

1 JOSHUA P. THOMPSON, SBN 250955

JThompson@pacificlegal.org

2 CALEB R. TROTTER, SBN 305195

3 CTrotter@pacificlegal.org

4 DONNA G. MATIAS, SBN 154268

DMatias@pacificlegal.org

5 Pacific Legal Foundation

6 555 Capitol Mall, Suite 1290

Sacramento, California 95814

7 (916) 419-7111

8 CAMERON T. NORRIS,

9 Va. Bar No. 91624*

cam@consovoymccarthy.com

10 Consovoy McCarthy PLLC

11 1600 Wilson Boulevard, Suite 700

Arlington, Virginia 22209

12 (703) 243-9423

13 *Pro hac vice

14 *Attorneys for Plaintiffs Azadeh Khatibi, M.D.,*
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 RANDY W. HAWKINS, in his official
25 capacity as President of the Medical Board of
26 California, LAURIE ROSE LUBIANO, in
27 her official capacity as Vice President of the
28 Medical Board of California, RYAN
BROOKS, in his official capacity as

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

**FIRST AMENDED
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 Medical Association,” as well as for all courses “which qualify for prescribed
2 credit from the American Academy of Family Physicians.” Cal. Code Regs. tit. 16,
3 § 1337(a).

4 17. For courses taught by “other organizations and institutions” to receive
5 credit, Cal. Code Regs. tit. 16, § 1337(a)(3), the content “shall be directly related to
6 patient care, community health or public health, preventive medicine, quality
7 assurance or improvement, risk management, health facility standards, the legal
8 aspects of clinical medicine, bioethics, professional ethics, or improvement of the
9 physician-patient relationship.” *Id.* at § 1337.5(a)(3).

10 18. In addition to attending CME courses, and in line with the stated
11 purpose of ensuring the continuing competence of physicians and surgeons, Cal.
12 Bus. & Prof. Code § 2190, doctors may satisfy some of the 50-hour CME
13 requirement through teaching CME courses, passing a “certifying or recertifying
14 examination administered by a recognized specialty board,” receiving the
15 Physician’s Recognition Award, and participating in an “approved postgraduate
16 residency training program or approved clinical fellowship program.” Cal. Code
17 Regs. tit. 16, § 1337(c)-(f).

18 19. Physicians are required to attest that they satisfied the 50-hour CME
19 requirement when renewing their licenses. Cal. Code Regs. tit. 16, § 1336(c).

20 20. Each year, the Medical Board randomly audits physicians for
21 compliance with the CME requirement. Cal. Code Regs. tit. 16, § 1338(a). When
22 reviewing a physician’s documentation for completed continuing education, the
23 Medical Board will randomly audit CME courses to determine whether the course
24 is approved for credit. Cal. Code Regs. tit. 16, §§ 1337.5(b), 1338(d).

25 21. If a course is not audited by the Medical Board, it is awarded credit
26 even though its content is never reviewed by the Medical Board so long as no
27 complaint is received regarding the course. Cal. Code Regs. tit. 16, § 1337.5(b).

28

1 27. There is inconsistent evidence that implicit bias in healthcare is
2 prevalent and results in disparate treatment outcomes.

3 28. Even assuming sufficient evidence exists that implicit bias in
4 healthcare is prevalent and results in disparate treatment outcomes, there is no
5 evidence-based consensus that trainings intended to reduce implicit bias are
6 effective.

7 29. Moreover, evidence shows that implicit bias trainings can cause
8 counterproductive anger, frustration, and resentment among those taking the
9 trainings.

10 30. Because neither Cal. Bus. & Prof. Code § 2190.1 nor any other
11 California statute or regulation sets forth recognized criteria for conducting
12 mandated implicit bias trainings, there are no measures to assure the trainings are
13 effective.

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

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

19 *Azadeh Khatibi*

20 32. Azadeh Khatibi was a child in Tehran during the Iranian Revolution
21 of 1979. As a result of increasingly theocratic changes to Iranian society following
22 the Revolution, her family joined the diaspora and uprooted to the United States,
23 settling in Los Angeles.

24 33. After matriculating at UCLA, Dr. Khatibi went on to earn an M.D.
25 from University of California, San Francisco, and master's degrees in public health
26 and health and medical sciences from University of California, Berkeley. Now an
27 ophthalmologist, Dr. Khatibi also teaches and organizes continuing medical
28 education courses in California.

1 34. Dr. Khatibi has taught CME courses on many topics in
2 ophthalmology, including retinal tumors, glaucoma, and other ocular diseases, as
3 well as systemic diseases. Dr. Khatibi has also organized CME courses. All
4 courses taught and organized by Dr. Khatibi were approved by authorized
5 continuing medical education providers. *See* Cal. Code Regs. tit. 16, § 1337(a).

6 35. Other than the requirements established in section 2190.1, the content
7 of every CME course taught by Dr. Khatibi was created and compiled by her
8 without any supervision, approval, control, or input by any government official,
9 including the Medical Board.

10 36. None of the CME courses taught by Dr. Khatibi have been audited by
11 the Medical Board.

12 37. After Dr. Khatibi's courses, attendees are typically asked to fill out an
13 evaluation. The evaluation usually includes questions asking about the
14 effectiveness of the course and whether the course instructor possessed any bias.

15 38. It is not uncommon for attendees to approach Dr. Khatibi following a
16 course taught by her to ask questions and engage in conversation about the course
17 and material discussed.

18 39. CME attendees also often ask questions of Dr. Khatibi during CME
19 courses taught by her and even debate with her.

20 40. Both during and after CME courses taught by Dr. Khatibi, attendees
21 treat her as the person responsible for the content discussed.

22 41. In addition to the joy of sharing knowledge with others, Dr. Khatibi
23 also benefits reputationally from teaching continuing medical education courses.

24 42. Dr. Khatibi wishes to continue teaching CME courses in California,
25 but does not want to be compelled to include discussion of implicit bias in her
26 courses when there is no relevance to her topics, or discussion of other topics is
27 more relevant to minimize treatment outcome disparities. This is especially true
28 given the lack of evidentiary support for implicit bias trainings and the significant

1 time constraints usually present in delivering CME courses, which limit the
2 amount of information capable of being discussed.

3 43. Further, Dr. Khatibi disagrees that implicit bias is the primary factor
4 driving disparities in healthcare. Thus, because Dr. Khatibi's courses do not
5 generally cover disparities in care, and because there is limited time available for
6 instruction in a given course, section 2190.1(d)'s mandate to include discussion of
7 implicit bias prevents her from having a more robust and appropriate discussion of
8 the topic. Instead, she is limited to only discussing the government's preferred
9 topic and viewpoint.

10 44. Even with those limitations, because section 2190.1(d) requires Dr.
11 Khatibi to provide "examples" or "strategies" of implicit bias herself, course
12 attendees are likely to attribute the content of CME courses taught by Dr. Khatibi
13 as coming from her, not the Medical Board.

14 45. Should Dr. Khatibi teach a course without the mandated implicit bias
15 discussion, the course would not qualify for CME credit in California. As a result,
16 it is unlikely that physicians would elect to take such a course.

17 *Marilyn M. Singleton*

18 46. Dr. Singleton is a board-certified anesthesiologist and past president
19 of the Association of American Physicians and Surgeons.

20 47. Dr. Singleton earned her bachelor's degree from Stanford University
21 and her medical degree from University of California, San Francisco.

22 48. Dr. Singleton has taught CME courses for several years. She has also
23 organized CME courses. All courses taught and organized by Dr. Singleton were
24 approved by authorized continuing medical education providers. *See* Cal. Code
25 Regs. tit. 16, § 1337(a).

26 49. Other than the requirements established in section 2190.1, the content
27 of every CME course taught by Dr. Singleton was created and compiled by her
28

1 without any supervision, approval, control, or input by any government official,
2 including the Medical Board.

3 50. None of the CME courses taught by Dr. Singleton have been audited
4 by the Medical Board.

5 51. After the courses taught by Dr. Singleton, attendees are typically
6 asked to fill out an evaluation. The evaluation usually includes four to five
7 questions asking about the effectiveness of the speaker and whether the speaker
8 conveyed the stated goals of the course.

9 52. It is not uncommon for attendees to approach Dr. Singleton following
10 a course taught by her to ask questions and engage in conversation about the
11 course and material discussed.

12 53. Dr. Singleton is often called upon to teach CME courses and expects
13 to be asked to do so in the future.

14 54. Dr. Singleton enjoys teaching CME courses and benefits financially
15 and reputationally from doing so.

16 55. Should Dr. Singleton be required to include discussion of implicit bias
17 in the courses she teaches, she would be forced to include information that is not
18 relevant to her chosen topic. Including discussion of implicit bias in her courses
19 would require her to change a portion of the talk to include information on implicit
20 bias at the expense of other information she would prefer to include.

21 56. Further, Dr. Singleton disagrees that including discussion of implicit
22 bias in her courses is helpful and important. To the contrary, she believes that such
23 trainings are harmful to physicians and patients. Yet because section 2190.1(d)
24 requires a discussion of “examples” of disparities in care resulting from implicit
25 bias or of “strategies” to address such disparities due to implicit bias, informing an
26 audience of her disagreement with including mandatory discussion of implicit bias
27 would be insufficient to make clear that the government’s required message is not
28 her own. Rather, because Dr. Singleton must provide “examples” or “strategies”

1 herself, course attendees are likely to attribute the content of CME courses taught
2 by Dr. Singleton as coming from her, not the Medical Board.

3 57. If, instead, Dr. Singleton taught a course without the mandated
4 implicit bias discussion, the course would not qualify for continuing medical
5 education credit in California. As a result, it is unlikely that physicians would elect
6 to take such a course.

7 *Do No Harm*

8 58. Do No Harm's membership is comprised of physicians, healthcare
9 professionals, medical students, patients, and policymakers united by a mission to
10 protect healthcare from radical, divisive, and discriminatory ideologies.

11 59. Do No Harm's members believe that all patients deserve access to the
12 best possible care and that barriers to care should be broken down.

13 60. Do No Harm's membership includes at least one individual who
14 teaches, has taught, and intends to teach continuing medical education courses in
15 the future for credit in California.

16 61. At least one of Do No Harm's members does not want to include
17 discussion of implicit bias in the CME courses she teaches because such trainings
18 have not been shown to successfully reduce barriers to healthcare, and instead risk
19 infecting healthcare decisions with divisive and discriminatory ideas.

20 62. If not for Cal. Bus. & Prof. Code § 2190.1(d), at least one of Do No
21 Harm's members would not include discussion of implicit bias in the CME courses
22 taught by her.

23 **CAUSES OF ACTION**

24 **FIRST CLAIM FOR RELIEF**

25 **Violation of Plaintiffs' First Amendment Right to Freedom of Speech**
26 **(42 U.S.C. § 1983)**

27 63. Plaintiffs reallege and incorporate by reference all allegations
28 contained in the previous paragraphs.

1 64. An actual and substantial controversy exists between Plaintiffs, their
2 members, and Defendants. All Plaintiffs and their members have the right to not
3 speak on topics they would rather remain silent about.

4 65. The First Amendment to the United States Constitution, as applied to
5 the States through the Fourteenth Amendment, protects the choice of Plaintiffs and
6 their members to not include discussions of implicit bias in the continuing medical
7 education courses taught by them.

8 66. On its face and as enforced by Defendants, Cal. Bus. & Prof. Code §
9 2190.1(d)(1) compels Plaintiffs and their members to include discussion of implicit
10 bias in CME courses taught by them when they would otherwise remain silent
11 about implicit bias.

12 67. Compelling Plaintiffs and their members to include discussion of
13 implicit bias in the CME courses taught by them when they would otherwise
14 remain silent about the topic burdens their rights to free speech.

15 68. Section 2190.1(d)(1) is a content-based restriction on Plaintiffs' and
16 their members' freedom of speech because it mandates the discussion of a certain
17 topic (implicit bias) in CME courses taught by them.

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

22 70. Section 2190.1(d)(1) is not sufficiently tailored to serve a compelling
23 government interest.

24 71. There is no evidence that CME courses have historically been used by
25 the government to communicate with the public or medical practitioners. Instead,
26 history shows CME is used by the government to ensure physicians are competent
27 to practice medicine.
28

1 active concert or participation with Defendants from enforcing Cal. Bus. & Prof.
2 Code § 2190.1(d)(1) against Plaintiffs and all others teaching continuing medical
3 education courses;

4 C. Judgment for Plaintiffs and against Defendants for the deprivation of
5 Plaintiffs’ rights;

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

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

9 DATED: December 22, 2023.

10 Respectfully submitted,

JOSHUA P. THOMPSON, SBN 250955
CALEB R. TROTTER, SBN 305195
DONNA G. MATIAS, SBN 154268
CAMERON T. NORRIS,
Va. Bar No. 91624*

11
12
13
14
15 By /s/ Caleb R. Trotter
16 CALEB R. TROTTER

17 *Pro hac vice

18
19 *Attorneys for Plaintiffs Azadeh Khatibi,*
20 *M.D., Marilyn M. Singleton, M.D., and*
21 *Do No Harm*
22
23
24
25
26
27
28

1 JOSHUA P. THOMPSON, SBN 250955

JThompson@pacificlegal.org

2 CALEB R. TROTTER, SBN 305195

3 CTrotter@pacificlegal.org

4 DONNA G. MATIAS, SBN 154268

DMatias@pacificlegal.org

5 Pacific Legal Foundation

6 555 Capitol Mall, Suite 1290

Sacramento, California 95814

7 (916) 419-7111

8 CAMERON T. NORRIS,

9 Va. Bar No. 91624*

cam@consovoymccarthy.com

10 Consovoy McCarthy PLLC

11 1600 Wilson Boulevard, Suite 700

Arlington, Virginia 22209

12 (703) 243-9423

13 *Pro hac vice ~~application to be filed~~

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

15
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
nonprofit corporation,

22 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 President of the Medical
Board of California, LAURIE ROSE

Case No.:

2:23-cv-
06195-DSF-E

FIRST AMENDED
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

1 LUBIANO, in her official capacity as Vice
 2 President of the Medical Board of California,
 3 ~~LAURIE ROSE LUBIANOR~~RYAN
 4 BROOKS, in her~~his~~ official capacity as
 5 Secretary of the Medical Board of California,
 6 REJI VARGHESE, in his official capacity as
 7 Executive Director of the Medical Board of
 8 California, and MARINA O’CONNOR, in
 9 her official capacity as Chief of Licensing,
 10 Medical Board of California,

Defendants.

INTRODUCTION

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

21 2. Rather than respect the freedom and judgment of continuing medical
 22 education instructors to choose which topics to teach, California law now requires
 23 the Medical Board of California to enforce the mandate that all continuing medical
 24 education courses include discussion of implicit bias. Under the First Amendment
 25 to the United States Constitution, the government cannot compel speakers to
 26 engage in discussions on subjects they prefer to remain silent about. Likewise, the
 27 government cannot condition a speaker’s ability to offer courses for credit on the
 28

1 requirement that she espouse the government’s favored view on a controversial
2 topic. This case seeks to vindicate those important constitutional rights.

3 **JURISDICTION AND VENUE**

4 3. This action arises under the First and Fourteenth Amendments to the
5 United States Constitution and 42 U.S.C. § 1983. This Court has jurisdiction over
6 this federal claim under 28 U.S.C. §§ 1331 (federal question) and 1343(a) (redress
7 for deprivation of civil rights). Declaratory relief is authorized by the Declaratory
8 Judgment Act, 28 U.S.C. §§ 2201–2202.

9 4. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a
10 substantial part of the events giving rise to the claims occurred or will occur in this
11 district.

12 **PARTIES**

13 5. Plaintiff Azadeh Khatibi, M.D., is a United States citizen and resident
14 of Los Angeles County, California. Dr. Khatibi is a California-licensed physician
15 and board-certified ophthalmologist who has taught and organized continuing
16 medical education courses for credit in California.

17 6. Plaintiff Marilyn “Marilyne” M. Singleton, M.D., is a United States
18 citizen and resident of Los Angeles County, California. Dr. Singleton is a
19 California-licensed physician and board-certified anesthesiologist. Dr. Singleton
20 teaches and organizes continuing medical education courses and has done so for
21 many years.

22 7. Plaintiff Do No Harm is a national nonprofit corporation
23 headquartered in Glen Allen, Virginia. Do No Harm’s membership includes at
24 least one individual who teaches and organizes continuing medical education
25 courses for credit in California.

26 8. Defendant ~~Kristina Lawson~~Randy W. Hawkins is the President of the
27 Medical Board of California, which is responsible for regulating and licensing the
28

1 practice of medicine in California, including enforcing the Medical Practice Act,
2 Cal. Bus. & Prof. Code § 2000, *et seq.* Mr. Hawkins~~Ms. Lawson~~ is sued in her~~his~~
3 official capacity.

4 9. Defendant ~~Randy W. Hawkins~~ Laurie Rose Lubiano is the Vice
5 President of the Medical Board of California. Ms. Lubiano~~Mr. Hawkins~~ is sued in
6 his~~her~~ official capacity.

7 10. Defendant ~~Laurie Rose Lubiano~~ Ryan Brooks is the Secretary of the
8 Medical Board of California. ~~Ms. Lubiano~~ Mr. Brooks is sued in her~~his~~ official
9 capacity.

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

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

17 **FACTUAL ALLEGATIONS**

18 **California’s Continuing Medical Education Requirements**

19 13. To “ensure the continuing competence of licensed physicians and
20 surgeons,” the Medical Board is responsible for “adopt[ing] and administer[ing]
21 standards” for continuing medical education (CME). Cal. Bus. & Prof. Code §
22 2190.

23 14. Educational activities that will satisfy the Medical Board’s CME
24 standards “may include, but are not limited to, educational activities that meet any”
25 of four criteria: contain “scientific or clinical content” directly affecting the
26 “quality or cost-effective provision of” healthcare; address “quality assurance or
27 improvement, risk management, health facility standards, or the legal aspects of
28

1 clinical medicine”; address “bioethics or professional ethics”; and “improve the
2 physician-patient relationship.” Cal. Bus. & Prof. Code § 2190.1(a).

3 ~~13.15.~~ All California-licensed physicians are required to complete 50 hours
4 of ~~continuing medical education~~ CME every two years. Cal. Code Regs. tit. 16, §
5 1336(a).

6 ~~14.16.~~ ~~To~~ The Medical Board awards CME credit for all courses “which
7 qualify for credit by the Medical Board, continuing education courses must be
8 approved by Category I credit from the California Medical Association, or the
9 American Medical Association,” as well as for all courses “which qualify for
10 prescribed credit from the American Academy of Family Physicians, or “other
11 organizations and institutions acceptable to” the Medical Board.” Cal. Code Regs.
12 tit. 16, § 1337(a).

13 ~~15.17.~~ ~~The Medical Board sets out criteria to determine whether~~ For courses
14 taught by “other organizations and institutions” to receive credit, Cal. Code Regs.
15 tit. are acceptable, including that course 16, § 1337(a)(3), the content “shall be
16 directly related to patient care, community health or public health, preventive
17 medicine, quality assurance or improvement, risk management, health facility
18 standards, the legal aspects of clinical medicine, bioethics, professional ethics, or
19 improvement of the physician-patient relationship.” Id. at ~~Cal. Code Regs. tit. 16,~~ §
20 1337.5(a)(3).

21 18. In addition to attending CME courses, and in line with the stated
22 purpose of ensuring the continuing competence of physicians and surgeons, Cal.
23 Bus. & Prof. Code § 2190, doctors may satisfy some of the 50-hour CME
24 requirement through teaching CME courses, passing a “certifying or recertifying
25 examination administered by a recognized specialty board,” receiving the
26 Physician’s Recognition Award, and participating in an “approved postgraduate
27
28

1 residency training program or approved clinical fellowship program.” Cal. Code
2 Regs. tit. 16, § 1337(c)-(f).

3 ~~16.19.~~Physicians are required to attest that they satisfied the 50-hour
4 ~~continuing education~~CME requirement when renewing their licenses. Cal. Code
5 Regs. tit. 16, § 1336(c).

6 20. Each year, the Medical Board randomly audits physicians for
7 compliance with the ~~continuing education~~CME requirement. Cal. Code Regs. tit.
8 16, § 1338(a). When reviewing a physician’s documentation for completed
9 continuing education, the Medical Board will randomly audit CME courses to
10 determine whether the course is approved for credit. Cal. Code Regs. tit. 16, §§
11 1337.5(b), 1338(d).

12 17.21.If a course is not audited by the Medical Board, it is awarded credit
13 even though its content is never reviewed by the Medical Board so long as no
14 complaint is received regarding the course. Cal. Code Regs. tit. 16, § 1337.5(b).

15 ~~18.22.~~Should a course not qualify for credit after an audit, then physicians
16 will not receive credit for that course. Cal. Code Regs. tit. 16, § 1337.5(c). And
17 should a physician fail to satisfy the 50-hour requirement as a result, he or she will
18 be required to cure the deficiency during the next renewal period. Cal. Code Regs.
19 tit. 16, § 1338(b).

20 **The Challenged Law**

21 ~~19.23.~~Cal. Bus. & Prof. Code § 2190.1(d)(1) declares that “[o]n and after
22 January 1, 2022, all continuing medical education courses shall contain curriculum
23 that includes the understanding of implicit bias.”

24 ~~20.24.~~In order to satisfy the curriculum requirements of Cal. Bus. & Prof.
25 Code § 2190.1(d)(1), continuing medical education courses must include
26 “[e]xamples of how implicit bias affects perceptions and treatment decisions of
27 physicians and surgeons, leading to disparities in health outcomes,” or “[s]trategies
28

1 to address how unintended biases in decisionmaking may contribute to health care
2 disparities by shaping behavior and producing differences in medical treatment
3 along lines of race, ethnicity, gender identity, sexual orientation, age,
4 socioeconomic status, or other characteristics,” or a combination of both. §
5 2190.1(e).

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Implicit Bias Trainings Are Controversial

1
2 21-25. 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 22-26. 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 23-27. There is inconsistent evidence that implicit bias in healthcare is
11 prevalent and results in disparate treatment outcomes.

12 24-28. 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 25-29. Moreover, evidence shows that implicit bias trainings can cause
17 counterproductive anger, frustration, and resentment among those taking the
18 trainings.

19 26-30. 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 27-31. 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.

The Challenged Law Compels Plaintiffs’ Speech

Azadeh Khatibi

28-32. Azadeh Khatibi was a child in Tehran during the Iranian Revolution of 1979. As a result of increasingly theocratic changes to Iranian society following the Revolution, her family joined the diaspora and uprooted to the United States, settling in Los Angeles.

29-33. After matriculating at UCLA, Dr. Khatibi went on to earn an M.D. from University of California, San Francisco, and master’s degrees in public health and health and medical sciences from University of California, Berkeley. Now an ophthalmologist, Dr. Khatibi also teaches and organizes continuing medical education courses in California.

30-34. Dr. Khatibi has taught ~~continuing medical education~~ CME courses on many topics in ophthalmology, including retinal tumors, glaucoma, and other ocular diseases, as well as systemic diseases. Dr. Khatibi has also organized ~~continuing medical education~~ CME courses. All courses taught and organized by Dr. Khatibi were ~~done under the auspices of~~ approved by authorized continuing medical education providers.- See Cal. Code Regs. tit. 16, § 1337(a).

35. Other than the requirements established in section 2190.1, the content of every CME course taught by Dr. Khatibi was created and compiled by her without any supervision, approval, control, or input by any government official, including the Medical Board.

36. None of the CME courses taught by Dr. Khatibi have been audited by the Medical Board.

37. After Dr. Khatibi’s courses, attendees are typically asked to fill out an evaluation. The evaluation usually includes questions asking about the effectiveness of the course and whether the course instructor possessed any bias.

1 38. It is not uncommon for attendees to approach Dr. Khatibi following a
2 course taught by her to ask questions and engage in conversation about the course
3 and material discussed.

4 39. CME attendees also often ask questions of Dr. Khatibi during CME
5 courses taught by her and even debate with her.

6 40. Both during and after CME courses taught by Dr. Khatibi, attendees
7 treat her as the person responsible for the content discussed.

8 31.41. In addition to the joy of sharing knowledge with others, Dr. Khatibi
9 also benefits reputationally from teaching continuing medical education courses.

10 32.42. Dr. Khatibi wishes to continue teaching ~~continuing medical~~
11 ~~education~~ CME courses in California, but does not want to be compelled to include
12 discussion of implicit bias in her courses when there is no relevance to her topics,
13 or discussion of other topics is more relevant to minimize treatment outcome
14 disparities. This is especially true given the lack of evidentiary support for implicit
15 bias trainings and the significant time constraints usually present in delivering
16 ~~continuing medical education~~ CME courses, which limit the amount of information
17 capable of being discussed.

18 33.43. Further, Dr. Khatibi disagrees that implicit bias is the primary factor
19 driving disparities in healthcare. Thus, because Dr. Khatibi's courses do not
20 generally cover disparities in care, and because there is limited time available for
21 instruction in a given course, section 2190.1(d)'s mandate to include discussion of
22 implicit bias prevents her from having a more robust and appropriate discussion of
23 the topic. Instead, she is limited to only discussing the government's preferred
24 topic and viewpoint.

25 44. Even with those limitations, because section 2190.1(d) requires Dr.
26 Khatibi to provide "examples" or "strategies" of implicit bias herself, course
27
28

1 attendees are likely to attribute the content of CME courses taught by Dr. Khatibi
2 as coming from her, not the Medical Board.

3 34.45. Should Dr. Khatibi teach a course without the mandated implicit bias
4 discussion, the course would not qualify for ~~continuing medical education~~ CME
5 credit in California. As a result, it is unlikely that physicians would elect to take
6 such a course.

7 *Marilyn M. Singleton*

8 35.46. Dr. Singleton is a board-certified anesthesiologist and past president
9 of the Association of American Physicians and Surgeons.

10 36.47. Dr. Singleton earned her bachelor's degree from Stanford University
11 and her medical degree from University of California, San Francisco.

12 37.48. Dr. Singleton has taught ~~continuing medical education~~ CME courses
13 for several years. She has also organized ~~continuing medical education~~ CME
14 courses. All courses taught and organized by Dr. Singleton were ~~done under the~~
15 ~~auspices of~~ approved by authorized continuing medical education providers. See
16 Cal. Code Regs. tit. 16, § 1337(a).

17 49. Other than the requirements established in section 2190.1, the content
18 of every CME course taught by Dr. Singleton was created and compiled by her
19 without any supervision, approval, control, or input by any government official,
20 including the Medical Board.

21 50. None of the CME courses taught by Dr. Singleton have been audited
22 by the Medical Board.

23 51. After the courses taught by Dr. Singleton, attendees are typically
24 asked to fill out an evaluation. The evaluation usually includes four to five
25 questions asking about the effectiveness of the speaker and whether the speaker
26 conveyed the stated goals of the course.

1 52. It is not uncommon for attendees to approach Dr. Singleton following
2 a course taught by her to ask questions and engage in conversation about the
3 course and material discussed.

4 38.53.Dr. Singleton is often called upon to teach ~~continuing medical~~
5 ~~education~~CME courses and expects to be asked to do so in the future.

6 39.54.Dr. Singleton enjoys teaching ~~continuing medical education~~CME
7 courses and benefits financially and reputationally from doing so.

8 40.55.Should Dr. Singleton be required to include discussion of implicit bias
9 in the courses she teaches, she would be forced to include information that is not
10 relevant to her chosen topic. Including discussion of implicit bias in her courses
11 would require her to change a portion of the talk to include information on implicit
12 bias at the expense of other information she would prefer to include.

13 41.56.Further, Dr. Singleton disagrees that including discussion of implicit
14 bias in her courses is helpful and important. To the contrary, she believes that such
15 trainings are harmful to physicians and patients. Yet because section 2190.1(d)
16 requires a discussion of “examples” of disparities in care resulting from implicit
17 bias or of “strategies” to address such disparities due to implicit bias, informing an
18 audience of her disagreement with including mandatory discussion of implicit bias
19 would be insufficient to make clear that the government’s required message is not
20 her own. Rather, because Dr. Singleton must provide “examples” or “strategies”
21 herself, course attendees are likely to attribute the content of CME courses taught
22 by Dr. Singleton as coming from her, not the Medical Board.

23 42.57.If, instead, Dr. Singleton taught a course without the mandated
24 implicit bias discussion, the course would not qualify for continuing medical
25 education credit in California. As a result, it is unlikely that physicians would elect
26 to take such a course.

27 *Do No Harm*

1 their members to not include discussions of implicit bias in the continuing medical
2 education courses taught by them.

3 51-66. On its face and as enforced by Defendants, Cal. Bus. & Prof. Code §
4 2190.1(d)(1) compels Plaintiffs and their members to include discussion of implicit
5 bias in ~~continuing medical education~~CME courses taught by them when they
6 would otherwise remain silent about implicit bias.

7 52-67. Compelling Plaintiffs and their members to include discussion of
8 implicit bias in the ~~continuing medical education~~CME courses taught by them
9 when they would otherwise remain silent about the topic burdens their rights to
10 free speech.

11 53-68. Section 2190.1(d)(1) is a content-based restriction on Plaintiffs' and
12 their members' freedom of speech because it mandates the discussion of a certain
13 topic (implicit bias) in ~~continuing medical education~~CME courses taught by them.

14 54-69. Section 2190.1(d)(1) is also a viewpoint-based restriction on
15 Plaintiffs' and their members' freedom of speech because it mandates speech
16 accepting the premise of implicit bias and resulting healthcare disparities due to
17 such bias, despite the controversial nature of both propositions.

18 55-70. Section 2190.1(d)(1) is not sufficiently tailored to serve a compelling
19 government interest.

20 71. There is no evidence that CME courses have historically been used by
21 the government to communicate with the public or medical practitioners. Instead,
22 history shows CME is used by the government to ensure physicians are competent
23 to practice medicine.

24 72. There is no evidence that the public or attendees of CME courses
25 perceive the content of CMEs as coming from the Medical Board, or the
26 government generally, rather than the individual instructor.

1 A. A declaration that Cal. Bus. & Prof. Code § 2190.1(d)(1), on its face
2 and as applied to Plaintiffs, violates the First and Fourteenth Amendments to the
3 U.S. Constitution;

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

9 C. Judgment for Plaintiffs and against Defendants for the deprivation of
10 Plaintiffs’ rights;

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

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

14 DATED: ~~August 1~~December 22, 2023.

15 Respectfully submitted,

16 JOSHUA P. THOMPSON, SBN 250955
17 CALEB R. TROTTER, SBN 305195
18 DONNA G. MATIAS, SBN 154268
19 CAMERON T. NORRIS,
Va. Bar No. 91624*

20 By /s/ Caleb R. Trotter
21 CALEB R. TROTTER

22 *Pro hac vice ~~application to be filed~~

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