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12 *Attorneys for Plaintiffs Azadeh Khatibi, M.D.,*
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.

Case No.: 2:23-cv-06195-DSF-E

JOINT RULE 26(f) REPORT

Judge: Hon. Dale S. Fischer

Date of Scheduling Conference:

Nov. 27, 2023, 11:00 AM

1 On November 6, 2023, counsel for Plaintiffs Azadeh Khatibi, M.D.,
2 Marilyn M. Singleton, M.D., and Do No Harm and counsel for Defendants Randy W.
3 Hawkins, in his official capacity as President of the Medical Board of California,
4 Laurie Rose Lubiano, in her official capacity as Vice President of the Medical Board
5 of California, Ryan Brooks, in his official capacity as Secretary of the Medical Board
6 of California, Reji Varghese, in his official capacity as Executive Director of the
7 Medical Board of California, and Marina O'Connor, in her official capacity as Chief of
8 Licensing of the Medical Board of California held a conference in accordance with
9 Federal Rule of Civil Procedure 26(f) and now jointly present the Court with the
10 following:

11 **A. Statement of the Case**

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

24 Plaintiffs’ Complaint raises two claims challenging the constitutionality of
25 section 2190.1(d)(1): the requirement that continuing medical education courses
26 include discussion of implicit bias compels speech in violation of the First
27 Amendment, and serves as an unconstitutional condition on the conferral of
28 continuing education credit.

1 It is Defendants' position that speech that the State Legislature requires to
2 be included in continuing medical education courses necessary for state licensure
3 constitutes government speech not subject to First Amendment protection. Thus,
4 the State's requirement that continuing medical education courses include
5 discussion of implicit bias as part of their curriculum does not implicate Plaintiffs'
6 First Amendment rights. And even if the implicit bias training requirement under
7 section 2190.1(d)(1) were protected speech under the First Amendment, the law
8 would survive constitutional scrutiny. As for Plaintiffs' First Amendment claim
9 under the unconstitutional conditions doctrine, it is Defendants' position that
10 Plaintiffs do not have a constitutional right to teach continuing medical education
11 courses for credit, and that the Medical Board of California has ultimate discretion
12 over the standards for the continuing education of licensed physicians and surgeons.

13 **B. Subject Matter Jurisdiction**

14 Both of Plaintiffs' legal claims arise under the First and Fourteenth
15 Amendments to the United States Constitution and 42 U.S.C. § 1983. As a result,
16 this Court has subject matter jurisdiction over Plaintiffs' claims in this action under
17 28 U.S.C. §§ 1331 (federal question) and 1343(a) (redress for deprivation of civil
18 rights). Plaintiffs seek declaratory relief pursuant to the Declaratory Judgment Act,
19 28 U.S.C. §§ 2201–2202.

20 **C. Legal Issues**

21 Plaintiffs claim that Cal. Bus. & Prof. Code § 2190.1(d)(1) compels their
22 speech in violation of the First Amendment and serves to unconstitutionally
23 condition the conferral of credit for continuing medical education courses taught by
24 them on foregoing their First Amendment right to not include discussion of implicit
25 bias as required by section 2190.1(d)(1).

26 It is Defendants' position that the implicit bias training requirement under
27 section 2190.1 constitutes government speech not subject to First Amendment
28 protection. 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 **D. Parties, Evidence, etc.**

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

8 Defendants: Randy W. Hawkins, in his official capacity as President of the
9 Medical Board of California; Laurie Rose Lubiano, in her official capacity as Vice
10 President of the Medical Board of California; Ryan Brooks, in his official capacity as
11 Secretary of the Medical Board of California; Reji Varghese, in his official capacity
12 as Executive Director of the Medical Board of California; and Marina O'Connor, in
13 her official capacity as Chief of Licensing for the Medical Board of California.

14 **E. Damages**

15 Plaintiffs do not seek damages.

16 **F. Insurance**

17 None.

18 **G. Motions**

19 Currently pending before the Court is Defendants' Motion to Dismiss (ECF
20 No. 16). Depending on the outcome of the Motion to Dismiss, and the development
21 of discovery, the Parties may seek to file motions for summary judgment. The
22 Parties do not anticipate filing other motions.

23 **H. Status of Discovery**

24 Other than the Rule 26(a) initial disclosures noted below, no other discovery
25 has been conducted.

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1 **I. Discovery Plan**

2 Plaintiffs served Defendants with their Rule 26(a) initial disclosures on
3 November 6, 2023. Defendants served Plaintiffs with their Rule 26(a) initial
4 disclosures on November 20, 2023.

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

10 Defendants currently intend to serve each Plaintiff with written discovery,
11 including interrogatories, requests for production of documents, and requests for
12 admission, relevant to the factual basis, if any, for the allegations and legal theories
13 in the Complaint. Defendants also intend to notice the depositions of some or all of
14 the Plaintiffs, including a Rule 30(b)(6) deposition of Plaintiff Do No Harm, and any
15 expert witness(es) that Plaintiffs may designate, in order (1) to test the factual
16 allegations in Plaintiffs' Complaint, and (2) to discover evidence relevant to the
17 claims and defenses asserted in this action. Defendants anticipate that the need for
18 further discovery and additional topics may be identified during the course of
19 discovery.

20 **J. Discovery Cut-off**

21 The Parties propose July 31, 2024, as the final day for completion of non-
22 expert discovery.

23 **K. Expert Discovery**

24 Initial expert disclosures, if any, will be served by June 1, 2024. Rebuttal
25 expert disclosures, if any, will be served by July 15, 2024, and sur-rebuttal expert
26 disclosures will be served by August 15, 2024. The expert discovery cut-off date will
27 be September 15, 2024.

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L. Dispositive Motions

Defendants believe the claims in this action should be dismissed. If the Court denies their pending motion to dismiss, the Parties agree that the claims in this action can be resolved by cross-motions for summary judgment.

M. Settlement/ADR

Because Plaintiffs challenge the constitutionality of a state law and are seeking solely declaratory and injunctive relief, the Parties agree that there is no possibility of settlement in this case. Should the Court deem it appropriate, the Parties select ADR Procedure No. 1 under Local Rule 16-15.4.

N. Trial Estimate

The Parties do not anticipate trial being necessary, but should trial become necessary, the Parties anticipate two to three days being sufficient for a trial by the Court. Each party anticipates calling three to five witnesses, if necessary.

O. Lead Trial Counsel

Plaintiffs: Caleb R. Trotter
Defendants: Stephanie Albrecht

P. Independent Expert or Master

Not applicable.

Q. Timetable

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SCHEDULE OF PRETRIAL AND TRIAL DATES

CASE NAME: Khatibi v. Hawkins

CASE NO: 2:23-cv-06195-DSF-E

Matter	Time	Weeks before trial	Plaintiff(s) Request	Defendant(s) Request	Court Order
Trial (jury)(court) (length 2-3 days) (Tuesday)	8:30 am		1/28/2025	2/25/2025	
Pretrial Conference, LR 16; Hearing on Motions in Limine (Monday)	3:00 pm	4	12/30/2024	1/27/2025	
Trial Documents (Set Two) All Trials: Lodge Pretrial Conference Order, LR 16-7; File Oppositions to Motions in Limine Jury Trial Only: File Agreed Set of Jury Instructions and Verdict Forms; Statement Regarding Disputed Instructions and Verdict forms		6	12/16/2024	1/13/2025	
Trial Documents (Set One) All Trials: File Memo of Contentions of Fact and Law, LR 16-4; Exhibit & Witness Lists, LR 16-5, 6; Status Report Regarding Settlement; Motions in Limine (no more than five motions per side may be filed without Court permission) Court Trial Only: Lodge Findings of Fact and Conclusions of Law; LR 52; File Summaries of Direct Testimony (optional)		7	12/9/2024	1/6/2025	
Last day to conduct ADR Proceeding, LR 16-15		12	11/4/2024	12/2/2024	
Last day to hear motions (except motion to amend pleadings or add parties and motions in limine), LR 7 (Monday)	1:30 pm	14	10/21/2024	11/18/2024	

Joint Rule 26(f) Report

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Matter	Time	Weeks before trial	Plaintiff(s) Request	Defendant(s) Request	Court Order
Nonexpert Discovery Cutoff		21+	7/31/2024	7/31/2024	
Expert Disclosure (initial)			3/1/2024	6/1/2024	
Expert Disclosure (rebuttal)			4/12/2024	7/15/2024	
Expert Disclosure (sur-rebuttal)			5/13/2024	8/15/2024	
Expert Discovery Cutoff		21+	6/14/2024	9/15/2024	
Last day to hear motion to amend pleadings or add parties (Monday)	1:30 pm	32+	5/6/2024	5/6/2024	

R. Magistrate Judge

The Parties do not agree to try this case before a magistrate judge.

S. Class Action

Not applicable.

T. Other Issues

None known or anticipated.

DATED: November 20, 2023.

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1 Respectfully submitted,

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3 CALEB R. TROTTER, SBN 305195
4 DONNA G. MATIAS, SBN 154268
5 CAMERON T. NORRIS,
6 Va. Bar No. 91624*

7 By /s/ Caleb R. Trotter
8 CALEB R. TROTTER

9 *Attorneys for Plaintiffs*
10 *Azadeh Khatibi, M.D.,*
11 *Marilyn M. Singleton, M.D., and*
12 *Do No Harm*

13 **Pro hac vice*

ROB BONTA
Attorney General of California
LARA HADDAD
Supervising Deputy Attorney General

/s/ Stephanie Albrecht †
STEPHANIE ALBRECHT
Deputy Attorney General

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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).