9 **G. Procedural history**

10 The Court previously dismissed Plaintiffs' original Complaint on December 11,  
11 2023, with leave to amend. (ECF No. 25). After Plaintiffs filed their First Amended  
12 Complaint, Defendants filed a second Motion to Dismiss (ECF No. 29), which is fully  
13 briefed and currently pending before the Court.

14 In the Court's Scheduling Order (ECF No. 23), the ADR cut-off date is set as  
15 December 2, 2024.

16 **H. Other deadlines**

17 Pursuant to the Court's Scheduling Order (ECF No. 23), additional deadlines  
18 are:

19 Motion to amend pleadings or add parties: May 6, 2024.

20 Motion hearing cut-off: November 18, 2024.

21 Trial documents (set one): January 6, 2025.

22 Trial documents (set two): January 13, 2025.

23 Final pre-trial conference: January 27, 2025.

24 Trial date: February 25, 2025.

25 **I. Consent to a magistrate judge**

26 The parties do not consent to a magistrate judge for trial.

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**J. Counsel statement on magistrate judge consent program**

Counsel for Plaintiffs have discussed the Court’s magistrate judge consent program with Plaintiffs and Plaintiffs do not consent to participate in the program.

Counsel for Defendants have discussed the Court’s magistrate judge consent program with Defendants, and Defendants do not consent to participate in the program.

**K. Need for case management conference**

There is no need for an immediate case management conference.

DATED: March 14, 2024.

Respectfully submitted,

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Director of the Medical Board of  
California, and Marina O’Connor,  
Chief of Licensing of the Medical  
Board of California, in their official  
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† The filer attests that all signatories concur with this filing’s content and have authorized the filing. L.R. 5-4.3.4(a)(2)(i).